

Mayor
Derek Easterling
City Manager
Jeff Drobney, ICMA-CM
City Clerk
Lea Alvarez, CMC



Council
Mayor Pro-Tem, James Eaton
Tracey Viars
Pat Ferris
Antonio Jones
Trey Sinclair

**City Council
Meeting Agenda
June 6, 2022 6:30 PM
Council Chambers**

I. INVOCATION

II. PLEDGE OF ALLEGIANCE

III. CALL TO ORDER

IV. ANNOUNCEMENTS

- A. This public meeting is being conducted via the use of real-time telephonic technology allowing the public simultaneous access to the public meeting. You may also attend in person with limited seating available at both the Council Chambers and the Ben Robertson Community Center, if needed.

Mayor and Council will be conducting their meeting via real-time telephonic technology using Zoom Meeting and Facebook Live. You can access the meeting via the following link: <https://www.facebook.com/CityofKennesaw/>

- B. If you are not able to attend a meeting in-person and would like to provide public comment on a specific agenda item, you can email **kennesawcouncil@kennesaw-ga.gov** no later than 6:00 PM the night of the regular meeting. Your comments on a specific agenda item will be read aloud or grouped into categories for the record. **Facebook Live is not monitored for public comment.**

V. PRESENTATIONS

- A. Introduction of the Chief's Citizen's Advisory Board.

In the aftermath of the tragic death of George Floyd, our community, like others throughout the country, experienced a great deal of pain and distrust towards law enforcement. Chief Westenberger was offered a chance to be apart of of a roundtable discussion with pastors and community leaders. From this meeting, the Chief continued to build stronger relations which have transformed into the Citizen's Advisory Board with the purpose to strengthen ties throughout our diverse community. The Chief wishes to introduce the board members to the Mayor and Council.

VI. PUBLIC COMMENT/BUSINESS FROM THE FLOOR

VII. OLD BUSINESS

VIII. NEW BUSINESS

IX. COMMITTEE AND BOARD REPORTS

X. PUBLIC HEARING(S)

Swearing-in of any witnesses or individuals offering comments on any of the following items.

- A. **FIRST PUBLIC HEARING:** Approval of RESOLUTION adopting the updates to the Capital Improvement Element and Short Term Work Program (CIE/STWP) report covering the five year period of 2022-2026. No action will take place until the regularly scheduled June 20, 2022, Mayor and Council meeting.

The City of Kennesaw is required to adopt an annual report for Capital Improvement Element and the Short Term Work Projects. The Atlanta Regional Commission and the Georgia Department of Community Affairs completed the regional review of the 2022 CIE Update for the City of Kennesaw. The Georgia Department of Community Affairs has determined that the updates conform to the Development Impact Fee Compliance Requirements. Renewal of Qualified Local Government (QLG) status is contingent on local adoption of the update. This annual report review and adoption is required for all jurisdictions that collect development impact fees. This is the first of two (2) required public hearings with adoption to be considered at the June 20, 2022, Mayor and Council meeting at 6:30 PM. City Staff recommends adoption of this resolution and report to maintain QLG status.

XI. CONSENT AGENDA

- A. Approval of the May 16, 2022 Mayor and Council regular meeting minutes.

- B. Consideration for approval of a Temporary Use Permit for TNT Fireworks.
Applicant: Kathy Roos.

This Temporary Use Permit request is for TNT Fireworks to sell fireworks in the parking lot located at 2500 North Cobb Parkway, Kennesaw, Georgia 30152. Property owner Mr. Ben Kushner with The Crossings Partners, LLC, has given written permission to conduct this on his property from June 14, 2022, through July 10, 2022. Attached is a plat of where the stand will be placed. A similar fireworks sale was conducted at the same location in June 2021. This approval is contingent upon passing the Cobb County Fire Marshal's inspection. Finance Director recommends approval.

100.0000.31.6100 \$500

- C. Authorization to Surplus and Dispose of Equipment.

The City currently owns a 2003 JLG scissor lift. It is a model ES2632 with serial number 110474. It is in non-functional condition and the expense of repair

outweighs its value. If approved for surplus, staff will attempt to sell the lift in the open market; however, if no bids are received then it will be sold as scrap metal. The Public Works Director recommends declaring the lift as surplus.

- D. Approval of RESOLUTION for Bid and Award of Contract for Community Development Block Grant (CDBG) Woodland Acres Sidewalk Improvements Phase VI.

Staff solicited bids from qualified contractors to install sidewalk in association with the Community Development Block Grant (CDBG) program. The project will consist of installing sidewalk on Woodland Drive NW from Butler Creek Road to White Oak Court and along Black Gum Drive NW from Woodland Drive to Pine Mountain Road. The bid announcement was advertised in the Marietta Journal pursuant to City procurement policy. Two bids were received: Curb Atlanta, Inc. - \$144,220.00; R&B Developer, Inc. - \$181,681.00. The Public Works Director recommends approval of bid and award of contract to Curb Atlanta, Inc. for the amount of \$144,220.00 and requests the Mayor to sign the attached resolution and contract.

100.1050.54.142000.00000 CDBG Projects

- E. Approval of RESOLUTION to award contract with Gay Construction Company as the Construction Manager At Risk (CMAR) for Depot Park - Phase 8.

On April 18, 2022, Request for Qualification (RFQ) packages were received from Astra Group, Gay Construction Company, and Hogan Construction Group for the above referenced project. A six-person Selection Committee consisting of City staff, the civil engineer, and the architect reviewed the responses to the RFQ and provided a score for each firm based on firm qualifications, references, experience, and litigation record. The Selection Committee conducted interviews with Gay Construction Company and Hogan Construction Group on May 20, 2022. Based on the overall score earned during this process, the Selection Committee recommends that Gay Construction perform pre-construction services for a fee not to exceed \$20,000 and for the Mayor to sign the attached resolution and contract.

310.4228.54.150600.00000 SPLOST 2022 Depot Park

- F. Approval of RESOLUTION Supporting the Establishment of Georgia Main Street Program

The Georgia Main Street Program began in 1980 as one of the original pilot state coordinating programs of the National Main Street Initiative launched by the National Trust for Historic Preservation. The program launched with five local communities and has grown to serve 100+ communities statewide. Georgia Main Streets represent some of the strongest central business districts in the state and in the Southeast. Since it started, the designated community programs have been instrumental in leading the state in historic preservation, small business development, expansion of the state's employment base, leveraging private investment, increasing tourism and providing a positive road map for public-private partnerships. Housed in the Office of Downtown Development at the Georgia Department of Community Affairs (DCA), Main Street is a signature program for community development and revitalization in Georgia's historic downtowns. This resolution outlines support for Kennesaw's application to start-

up program for the 2022-2023 program year. The Economic Development Director recommends approval.

- G. Authorize the Start of Right of Way Abandonment Process for unnamed right of way between 2020 Smith Drive and 2022 Smith Drive.

The City is in receipt of a request for right of way abandonment of an unnamed right of way that lies between 2020 Smith Drive and 2022 Smith Drive. In accordance with Georgia law O.C.G.A Title 32, Chapter 7, multiple steps must be followed to abandon public rights of way. The first step is approval from the governing body to start the abandonment process. The Public Works Director has notified the requestor that they would be responsible for obtaining all necessary surveys and appraisals required for the abandonment if approved by Council. With Council's approval, the Public Works Department will proceed with the abandonment process. The Public Works Director recommends approval to begin the abandonment process.

DEPARTMENT REPORTS

XII. GENERAL AND ADMINISTRATIVE

GINA AULD, Finance Director

XIII. PUBLIC SAFETY

BILL WESTENBERGER, Police Chief

NIKKI MCGRAW, 911 Communications Director

XIV. INFORMATION TECHNOLOGY

RICK ARNOLD, Operations Specialist

JOSHUA GUERRERO, Systems Administration Specialist

KENNETH KING, Help Desk Specialist

XV. PUBLIC WORKS

RICKY STEWART, Public Works Director

ROBBIE BALENGER, Facilities Manager

XVI. RECREATION AND CULTURE

RICHARD BANZ, Museum Director

STEVE ROBERTS, Parks and Recreation Director

ANN PARSONS, Smith-Gilbert Gardens Director

XVII. COMMUNITY DEVELOPMENT

LUKE HOWE, Economic Development Director

DARRYL SIMMONS, Zoning Administrator

SCOTT BANKS, Building Official

XVIII. PUBLIC COMMENT/BUSINESS FROM THE FLOOR

XIX. CITY MANAGER'S REPORT (Jeff Drobney)

- A. City Manager reports, discussions and updates.

XX. MAYOR'S REPORT

- A. Mayor and Council (re)appointments to Boards and Commissions. This item is for (re)appointments made by the Mayor to any Board, Committees, Authority or Commission requiring an appointment to fill any vacancies, resignations, and to create or dissolve committees, as deemed necessary.

XXI. COUNCIL COMMENTS

XXII. EXECUTIVE SESSION - Land, Legal, Personnel

Pursuant to the provisions of O.C.G.A. 50-14-3, the City Council could, at any time during the meeting, vote to close the public meeting and move to executive session to discuss matters relating to litigation, legal actions and/or communications from the City Attorney; and/or personnel matters; and/or real estate matters

XXIII. ADJOURN



**Regular Meeting Agenda
6/6/2022 6:30 PM
Council Chambers**

Title of Item:	This public meeting is being conducted via the use of real-time telephonic technology allowing the public simultaneous access to the public meeting. You may also attend in person with limited seating available at both the Council Chambers and the Ben Robertson Community Center, if needed.
Agenda Comments:	Mayor and Council will be conducting their meeting via real-time telephonic technology using Zoom Meeting and Facebook Live. You can access the meeting via the following link: https://www.facebook.com/CityofKennesaw/
Funding Line(s)	



**Regular Meeting Agenda
6/6/2022 6:30 PM
Council Chambers**

Title of Item:	If you are not able to attend a meeting in-person and would like to provide public comment on a specific agenda item, you can email kennesawcouncil@kennesaw-ga.gov no later than 6:00 PM the night of the regular meeting. Your comments on a specific agenda item will be read aloud or grouped into categories for the record. Facebook Live is not monitored for public comment.
Agenda Comments:	
Funding Line(s)	



**Regular Meeting Agenda
6/6/2022 6:30 PM
Council Chambers**

Title of Item:	Introduction of the Chief's Citizen's Advisory Board.
Agenda Comments:	In the aftermath of the tragic death of George Floyd, our community, like others throughout the country, experienced a great deal of pain and distrust towards law enforcement. Chief Westenberger was offered a chance to be apart of of a roundtable discussion with pastors and community leaders. From this meeting, the Chief continued to build stronger relations which have transformed into the Citizen's Advisory Board with the purpose to strengthen ties throughout our diverse community. The Chief wishes to introduce the board members to the Mayor and Council.
Funding Line(s)	



**Regular Meeting Agenda
6/6/2022 6:30 PM
Council Chambers**

Title of Item:	FIRST PUBLIC HEARING: Approval of RESOLUTION adopting the updates to the Capital Improvement Element and Short Term Work Program (CIE/STWP) report covering the five year period of 2022-2026. No action will take place until the regularly scheduled June 20, 2022, Mayor and Council meeting.
Agenda Comments:	The City of Kennesaw is required to adopt an annual report for Capital Improvement Element and the Short Term Work Projects. The Atlanta Regional Commission and the Georgia Department of Community Affairs completed the regional review of the 2022 CIE Update for the City of Kennesaw. The Georgia Department of Community Affairs has determined that the updates conform to the Development Impact Fee Compliance Requirements. Renewal of Qualified Local Government (QLG) status is contingent on local adoption of the update. This annual report review and adoption is required for all jurisdictions that collect development impact fees. This is the first of two (2) required public hearings with adoption to be considered at the June 20, 2022, Mayor and Council meeting at 6:30 PM. City Staff recommends adoption of this resolution and report to maintain QLG status.
Funding Line(s)	

ATTACHMENTS:

Description
Resolution

Upload Date Type
5/27/2022 Resolution

CIE/STWP Report for 2022-2026
ARC Approval Letter
Legal Ads

5/26/2022	Backup Material
5/26/2022	Backup Material
5/26/2022	Legal Ad

**CITY OF KENNESAW
GEORGIA**

RESOLUTION NO. 2022-___, 2022

**RESOLUTION ADOPTING THE UPDATES TO THE CAPITAL IMPROVEMENT
ELEMENT AND THE SHORT-TERM WORK PROGRAM COVERING THE FIVE-YEAR
PERIOD 2022-2026 OF THE ADOPTED 2017 COMPREHENSIVE PLAN UPDATE**

**BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF KENNESAW,
COBB COUNTY, GEORGIA AS FOLLOWS:**

WHEREAS, the annual update of the Capital Improvements Element and Short-Term Work Program was prepared in accordance with the Development Impact Fee Compliance Requirements and the Minimum Planning Standards and Procedures for Local Comprehensive Planning established by the Georgia Planning Act of 1989; and

WHEREAS, the updated sections of the Capital Improvements Elements and Short-Term Work Program has been presented at two duly advertised public hearings held by the Mayor and Council on June 6, 2022 and for final adoption at a meeting held by the Mayor and Council on June 20, 2022 at which the City of Kennesaw solicited community input on community needs and issues and which was conducted pursuant to the State's Minimum Planning Standards and Procedures; and

WHEREAS, the updated sections of the Capital Improvements Elements and Short-Term Work Program were submitted to Atlanta Regional Commission and Department of Community Affairs for review and recommendations on March 23, 2022. ARC (Atlanta Regional Commission) and DCA (Department of Community Affairs) have completed their review and have informed the City that they determined that the submittal complies with the Development Impact Fee and the Minimum Standards and Procedures for Local Comprehensive Planning.

NOW, THEREFORE BE IT RESOLVED, by the City of Kennesaw that, having met the public participation requirements of the Minimum Planning Standards and Procedures, and incorporating recommended changes and receive approval by the Atlanta Regional Commission and Department of Community Affairs, this Mayor and Council do hereby adopt these updates to the Capital Improvements and Short-Term Work Program.

PASSED AND ADOPTED by the Kennesaw City Council on this ___ day of June 2022.

ATTEST:

CITY OF KENNESAW:

Lea Alvarez, City Clerk

Derek Easterling, Mayor

**CITY OF KENNESAW
GEORGIA**

RESOLUTION NO. 2022-13, 2022

**RESOLUTION ADOPTING THE TRANSMITTAL OF UPDATES TO THE CAPITAL
IMPROVEMENT ELEMENT AND THE SHORT-TERM WORK PROGRAM COVERING
THE FIVE-YEAR PERIOD 2022-2026**

**BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF KENNESAW,
COBB COUNTY, GEORGIA AS FOLLOWS:**

WHEREAS, the City of Kennesaw has prepared an annual update to the Capital Improvements Element and Short Term Work Program; and

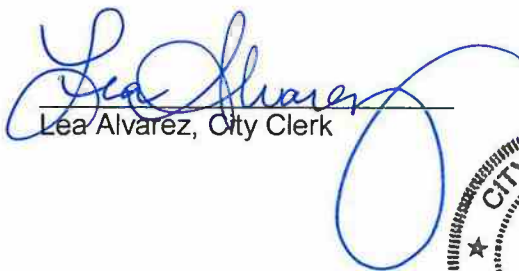
WHEREAS, the annual update of the Capital Improvements Element and Short-Term Work Program was prepared in accordance with the Development Impact Fee Compliance Requirements and the Minimum Planning Standards and Procedures for Local Comprehensive Planning established by the Georgia Planning Act of 1989, and a Public Hearing was held on March 21, 2022 6:30 p.m. in the Kennesaw City Hall.

NOW THEREFORE, BE IT THEREFORE RESOLVED, the Mayor and the Council of the City of Kennesaw does hereby submit for transmittal the annual update of the Capital Improvements Element and Short Term Work Program covering the five-year period 2022-2026 to the Atlanta Regional Commission for Regional review, as per the requirements of the Georgia Planning Act of 1989.

PASSED AND ADOPTED by the Kennesaw City Council on this 21st day of March, 2022.

ATTEST:

CITY OF KENNESAW


Lea Alvarez, City Clerk


Derek Easterling, Mayor



City of Kennesaw Annual STWP Update FY2021-2022							
Project Number	Plan Element	Project Description	Start Date	End Date	Estimated Cost	Funding Source	Responsible Party
1	Land Use	Create housing audit report	2021	2022	N/A	N/A	Mayor and Council & City Manager
2	Public Facilities	Revisions to Zoning ordinance and development standards	2021	2022	N/A	N/A	Community Development
3	Public Facilities	Continue business recruitment, expansion and retention efforts	2021	2022	\$5,000	GF, KDA & KDDA	Economic Development
4	Public Facilities	Swift Cantrell Park improvements	2021	2022	\$100,000	SPLOST	Public Works
5	Land Use	Review of implementation of Plan 2040	2021	2022	N/A	N/A	Community Development
6	Economic Development	Evaluate annexation action plan for all commercial and industrial corridors	2021	2022	N/A	NA	Community Development
7	Public Facilities	Transportation study on existing roadways and gateways into the City in association with GRTA and ARC consistent with the LCI Plan.	2021	2022	NA	NA	Community Development, Public Works
8	Land Use	Review master trails plan	2021	2022	N/A	N/A	Community Development, Parks and Recreation
9	Economic Development	Economic Development strategic plan	2021	2022	\$30,000	GF, KDA, KDDA	Economic Development
10	Economic Development	Review strategic growth plan with Planning and Zoning Department	2021	2022	N/A	N/A	Museum & Economic Dev
11	Community Facilities	Upgrade Neighborhood Parks	2021	2022	\$30,000	GF	Parks and Recreation
12	Information Technology	implement electronic submittal programs for all departments	2021	2022	N/A	N/A	Information Technology
13	Community Facilities	Street Improvements	2021	2022	\$300,000	SPLOST	Public Works
14	Transportation Element	Promote the expansion of local public transit alternatives in conjunction with Cobb County, ARC and other state/regional agencies.	2021	2022	N/A	N/A	Community Development
15	Community Facilities	City Wide Computer upgrade and integration	2021	2022	\$70,000	GF	Information Technology
16	Economic Development	Review Downtown Development authority business recruitment strategy	2021	2022	N/A	N/A	Community Development
17	Community Facilities	Review greenspace requirement for population	2021	2022	N/A	N/A	Parks and Recreation
18	Economic Development	Analyze the downtown business retention plan	2021	2022	N/A	N/A	Economic Development
19	Land Use	City to expand network with local school board system in order to improve input regarding future development	2021	2022	N/A	N/A	Community Dev
20	Land Use	Depot master plan review of projects	2021	2022	N/A	N/A	Community Development
21	Community Facilities	Annual comprehensive plan updates	2021	2022	N/A	NA	Planning and Zoning
22	land use	analyze Senior Housing inventory for lifelong community initiative	2021	2022	N/A	N/A	Planning and Zoning
23	Community Facilities	Storm Water Utility assessment of projects	2021	2022	N/A	NA	Public Works
24	Community Facilities	Drainage system improvements	2021	2022	\$300,000	SPLOST	Public Works
25	Community Facilities	review city transportation plan	2021	2022	N/A	GF	Public Works

City of Kennesaw Annual Short Term Work Program Update FY2022/2023							
Project Number	Plan Element		Start Date	End Date	Estimated Cost	Funding Source	Responsible Party
1	Land Use	Implement next phase of annexation plan city wide	2022	2023	N/A	N/A	Economic Dev. & Planning
2	Public Facilities	Storm Water Utility CIP Project	2022	2023	\$200,000	SPLOST	Public Works
3	Public Safety	police vehicles	2022	2023	\$250,000	Court Services/GF	Economic Development
4	Economic Development	Apply for grants for development projects	2022	2023	\$5,000	N/A	Economic Development & Planning
5	Land Use	conduct broadband study for opportunity for business recruitment	2022	2023	NA	GF	Planning and Zoning
6	Land Use	Conduct pedestrian and bike study	2022	2023	N/A	NA	Community Development
7	Land Use	Review of Historic District Guidelines	2022	2023	N/A	NA	Planning
8	Community Development	Revision of Unified Development Code	2022	2023	N/A	NA	Community Development
9	Community Facilities	coordinate with police department on exploring technology for safety and business recruitment	2022	2023	N/A	N/A	Park and Recreation
10	Community Facilities	Continued marketing of Downtown venues in cooperation with Downtown Merchants	2022	2023	N/A	KDDA	Economic Development
11	Information Technology	City Wide Software Upgrades/purchases City Wide Computer upgrade and integration WI-FI integration in parks	2022	2023	\$70,000	GF	Information Technology
12	Information Technology	GIS upgrades for land use analysis and public safety	2022	2023	\$10,000	GF	Community Development
13	Community Facilities	Drainage Improvements	2022	2023	\$300,000	CDBG	Public Works
14	Community Facilities	Smith-Gilbert Gardens Improvements	2022	2023	\$200,000	SPLOST	Parks and Recreation
15	Community Facilities	Street Improvements	2022	2023	\$350,000	SPLOST	Public Works
16	Community Facilities	Establish quarterly meeting with KSU	2022	2023	N/A	GF	Planning
18	Land Use	Increase training of Traditional Neighborhood Districts and Smart Growth techniques for the Planning Commission	2022	2023	\$3,000	GF	Planning
19	Community facilities	Swift Cantrell park improvements	2022	2023	\$100,000	SPLOST	Parks and Recreation

FY 2023/2024							
Project Number	Plan Element	Project Description	Start Date	End Date	Estimated Cost	Funding Source	Responsible Party
1	Community Facilities	LCI plan project evaluation	2023	2024	N/A	NA	Planning and Zoning
2	Community Facilities	review sustainability policies for city facilities	2023	2024	N/A	N/A	Public Works
3	Economic Development	Continue business recruitment, expansion and retention efforts	2023	2024	\$5,000	GF, KDA & KDDA	Economic Development
4	Economic Development	Apply for grants for development projects	2023	2024	N/A	N/A	Economic Development & Planning
5	Community Facilities	Evaluate effectiveness of Museum marketing strategies and make adjustments as needed	2023	2024	N/A	N/A	Museum & Economic Dev
6	Community Facilities	Upgrade neighborhood parks	2023	2024	\$20,000	GF	Parks and Recreation
7	Land Use	Initiate study for sustainability initiatives and incentive program for new development	2023	2024	N/A	N/A	Planning and Zoning
8	Community facilities	Reevaluating Trail Master plan	2023	2024	N/A	N/A	Parks and Recreation
9	Housing	Continue strategies (through zoning) aimed at the identification and preservation of existing sound housing and stable residential neighborhoods including preservation of historic properties	2023	2024	N/A	N/A	Community Development
10	Land Use	Re evaluate green city objectives	2023	2024	N/A	N/A	Planning and Zoning
11	Information Technology	City Wide Computer upgrade and integration	2023	2024	\$70,000	GF	Information Technology
12	Community Facilities	Traffic Improvements	2023	2024	\$4,000,000	SPLOST	Public Works
13	Economic Development	Continue implementation of downtown master plan	2023	2024	N/A	SPLOST	Community Development
14			2023	2024		GF	
15	Community Facilities	Storm Water Utility assesment and system analysis	2023	2024	N/A	GF	Public Works
16	Community Facilities	Street Improvements	2023	2024	\$300,000	SPLOST	Parks and Recreation
17	Community Facilities	Drainage Improvements	2023	2024	\$250,000	SPLOST	Public Works
18			2023	2024		General Fund	
19	Community Facilities	Depot master plan review of projects	2023	2024	N/A	N/A	Parks and Recreation
20	Community Facilities	Smith-Gilbert Gardens facility improvements	2023	2024	\$200,000	SPLOST	Parks and Recreation
21	Land Use	Historic District Standards reevaluation	2023	2024	N/A	N/A	Planning and Zoning

City of Kennesaw Annual STWP Update 2024/2025							
Project Number	Plan Element	Project Description	Start Date	End Date	Estimated Cost	Funding Source	Responsible Party
1	Economic Development	Continue business recruitment, expansion and retention efforts	2024	2025	\$8,000	KDA & KDDA	Economic Development
2	Community Facilities	Evaluate master trail system tie-in to Cobb County System	2024	2025	N/A	N/A	Planning and Zoning/parks and recreation
3	Land Use	Additional amendments to sustainability policy	2024	2025	N/A	N/A	Community Development
4	Housing	Continue strategies (through zoning) aimed at the identification and preservation of existing sound housing and stable residential neighborhoods including preservation of historic properties	2024	2025	N/A	N/A	Planning and Zoning
5	Community Facilities	Storm Water Utility CIP Project	2024	2025	\$500,000	SPLOST	Public Works
6	Community Facilities	Traffic Improvements	2024	2025	\$12,000,000	SPLOST	Public Works
7	Land Use	Annual review of Unified Development code	2024	2025	NA	NA	Planning and Zoning
8	Community Facilities	Smith Gilbert Gardens facility improvements	2024	2025	\$100,000	SPLOST	Parks and Recreation
9	Community Facilities	Street Improvements	2024	2025	\$400,000	SPLOST	Public Works
10	Economic Development	Economic Development multi-year plan review	2024	2025	NA	Economic Development	Economic Development
11	Land Use	Strengthen enforcement of housing codes in order to revitalize neighborhoods	2024	2025	N/A	N/A	Community Development
12	Community Facilities	Reevaluate Future land use maps and character areas as identified in the comprehensive plan	2024	2025	N/A	N/A	Community Development
13	Information Technology	City Wide Computer upgrade and integration	2024	2025	\$75,000	GF	Information Technology
14	Housing	Reevaluate housing inventory city wide and occupancy rate	2024	2025	N/A	N/A	Planning and Zoning
15	Community Facilities	Community Center Improvements	2024	2025	\$250,000	GF	Parks and Recreation
16	Community Facilities	Review status of adopted redevelopment areas	2024	2025	NA	NA	Economic Development/Planning

City of Kennesaw Annual STWP Update FY2025/2026							
Project Number	Plan Element	Project Description	Start Date	End Date	Estimated Cost	Funding Source	Responsible Party
1	Economic Development	Continue implementation of Kennesaw LCI downtown master plan	2025	2026	N/A	N/A	Mayor and Council & City Manager
2	Land Use	review downtown master plan	2025	2026	N/A	N/A	Community Development
3	Economic Development	Continue business recruitment, expansion and retention efforts	2025	2026	\$5,000	GF, KDA, KDDA	Economic Development
4	Community Facilities	re-evaluate storm water management plan	2025	2026	N/A	N/A	Public Works
5	Land Use	updating comprehensive plans and objectives	2025	2026	N/A	N/A	Community Development
6	Land Use	Evaluate existing development regulations for provisions that may limit diversity in housing types and barriers to revitalization and infill development and recommend changes where appropriate	2025	2026	\$5,000	KDDA, GF, and DCA Grants	Community Development
7	Community Facilities	Traffic Improvements	2025	2026	\$4,000,000	SPLOST	Public Works
8	Land Use	Analyze Senior Housing inventory	2025	2026	N/A	N/A	Planning and Zoning
9	Land Use	Annual review of Unified Development code	2025	2026	N/A	N/A	Community Development, Public Works
10	Land Use	Develop additional development standards for the provision and location of pedestrian and bicycle facilities in connection with private development projects.	2025	2026	N/A	N/A	Community Development
11	Community Facilities	Upgrade neighborhood parks	2025	2026	\$30,000	GF	Parks and Recreation
12	Land Use	Review Comprehensive plan and 2040 Plan	2025	2026	N/A	N/A	Planning and Zoning
13	Community Facilities	Establish strategies and priorities for funding road improvements needed in the city in conjunction with county, state, regional and federal agencies.	2025	2026	N/A	N/A	Public Works/Economic Development
14	Land Use	evaluate needs for student housing	2025	2026	NA	NA	Planning and Zoning
15	Community Facilities	Promote the expansion of local public transit alternatives in conjunction with Cobb County, DOT, GRTA, CCT, ARC and other state/regional agencies.	2025	2026	N/A	N/A	Community Development
16	Community Facilities	Storm Water Utility CIP Project	2025	2026	\$250,000	SPLOST	Public Works
17	Information Technology	City Wide Computer upgrade and integration	2025	2026	\$65,000	GF	Information Technology
18	Environmental	Evaluate environmentally sensitive areas affected by development	2025	2026	N/A	N/A	Public Works/Community development
19	Land Use	Participate in regional and local transportation studies and initiatives to promote rail connectivity to cities and county	2025	2026	N/A	N/A	Community Development
20	Land Use	Work with Cobb County to implement a greenbelt system for flood plains that can also be used as a passive recreation resource.	2025	2026	N/A	N/A	Community Development
21	Economic Development	Evaluate Economic Development Incentive program	2025	2026	N/A	N/A	Community Development
22	Community Facilities	Review trail network program	2025	2026	N/A	N/A	Parks and Recreation

ANNUAL FEE FINANCIAL REPORT - FY 2020-2021
CITY OF KENNESAW, GEORGIA

[illegible]

CITY OF KENNESAW
SUMMARY OF FIVE-YEAR CAPITAL IMPROVEMENT PROGRAM

	A	B	C	D	E	F	G	H
1								
2		FY2021-2022	FY2022-2023	FY2023-2024	FY2024-2025	FY2025-2026	TOTAL	
3	Police vehicles	200,000	250,000	200,000	200,000	200,000	\$ 1,050,000	
4	Parks & Recreation Vehicles	30,000	45,000	30,000	40,000	45,000	\$ 190,000	
5	Street Vehicles	100,000	65,000	100,000	100,000	150,000	\$ 515,000	
6	Stormwater utility CIP Project	250,000	200,000	500,000	500,000	250,000	\$ 1,700,000	
7	Street Improvements	300,000	350,000	300,000	400,000	300,000	\$ 1,650,000	
8	Drainage Improvements	300,000	300,000	250,000	300,000	300,000	\$ 1,450,000	
9	Neighborhood Park Improvements	30,000	35,000	20,000	40,000	35,000	\$ 160,000	
10	Smith-Gilbert Gardens Improvements	100,000	200,000	200,000	100,000	100,000	\$ 700,000	
11	Computer System Upgrades	70,000	70,000	70,000	75,000	100,000	\$ 385,000	
12	Traffic Improvements	10,000,000	7,000,000	4,000,000	12,000,000	4,000,000	\$ 37,000,000	
13	Community Center Improvements	45,000	100,000	50,000	250,000	NA	\$ 445,000	
14	Swift-Cantrell Park Improvement	100,000	100,000	100,000	100,000	NA	\$ 400,000	
15	Depot Park Expansion (Phases 1 - 7)	400,000	NA	NA	NA	NA	\$ 400,000	
16	Recreation Center	3,924,689	NA	NA	NA	NA	\$ 3,924,689	
17	Depot Park Amphitheater	200,000	2,800,000	NA	NA	NA	\$ 3,000,000	
18	Public Safety Building	NA	NA	7,500,000	1,000,000	NA	\$ 8,500,000	
19	East Park Community Park	50,000	250,000	250,000	250,000	250,000	\$ 1,050,000	
20	Depot Park Phases 9 - 12	NA	NA	800,000	NA	NA	\$ 800,000	
21								
22	Totals	\$ 16,099,689	\$ 11,765,000	\$ 14,370,000	\$ 15,355,000	5,730,000	\$ 63,319,689	
23								

2021-2022								
PROJECT DESCRIPTION	PROJECT START DATE	PROJECT END DATE	EST. COST OF PROJECT	% FUNDING FROM IMPACT FEES	OTHER FINANCE SOURCES	EXPENDITURES FOR YEAR	IMPACT FEES ENCUMBERED THROUGH YEAR	STATUS/REMARKS
Police vehicles	10/1/2021	9/30/2022	\$ 1,171,000	10%	GF/CPF/CSIF	\$ 200,000	\$ 35,000	Programmed for FY 2022
Parks & Recreation Vehicles	10/1/2021	9/30/2022	\$ 190,000	0%	General Fund	\$ 30,000		Programmed for FY 2022
Street Vehicles	10/1/2021	9/30/2022	\$ 515,000	0%	General Fund	\$ 100,000		Programmed for FY 2022
Stormwater utility CIP Project	10/1/2021	9/30/2022	\$ 1,700,000	0%	Stormwater	\$ 250,000		Programmed for FY 2022
Street Improvements	10/1/2021	9/30/2022	\$ 1,650,000	0%	SPLOST	\$ 300,000		Programmed for FY 2022
Drainage Improvements	10/1/2021	9/30/2022	\$ 1,450,000	0%	CDBG/SPLOST	\$ 300,000		Programmed for FY 2022
Neighborhood Park Improvements	10/1/2021	9/30/2022	\$ 160,000	50%	General Fund	\$ 30,000	\$ 15,000	Programmed for FY 2022
Smith-Gilbert Gardens Improvements	10/1/2021	9/30/2022	\$ 700,000	0%	SPLOST/Grants	\$ 200,000		Programmed for FY 2022
Computer System Upgrades	10/1/2021	9/30/2022	\$ 500,000	0%	General Fund	\$ 70,000		Programmed for FY 2022
Traffic Improvements	10/1/2021	9/30/2022	\$ 37,000,000	0%	SPLOST	\$ 10,000,000		Programmed for FY 2022
Community Center Improvements	10/1/2021	9/30/2022	\$ 475,000	0%	SPLOST/GF	\$ 45,000		Programmed for FY 2022
Swift-Cantrell Park Improvement	10/1/2021	9/30/2022	\$ 500,000	25%	SPLOST	\$ 100,000	\$ 30,000	Programmed for FY 2022
Depot Park Expansion (Phases 1 - 7)	10/1/2021	9/30/2022	\$ 3,500,000	10%	SPLOST	\$ 400,000		Programmed for FY 2022
Recreation Center	10/1/2021	9/30/2022	\$ 10,500,000	0%	SPLOST	\$ 3,924,869		Programmed for FY 2022
Depot Park Amphitheatre	10/1/2021	9/30/2022	\$ 3,000,000	0%	SPLOST	\$ 200,000		Programmed for FY 2022
East Park	10/1/221	9/30/2022	\$ 1,050,000	100%	Grants	\$ 50,000		Programmed for FY 2023
TOTAL			\$ 64,061,000			\$ 16,199,869		

2022-2023								
PROJECT DESCRIPTION	PROJECT START DATE	PROJECT END DATE	EST. COST OF PROJECT	% FUNDING FROM IMPACT FEES	OTHER FINANCE SOURCES	EXPENDITURES FOR YEAR	IMPACT FEES ENCUMBERED THROUGH YEAR	STATUS/REMARKS
Police vehicles	10/1/2022	9/30/2023	\$ 1,171,000	10%	GF/CPF/CSIF	\$ 250,000	\$ 25,000	Programmed for FY 2023
Parks & Recreation Vehicles	10/1/2022	9/30/2023	\$ 190,000	0%	General Fund	\$ 45,000		Programmed for FY 2023
Street Vehicles	10/1/2022	9/30/2023	\$ 515,000	0%	General Fund	\$ 65,000		Programmed for FY 2023
Stormwater utility CIP Project	10/1/2022	9/30/2023	\$ 1,700,000	0%	Stormwater	\$ 200,000		Programmed for FY 2023
Street Improvements	10/1/2022	9/30/2023	\$ 1,650,000	0%	SPLOST	\$ 350,000		Programmed for FY 2023
Drainage Improvements	10/1/2022	9/30/2023	\$ 1,450,000	0%	CDBG/SPLOST	\$ 300,000		Programmed for FY 2023
Neighborhood Park Improvements	10/1/2022	9/30/2023	\$ 160,000	50%	General Fund	\$ 35,000	\$ 15,000	Programmed for FY 2023
Smith-Gilbert Gardens Improvements	10/1/2022	9/30/2023	\$ 700,000	0%	SPLOST/Grants	\$ 200,000		Programmed for FY 2023
Computer System Upgrades	10/1/2022	9/30/2023	\$ 500,000	0%	General Fund	\$ 70,000		Programmed for FY 2023
Traffic Improvements	10/1/2022	9/30/2023	\$ 37,000,000	0%	SPLOST	\$ 7,000,000		Programmed for FY 2023
Community Center Improvements	10/1/2022	9/30/2023	\$ 475,000	0%	SPLOST/GF	\$ 100,000		Programmed for FY 2023
Swift-Cantrell Park Improvement	10/1/2022	9/30/2023	\$ 500,000	25%	SPLOST	\$ 100,000	\$ 50,000	Programmed for FY 2023
Depot Park Amphitheatre	10/1/2022	9/30/2023	\$ 3,000,000	0%	SPLOST	\$ 2,800,000		Programmed for FY 2023
East Park Community Park	10/1/2022	9/30/2023	\$ 1,050,000	100%	Grants	\$ 250,000	\$ 250,000	Programmed for FY 2023
TOTAL			\$ 50,061,000			\$ 11,765,000		

2023-2024								
PROJECT DESCRIPTION	PROJECT START DATE	PROJECT END DATE	EST. COST OF PROJECT	% FUNDING FROM IMPACT FEES	OTHER FINANCE SOURCES	EXPENDITURES FOR YEAR	IMPACT FEES ENCUMBERED THROUGH YEAR	STATUS/REMARKS
Police vehicles	10/1/2023	9/30/2024	\$ 1,171,000	10%	GF/CPF/CSIF	\$ 200,000	\$ 30,000	Programmed for FY 2024
Parks & Recreation Vehicles	10/1/2023	9/30/2024	\$ 190,000	0%	General Fund	\$ 30,000		Programmed for FY 2024
Street Vehicles	10/1/2023	9/30/2024	\$ 515,000	0%	General Fund	\$ 100,000		Programmed for FY 2024
Stormwater utility CIP Project	10/1/2023	9/30/2024	\$ 1,700,000	0%	Stormwater	\$ 500,000		Programmed for FY 2024
Street Improvements	10/1/2023	9/30/2024	\$ 1,650,000	0%	SPLOST	\$ 300,000		Programmed for FY 2024
Drainage Improvements	10/1/2023	9/30/2024	\$ 1,450,000	0%	CDBG/SPLOST	\$ 250,000		Programmed for FY 2024
Neighborhood Park Improvements	10/1/2023	9/30/2024	\$ 160,000	50%	General Fund	\$ 20,000	\$ 10,000	Programmed for FY 2024
Smith-Gilbert Gardens Improvements	10/1/2023	9/30/2024	\$ 700,000	0%	SPLOST/Grants	\$ 200,000		Programmed for FY 2024
Computer System Upgrades	10/1/2023	9/30/2024	\$ 500,000	0%	General Fund	\$ 70,000		Programmed for FY 2024
Traffic Improvements	10/1/2023	9/30/2024	\$ 37,000,000	0%	SPLOST	\$ 4,000,000		Programmed for FY 2024
Community Center Improvements	10/1/2023	9/30/2024	\$ 475,000	0%	SPLOST/GF	\$ 50,000		Programmed for FY 2024
Swift-Cantrell Park Improvement	10/1/2023	9/30/2024	\$ 500,000	25%	SPLOST	\$ 100,000	\$ 20,000	Programmed for FY 2024
Public Safety Building	10/1/2023	9/30/2024	\$ 8,500,000	0%	SPLOST	\$ 7,500,000		Programmed for FY 2024
East Park Community Park	10/1/2023	9/30/2024	\$ 1,050,000	100%	Grants	\$ 250,000	\$ 250,000	Programmed for FY 2024
Depot Park Phases 9 - 12	10/1/2023	9/30/2024	\$ 800,000	0%	SPLOST	\$ 800,000		Programmed for FY 2024
TOTAL			\$ 56,361,000			\$ 14,370,000		

2024-2025								
PROJECT DESCRIPTION	PROJECT START DATE	PROJECT END DATE	EST. COST OF PROJECT	% FUNDING FROM IMPACT FEES	OTHER FINANCE SOURCES	EXPENDITURES FOR YEAR	IMPACT FEES ENCUMBERED THROUGH YEAR	STATUS/REMARKS
Police vehicles	10/1/2024	9/30/2025	\$ 1,171,000	10%	GF/CPF/CSIF	\$ 200,000	\$ 20,000	Programmed for FY 2025
Parks & Recreation Vehicles	10/1/2024	9/30/2025	\$ 190,000	0%	General Fund	\$ 40,000		Programmed for FY 2025
Street Vehicles	10/1/2024	9/30/2025	\$ 515,000	0%	General Fund	\$ 100,000		Programmed for FY 2025
Stormwater utility CIP Project	10/1/2024	9/30/2025	\$ 1,700,000	0%	Stormwater	\$ 500,000		Programmed for FY 2025
Street Improvements	10/1/2024	9/30/2025	\$ 1,650,000	0%	SPLOST	\$ 400,000		Programmed for FY 2025
Drainage Improvements	10/1/2024	9/30/2025	\$ 1,450,000	0%	CDBG/SPLOST	\$ 300,000		Programmed for FY 2025
Neighborhood Park Improvements	10/1/2024	9/30/2025	\$ 160,000	50%	General Fund	\$ 40,000	\$ 20,000	Programmed for FY 2025
Smith-Gilbert Gardens Improvements	10/1/2024	9/30/2025	\$ 700,000	0%	SPLOST/Grants	\$ 100,000		Programmed for FY 2025
Computer System Upgrades	10/1/2024	9/30/2025	\$ 500,000	0%	General Fund	\$ 75,000		Programmed for FY 2025
Traffic Improvements	10/1/2024	9/30/2025	\$ 37,000,000	0%	SPLOST	\$ 12,000,000		Programmed for FY 2025
Community Center Improvements	10/1/2024	9/30/2025	\$ 475,000	0%	SPLOST/GF	\$ 250,000		Programmed for FY 2025
Swift-Cantrell Park Improvement	10/1/2024	9/30/2025	\$ 500,000	25%	SPLOST	\$ 100,000		Programmed for FY 2025
Public Safety Building	10/1/2023	9/30/2024	\$ 8,500,000	0%	SPLOST	\$ 1,000,000		Programmed for FY 2025
East Park Community Park	10/1/2024	9/30/2025	\$ 1,050,000	100%	Grants	\$ 250,000	\$ 25,000	Programmed for FY 2025
TOTAL			\$ 55,561,000			\$ 15,355,000		

2025-2026								
PROJECT DESCRIPTION	PROJECT START DATE	PROJECT END DATE	EST. COST OF PROJECT	% FUNDING FROM IMPACT FEES	OTHER FINANCE SOURCES	EXPENDITURES FOR YEAR	IMPACT FEES ENCUMBERED THROUGH YEAR	STATUS/REMARKS
Police vehicles	10/1/2025	9/30/2026	\$ 1,171,000	10%	GF/CPF/CSIF	\$ 200,000	\$ 35,000	Programmed for FY 2026
Parks & Recreation Vehicles	10/1/2025	9/30/2026	\$ 190,000	0%	General Fund	\$ 45,000		Programmed for FY 2026
Street Vehicles	10/1/2025	9/30/2026	\$ 515,000	0%	General Fund	\$ 150,000		Programmed for FY 2026
Stormwater utility CIP Project	10/1/2025	9/30/2026	\$ 1,700,000	0%	Stormwater	\$ 250,000		Programmed for FY 2026
Street Improvements	10/1/2025	9/30/2026	\$ 1,650,000	0%	SPLOST	\$ 300,000		Programmed for FY 2026
Drainage Improvements	10/1/2025	9/30/2026	\$ 1,450,000	0%	CDBG/SPLOST	\$ 300,000		Programmed for FY 2026
Neighborhood Park Improvements	10/1/2025	9/30/2026	\$ 160,000	50%	General Fund	\$ 35,000	\$ 20,000	Programmed for FY 2026
Smith-Gilbert Gardens Improvements	10/1/2025	9/30/2026	\$ 700,000	0%	SPLOST/Grants	\$ 100,000		Programmed for FY 2026
Computer System Upgrades	10/1/2025	9/30/2026	\$ 500,000	0%	General Fund	\$ 100,000		Programmed for FY 2026
Traffic Improvements	10/1/2025	9/30/2026	\$ 37,000,000	0%	SPLOST	\$ 4,000,000		Programmed for FY 2026
Community Center Improvements	10/1/2025	9/30/2026	\$ 475,000	0%	SPLOST/GF	NA		Programmed for FY 2026
Swift-Cantrell Park Improvement	10/1/2025	9/30/2026	\$ 500,000	25%	SPLOST	NA		Programmed for FY 2026
East Park Community Park	10/1/2025	9/30/2026	\$ 1,050,000	100%	Grants	\$ 250,000	\$ 250,000	Programmed for FY 2026
TOTAL			\$ 47,061,000			\$ 5,730,000		

From: Darryl Simmons
Sent: Thursday, May 26, 2022 10:41 AM
To: Albert Trevino
Subject: FW: City of Kennesaw CIE Update: Approved

From: Donald Shockey <DShockey@atlantaregional.org>
Sent: Tuesday, April 26, 2022 7:43 PM
To: Darryl Simmons <dsimmons@kennesaw-ga.gov>
Cc: Andrew Smith <ASmith@atlantaregional.org>
Subject: FW: City of Kennesaw CIE Update: Approved

CAUTION: This email originated from outside the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hello Mr. Simmons,

ARC has completed the regional review and comment period for the 2022 City of Kennesaw CIE Annual Update. Per the below, we're pleased to inform you that the Georgia Department of Community Affairs (DCA) has determined that the Update complies with applicable requirements.

No comments on the Plan were received.

Renewal of Qualified Local Government (QLG) status is contingent upon local adoption of the approved CIE Annual Update, which may take place at any time. Once adopted, please send ARC digital copies of the adoption resolution and the final, "as adopted" Update, so that we may forward them to DCA. Upon receiving notice of local adoption, DCA will renew the City's QLG status.

ARC commends the City's leadership and staff for your commitment to the comprehensive planning process. Please contact me if you have any questions or if we can provide further assistance.

Best regards,

Donald Shockey

Donald P. Shockey, AICP, LEED GA

Plan Review Manager, Community Development
Atlanta Regional Commission
P | 470.378.1531

DShockey@atlantaregional.org
atlantaregional.org

International Tower
229 Peachtree Street NE | Suite 100
Atlanta, Georgia 30303

From: Juli M Yoder <juli.yoder@gadca.onmicrosoft.com>
Sent: Monday, April 11, 2022 9:26 AM
To: Jared Lombard <JLombard@atlantaregional.org>
Cc: PEMD OPQG Administration <pemd.opqga@dca.ga.gov>; Donald Shockey <DShockey@atlantaregional.org>; Andrew Smith <ASmith@atlantaregional.org>
Subject: City of Kennesaw CIE Update: Approved

Jared,

Our staff has reviewed the Annual Capital Improvement Element (CIE) Update for the City of Kennesaw and finds that it adequately addresses applicable requirements. The next step is for the local government to adopt the CIE Update. As soon as your office provides written notice that the CIE Update has been adopted and provides DCA with a digital copy of the final adopted version of this document, we will notify the local government that its Qualified Local Government status has been extended. If you have any questions, please contact us at 404-679-5279.

Thanks,



Learn more about our commitment to [fair housing](#).



Juli M Yoder, AICP
Senior Planner | Local Programs Lead
Georgia Department of Community Affairs
60 Executive Park South, NE
Atlanta, Georgia 30329

Direct 404-327-6860
juli.yoder@gadca.onmicrosoft.com

8000 Legals

Magistrate Court Case No.: 22-L-01115
Vehicle make: TOYOTA Year: 2007
Model: CAMRY
Vehicle I.D.# 4T1B64K27U061004
Vehicle License #: NONE State:
Magistrate Court Case No.: 22-L-01136
Vehicle make: NISSAN Year: 2013
Model: MAXIMA
Vehicle I.D.# 1N4AASAP3DC822702
Vehicle License #: LXC4115 State: MS
Magistrate Court Case No.: 22-L-001111
Vehicle make: SCOOTER Year: 2000
Model: 50CC
Vehicle I.D.# 0000000000000000
Vehicle License #: NONE State:

Publication in the Marietta Daily Journal, a newspaper published in Cobb County, Georgia, once a week for four consecutive weeks, requiring the Unknown Father to answer the Petition for Termination of Parental Rights in this cause within fourteen (14) days from the last date of publication of the notice, and by failing to do so a judgment by default may be taken against him.

Done this the 4th day of May, 2022.

CHRISSE L. RIDDLE (RID-013)

Attorney for Petitioner

Post Office Box 658

Haleyville, Alabama 35565

Tel (205) 485-2665

Fax (205) 485-2660

5:13,20,27; 6:3-2022

MDJ-4667

GNP-16

City of Kennesaw

NOTICE TO THE PUBLIC

Notice is hereby given that the City of Kennesaw shall hold a public hearing to adopt the 2022 Comprehensive Plan Update, as approved by the Department of Community Affairs.

Said meetings shall be held before the Planning Commission on June 1, 2022 at 6:30PM and the Mayor and Council will hold a public hearing on June 20, 2022 at 6:30PM both meetings to be held at 2529 J.O. Stephenson Avenue, Kennesaw, Georgia. Any interested persons may attend and be heard relative thereto. Questions may be directed to the Assistant Zoning Administrator and Planner, Albert Trevino, by calling (770) 424-8274 ext. 3172.

Mayor and Council will be conducting their meeting in person as well as through Zoom Meeting and Facebook Live and you can access the meeting via the following link: <https://www.facebook.com/CityofKennesaw/>

Any interested citizens are invited to email kennesawcouncil@kennesaw-ga.gov.

5:13,20-2022

MDJ-4668

GNP-16

CITY OF KENNESAW

PUBLIC NOTICE

Notice is hereby given that the City of Kennesaw shall hold two public hearings to consider the final adoption of the Capital Improvement Element and Short-Term Work Program report for Fiscal Years 2022 through 2026.

A copy of the report is on file at City Hall in the Planning and Zoning Office for review during normal business hours of 8:00 AM - 5:00 PM Monday through Friday.

The Mayor and Council will hold the first public hearing on June 6, 2022 at 6:30 PM. The final adoption hearing is

8000 Legals

scheduled for a meeting on June 20, 2022 at 6:30 PM in the Kennesaw City Council Chambers, 2529 J.O. Stephenson Avenue. Any interested citizens are invited to email kennesawcouncil@kennesaw-ga.gov or attend to be heard.

Mayor and Council will be conducting their meeting in person as well as through Zoom Meeting and Facebook Live and you can access the meeting via the following link: <https://www.facebook.com/CityofKennesaw/>

5:13,20-2022

STORAGE TREASURES AUCTION

Extra Space Storage will hold a public auction to sell personal property described below belonging to those individuals listed below at the location indicated:

2141 Powers Ferry Rd SE, Marietta, GA 30067 06-01-2022 @ 1:30pm

1094. Danielle Adair. Household items

1155. Thomas Jones. Household items

1221. Clifford Winters. Household items

1240. Briana Preston. Household items

2012. Latrece Adkins. Household items

2015. Keon Jackson. Household items

2060. Britany Johnson. Household items

2191. Lavance Lining. Household items

2193. Clint Edwards. Household items

2213 Lorenzo Carnish. Household items

2216. Markus A. Perteete. Household items

3009. Ciambi Paul. Household items

3052. Miles Jackson. Household items

3055. Collin Taschler. Household items

3058. Deia Brock-Thomas. Household items

3178. Curtis George. Household items

3182. Fantasha Phillips. Household items

3245. Khala Cloyd. Household items

3248. Kellisha Russell. Household items

3257. Vini Sloan. Household items

3281. Rashard L. Wynn. Household items

3308. Marquis Worsley. Household items

3327. Gregory Tatum. Household items

3384. Keith Powell. Household items

3396. Dayana Edwards. Household items

The auction will be listed and advertised on www.storage-treasures.com.

Purchases must be made with cash only and paid at the above referenced facility in order to complete the transaction.

Extra Space Storage may refuse any bid and may rescind any purchase up until the winning bidder takes possession of the personal property.

5:13,20-2022

MDJ-4685

GNP-17

PUBLIC SALE

Pursuant to the Georgia Storage Facility Act, Alpha Omega Star, All shall Conduct a public sale on the following spaces at 4905 Oglesby Road Powder Springs, GA 30127 MAY 31 ST, 2022 @ 1:30 pm. Alpha Omega Star all reserves the right to exclude any item for such sale and reject any bids.

0727 STERLING HARLEY

HOUSEHOLD GOODS

0450 MARY CALDREN

HOUSEHOLD GOODS

0711 SCARLA WATSON

HOUSEHOLD GOODS

8000 Legals

0727 STERLING HARLEY
HOUSEHOLD GOODS
0826 DANNY HUMPHRIES
HOUSEHOLD GOODS
0912 CORINE REMONE
HOUSEHOLD GOODS
1016 RAQIA MURPHEY
HOUSEHOLD GOODS
1104 MARY CALDREN
HOUSEHOLD GOODS
5:13,20-2022

MDJ-4689

ABANDONED MOTOR VEHICLE
PETITION ADVERTISEMENT

License #: RCA9420 State: GA

Magistrate Court Case No.: 22-L-01511

Vehicle make: CHEVROLET Year: 1993

Model: K1500

Vehicle I.D.# 1GCEK19K9SE106351

License #: RQF0859 State: GA

Magistrate Court Case No.: 22-L-01534

Vehicle make: DODGE Year: 2012

Model: AVEGER SE

Vehicle I.D.# 1C3CDZAB8CN111557

License #: NA State:

Magistrate Court Case No.: 22-L-01536

Vehicle make: FORD Year: 2005

Model: FIVE HUNDRED

Vehicle I.D.# 1FAFP5219S103697

License #: TBF5667 State: GA

Magistrate Court Case No.: 22-L-01538

Vehicle make: VOLKSWAGEN Year: 2006

Model: JETTA

Vehicle I.D.# 3VWDF71K86M771768

License #: NA State:

Magistrate Court Case No.: 22-L-01521

Vehicle make: CHEVROLET Year: 2004

Model: MALIBU

Vehicle I.D.# 3VWDF71K86M771768

License #: NA State:

Magistrate Court Case No.: 22-L-01523

Vehicle make: NISSAN Year: 2006

Model: PATHFINDER

Vehicle I.D.# 5N1AR18U16C674216

License #: RTL8660 State: GA

Magistrate Court Case No.: 22-L-01526

Vehicle make: KIA Year: 2007

Model: RIO

Vehicle I.D.# KNAD123576213191

License #: NA State: GA

Magistrate Court Case No.: 22-L-01530

Vehicle make: NISSAN Year: 2017

Model: SENTRA SV

Vehicle I.D.# 3N1AB7AP2HY213846

License #: RFD6177 State: GA

Magistrate Court Case No.: 22-L-01532

Vehicle make: CHEVROLET Year: 2011

Model: EQUINOX

Vehicle I.D.# 2CNFLN55B6409328

License #: NA State:

Magistrate Court Case No.: 22-L-01533

Vehicle make: CHEVROLET Year: 2012

Model: CRUZE LT

Vehicle I.D.# 1G1PFS5C5C7218151

License #: WNB3885 State: MS

Magistrate Court Case No.: 22-L-01512

Vehicle make: BMW Year: 2004

Model: 530I

Vehicle I.D.# WBANA73574B803592

License #: NA State:

Magistrate Court Case No.: 22-L-01513

Vehicle make: CHEVROLET Year: 2008

Model: EQUINOX

Vehicle I.D.# 2CNDL23F486298927

License #: NA State:

Magistrate Court Case No.: 22-L-01514

Vehicle make: BMW Year: 1998

Model: 323IC

Vehicle I.D.# WBABJ8330WEM22644

License #: RM19014 State: GA

Magistrate Court Case No.: 22-L-01515

Vehicle make: BMW Year: 1986

Model: 325E

Vehicle I.D.# WBAAE6404G1705291

8000 Legals

License #: PKH7452 State: GA
Magistrate Court Case No.: 22-L-01516
Vehicle make: CHEVROLET Year: 2000
Model: IMPALA
Vehicle I.D.# 2G1WFS5EXY9230309
License #: NA State:
Magistrate Court Case No.: 22-L-01517
Vehicle make: MAZDA Year: 2003
Model: 6

Vehicle I.D.# 1YVHP80D535M31919

License #: RVS1058 State: GA

Magistrate Court Case No.: 22-L-01519

Vehicle make: JEEP Year: 2003

Model: LIBERTY SPORT

Vehicle I.D.# 1J4GL48K83W572450

Vehicle I.D.# 1GNSKJE79DR247881

License #: RZY7701 State: GA

Magistrate Court Case No.: 22-L-00940

Vehicle make: CHEVROLET Year: 1993

Model: CAPRICE

Vehicle I.D.# 1G1BN53E5PR107056

License #: TDJ3818 State: GA

Magistrate Court Case No.: 22-L-00937

Vehicle make: NISSAN Year: 2011

Model: ALTIMA

Vehicle I.D.# 1N4AL2AP1BN511277

License #: PYA2438 State: GA

Magistrate Court Case No.: 22-L-00705

Vehicle make: CHEVROLET Year: 2002

Model: IMPALA LS

Vehicle I.D.# 2G1WHS5KX2922301

License #: RZY4588 State: GA

Magistrate Court Case No.: 22-L-00923

Vehicle make: HONDA Year: 1999

Model: ACCORD

Vehicle I.D.# 1HGCG5652XA078214

License #: TAY0668 State: GA

Magistrate Court Case No.: 22-L-00736

Vehicle make: FORD Year: 2002

Model: F150

Vehicle I.D.# 1FTRF1720NB67824

License #: RMH5012 State: GA

Magistrate Court Case No.: 22-L-00716

Vehicle make: CHEVROLET Year: 2006

Model: IMPALA LS

Vehicle I.D.# 2G1WBS8KX69343901

License #: RGJ8949 State: GA

Magistrate Court Case No.: 22-L-00745

Vehicle make: PONTIAC Year: 2004

Model: GRANDE AM SE

Vehicle I.D.# 1G2NE52F24M527790

License #: RP19378 State: GA

Magistrate Court Case No.: 22-L-00735

Vehicle make: MITSUBISHI Year: 2006

Model: ECLIPSE GT

Vehicle I.D.# 4A3AK34T4E0012469

License #: RKM2694 State: GA

Magistrate Court Case No.: 22-L-00896

Vehicle make: CHEVROLET Year: 2000

Model: SUBURBAN

Vehicle I.D.# 3GNEC16T0Y6199988

License #: NA State:

Magistrate Court Case No.: 22-L-00802

Vehicle make: TOYOTA Year: 2000

Model: COROLLA

Vehicle I.D.# 2T1BR12E8YC312243

License #: RQT4902 State: GA

Magistrate Court Case No.: 22-L-00938

Vehicle make: CHRYSLER Year: 2011

Model: 200

Vehicle I.D.# 1C3BC2FBXBN601026

License #: NA State:

Magistrate Court Case No.: 22-L-00707

Vehicle make: CHEVROLET Year: 2008

Model: EQUINOX

Vehicle I.D.# 2CNDL13F086005292

License #: RXE7366 State: GA

Magistrate Court Case No.: 22-L-00719

Vehicle make: CHRYSLER Year: 2010

Model: SEBRING

Vehicle I.D.# 1C3CC4FB6AN212592

License #: RSX2810 State: GA

Magistrate Court Case No.: 22-L-00730

Vehicle make: TOYOTA Year: 2000

Model: CAMRY

8000 Legals

Vehicle I.D.# 4T1B622K2YU071301
License #: NA State:
Magistrate Court Case No.: 22-L-00893
Vehicle make: MAZDA Year: 2006
Model: 6
Vehicle I.D.# 1YVHP80CX65M15825
License #: NA State:
Magistrate Court Case No.: 22-L-00894
Vehicle make: NISSAN Year: 2006
Model: TITAN

Vehicle I.D.# 1N6BA07B56N555211

License #: 8764PD State: SC

Magistrate Court Case No.: 22-L-00781



Publication Name:

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Notice URL:

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Notice Publish Date:

Friday, May 20, 2022

Notice Content

gpn16 MDJ-4668 MDJ-4668 GPN-16 CITY OF KENNESAW PUBLIC NOTICE Notice is hereby given that the City of Kennesaw shall hold two public hearings to consider the final adoption of the Capital Improvement Element and Short-Term Work Program report for Fiscal Years 2022 through 2026. A copy of the report is on file at City Hall in the Planning and Zoning Office for review during normal business hours of 8:00 AM - 5:00 PM Monday through Friday. The Mayor and Council will hold the first public hearing on June 6, 2022 at 6:30 PM. The final adoption hearing is scheduled for a meeting on June 20, 2022 at 6:30 PM in the Kennesaw City Council Chambers, 2529 J.O. Stephenson Avenue. Any interested citizens are invited to email kennesawcouncil@kennesaw-ga.gov or attend to be heard. Mayor and Council will be conducting their meeting in person as well as through Zoom Meeting and Facebook Live and you can access the meeting via the following link: <https://www.facebook.com/CityofKennesaw/> 5:13,20-2022

[Back](#)



**Regular Meeting Agenda
6/6/2022 6:30 PM
Council Chambers**

Title of Item:	Approval of the May 16, 2022 Mayor and Council regular meeting minutes.
Agenda Comments:	
Funding Line(s)	

ATTACHMENTS:

Description	Upload Date	Type
Minutes	5/27/2022	Minutes

**MINUTES OF MAYOR & CITY COUNCIL MEETING
CITY OF KENNESAW
Council Chambers
Monday, May 16, 2022
6:30 p.m.**

Present: Mayor Derek Easterling
Mayor Pro Tem James Eaton
Councilmember Tracey Viars
Councilmember Pat Ferris
Councilmember Trey Sinclair
Councilmember Antonio Jones
City Clerk Lea Alvarez
City Manager Jeff Drobney
Assistant City Attorney Sam Hensley, Jr.

I. INVOCATION

Mayor Derek Easterling led the invocation.

II. PLEDGE OF ALLEGIANCE

Mayor Derek Easterling led the Pledge of Allegiance.

III. CALL TO ORDER

IV. ANNOUNCEMENTS

- A. This public meeting is being conducted via the use of real-time telephonic technologies allowing the public simultaneous access to the public meeting. You may also attend in person with limited seating available at both the Council Chambers and the Ben Robertson Community Center, if needed.
Mayor and Council will be conducting their meeting through Zoom Meeting and Facebook Live and you can access the meeting via the following link:
<https://www.facebook.com/CityofKennesaw/>
- B. If you would like to provide public comment on a specific agenda item, you can email kennesawcouncil@kennesaw-ga.gov no later than 6:00 P.M. the night of the regular meeting. Your comments on a specific agenda item will be read aloud or grouped into categories for the record. **Facebook Live is not monitored for public comment.**

[The City Attorney swore-in any witnesses or individuals offering comments on the agenda].

V. PRESENTATIONS

Georgia House District 35 candidate, Lisa Campbell, introduced herself to the Mayor, Council, and public. Ms. Campbell shared why she wants to represent our community

and how she will be working to expand access to high quality, affordable healthcare and invest in education. Additionally, Ms. Campbell hopes to work with the City of Kennesaw to have secure voting options, to attract inclusive businesses, and to build unity in our community.

- A. A proclamation declaring May 21-27, 2022 as National Safe Boating Week in the City of Kennesaw.

Mayor Easterling presented a proclamation declaring May 21-27, 2022 as National Safe Boating Week in the City of Kennesaw to Robert George from the U.S. Coast Guard Auxiliary.

VI. PUBLIC COMMENT/BUSINESS FROM THE FLOOR

6:38 P.M. Floor Open for Public Comments

No comments.

6:39 P.M. Floor Closed for Public Comments

VII. OLD BUSINESS

No items.

VIII. NEW BUSINESS

No items.

IX. COMMITTEE AND BOARD REPORTS

No items.

X. PUBLIC HEARING(S)

No items.

XI. CONSENT AGENDA

- A. Approval of the May 2, 2022 Mayor and Council meeting minutes.

- B. On May 6, 2022, Stephanie "Nichole" Walsh purchased two (2) lots in the Kennesaw City Cemetery. These lots are located in Section III, Plot 56, Lots G and H. The City Clerk recommends approval and to authorize the Mayor to sign the supporting deed for the purchase of the lots.

Motion by Councilmember Viars to approve the Consent Agenda engross, seconded by Mayor Pro Tem Eaton.

Vote taken, motion unanimously approved 5-0. Motion carried.

XII. FINANCE AND ADMINISTRATION **GINA AULD, Finance Director**

No items.

XIII. PUBLIC SAFETY

BILL WESTENBERGER, Police Chief

NIKKI MCGRAW, 911 Communications Director

A. Receipt of the April 2022 Crime Statistics.

Chief Bill Westenberger presented the April 2022 crime statistics.

Motion by Councilmember Ferris to receive the April 2022 crime statistics, as presented, seconded by Councilmember Jones.

Vote taken, motion unanimously approved 5-0. Motion carried.

XIV. INFORMATION TECHNOLOGY

RICK ARNOLD, Co-Director

JOSHUA GUERRERO, Co-Director

No items.

XV. PUBLIC WORKS

RICKY STEWART, Director

ROBBIE BALENGER, Building & Facilities Manager

No items.

XVI. RECREATION AND CULTURE

RICHARD BANZ, Museum and Agency Director

STEVE ROBERTS, Parks and Recreation Director

ANN PARSONS, Smith-Gilbert Gardens Director

No items.

XVII. COMMUNITY DEVELOPMENT

LUKE HOWE, Economic Development Director

DARRYL SIMMONS, Zoning Administrator

SCOTT BANKS, Building Official

No items.

XVIII. PUBLIC COMMENT/BUSINESS FROM THE FLOOR

6:40 PM Floor Open for Public Comments

ANDREW BRAMLETT [City Resident]: Mr. Bramlett shared facts about the first Mayor of Kennesaw, Thomas Jefferson Hardage, elected in August 1887 (See **Exhibit A**).

DAEMIEN KEATON [City Resident]: Mr. Keaton shared he lives in Deerfield and requested speed bumps be placed in his neighborhood. He is worried about the safety of the kids in his neighborhood due to speeding.

6:43 PM Floor Closed to Public Comments

XIX. CITY MANAGERS REPORT – Jeff Drobney

- A. City Manager reports, discussions and updates.

No items.

XX. MAYOR’S REPORT

- A. Mayor and Council (re)appointments to Boards and Commissions. This item is for (re)appointments made by the Mayor to any Board, Committees, Authority or Commission requiring an appointment to fill any vacancies, resignations, and to create or dissolve committees, as deemed necessary.

After Council reviewed the proposed appointment, Mayor Easterling asked for a motion to ratify the appointment of Elisabeth Jensen to the Sister Cities Commission with a term ending in December 2022.

Motion by Councilmember Viars to ratify the appointment of Elisabeth Jensen to the Sister Cities Commission with a term ending in December 2022, seconded by Mayor Pro Tem Eaton.

Vote taken, motion unanimously approved 5-0. Motion carried.

XXI. COUNCIL COMMENTS

Councilmember Ferris had friends over and shared with them the big events that happened over the weekend in the City of Kennesaw. His friends were impressed. Councilmember Ferris wanted to pass on kudos to the City of Kennesaw staff and all those who worked together to pull the events off.

Mayor Pro Tem Eaton congratulated the Kennesaw Police Department on the speedy investigation regarding the crime that occurred in Swift-Cantrell Park on Mother’s Day.

Councilmember Sinclair was amazed by the amount of runners in the Swift-Cantrell Classic 5K over the weekend.

Councilmember Jones and his wife had a wonderful time at the Smith-Gilbert Gardens’ Rose Garden Gala this past Saturday.

Councilmember Viars congratulated all of the seniors graduating this month.

XXII. EXECUTIVE SESSION –Land, Legal, Personnel

- A. Pursuant to the provisions of O.C.G.A. §50-14-3, the City Council could, at any time during the meeting, vote to close the public meeting and move to executive session to discuss matters relating to litigation, legal actions and/or communications from the City Attorney; and/or personnel matters; and/or real estate matters.

No items.

XXIII. ADJOURN

Mayor Easterling adjourned the meeting at 6:50 P.M. The next regularly scheduled meeting will be held Monday, June 6, 2022 at 6:30 P.M. in the Council Chambers. The public is encouraged to attend or view via Facebook Live.

Lea Alvarez, City Clerk



**Regular Meeting Agenda
6/6/2022 6:30 PM
Council Chambers**

Title of Item:	Consideration for approval of a Temporary Use Permit for TNT Fireworks. Applicant: Kathy Roos.
Agenda Comments:	This Temporary Use Permit request is for TNT Fireworks to sell fireworks in the parking lot located at 2500 North Cobb Parkway, Kennesaw, Georgia 30152. Property owner Mr. Ben Kushner with The Crossings Partners, LLC, has given written permission to conduct this on his property from June 14, 2022, through July 10, 2022. Attached is a plat of where the stand will be placed. A similar fireworks sale was conducted at the same location in June 2021. This approval is contingent upon passing the Cobb County Fire Marshal's inspection. Finance Director recommends approval.
Funding Line(s)	100.0000.31.6100 \$500

ATTACHMENTS:

Description	Upload Date	Type
TNT Fireworks Application	5/27/2022	Backup Material



City of Kennesaw
2529 J.O. Stephenson Avenue
Kennesaw, GA 30144
770-424-8274
770-429-4559 Fax
www.kennesaw-ga.gov

**TEMPORARY USE APPLICATION
(REQUIRES MAYOR & COUNCIL APPROVAL)**

Name of Business TNT Fireworks

Business Location (drawing of property required) 2500 North Cobb Parkway

City Kennesaw State GA Zip Phone # 404-545-1087

Nature of Temporary Use consumer legal fireworks

Nature of Merchandise, wares or items for sale Fireworks

Dates of Temporary Use (not to exceed 30 days) June 22 - July 5th

Name of Applicant Kathy Roos Date of rental agreement June 14 - July 10

Home address of Applicant 180 Fieldstone Edge

City Alpharetta State GA Zip 30006 Phone#

Legal Owner of Property (notarized letter of permission required)

Name The Crossing Partners Address 1924 Birmingham Hwy

City Alpharetta State GA Zip 30004 Phone # 77-886-1963

Regulatory Fee Paid 500.00

If tent to be set up at location, check here stand Tent Size 8X24

Date of Mayor & Council Approved Denied

Permit Issued Permit Expires

Tent Permit Issued - If applicable

****Please have tent ready for inspection 24 hours before event starts. Tents are only inspected Monday - Friday 8:00 - 3:00 by appointment only. Any questions regarding inspections, please call (770) 429-4554**

Temporary Use Certificates shall not exceed 30 days in length

Notarized letter granting permission from property owner required

Plat or drawing of property showing all intersections, parking, zoning, existing structures and location of temporary use required

No signs, merchandise, or parking shall encroach on right of way

9/10/12

Temporary Use Application (Continued)

Name of Business TNT Fireworks

I understand that this permit is a privilege and it may be revoked at anytime. I am also aware that soliciting or canvassing outside the allowed hours can result in revocation of this permit and/or a citation. In addition, I understand that my business must conform to all rules and regulations of the City of Kennesaw and I must produce a copy of this permit upon request.

Applicant Signature Kathy Roos Date 4/1/2022

(OFFICE USE ONLY)

Chief of Police: _____ Date _____

City Manager: _____ Date _____

Business License Clerk: _____ Date _____

- 10 ft barrier around stand
- Generator 20' away
- No smoking signs displayed
- 300' No Discharge Signs displayed
- Fire Extinguisher and Water Can on site

FGA9991
KENNESAW
KENNESAW
LANDING
JOHN FAULKNER
(678)429-8659

Hydrant

50+ feet from Grass

Google Earth

34°00'52.105" N 84°36'45.87" W elev 110.5 ft eye alt 1979 ft



CERTIFICATE OF LIABILITY INSURANCE

11/1/2022

DATE (MM/DD/YYYY)

10/29/2021

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. IF SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Lockton Companies
3280 Peachtree Road NE, Suite #250
Atlanta GA 30305
(404) 460-3600

CONTACT
NAME:
PHONE:
(A/C No. Ext):
E-MAIL:
ADDRESS:

FAX (A/C No.):

INSURER(S) AFFORDING COVERAGE

NAIC #

INSURER A: Everest Indemnity Insurance Company

10851

INSURED
1359629 American Promotional Events, Inc.
DBA TNT Fireworks, Inc.
P.O. Box 1318
4511 Helton Drive
Florence AL 35630

INSURER B:

INSURER C:

INSURER D:

INSURER E:

INSURER F:

COVERAGES

CERTIFICATE NUMBER: 13367017

REVISION NUMBER: XXXXXXXX

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDITIONAL INSURER (INSR) WVD	POLICY NUMBER	POLICY BPP (MM/DD/YYYY)	POLICY BXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input checked="" type="checkbox"/> LOC OTHER: AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> RENTED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input type="checkbox"/> RETENTION \$ WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y N	S18GL00242-211	11/1/2021	11/1/2022	
			NOT APPLICABLE			
			NOT APPLICABLE			
		Y/N N/A	NOT APPLICABLE			

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Additional Insured: FGA9991: Property located at Kennesaw Landing at 2500 N. Cobb Parkway, Kennesaw, GA 30152; Group of Interested Citizens; Certificate holder is an additional insured on the General Liability as required by written contract subject to policy terms, conditions, and exclusions.

CERTIFICATE HOLDER

13367017
The Crossing Partners, LLC
19241 Birmingham Highway
Alpharetta GA 30004

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

LEASE AGREEMENT / STAND AND TENT LOCATION
TNT® FIREWORKS
4511 Helton Drive, Florence, AL 35630
800.243.1189

This agreement is made between The Crossing Partners, LLC ("Landlord") and American Promotional Events, Inc. – East dba TNT Fireworks ("Tenant") for the purpose of allowing Tenant to sell approved fireworks from the following Premises (the "Location"):

Location Name Kennesaw Landing TNT Location Number FGA9991
Address 2500 North Cobb Pkwy TNT Sales Associate ADAM JERNIGAN
City, State, Zip Kennesaw, Ga 30152 County Cobb

A. Landlord agrees:

1. To lease the Location to Tenant and Tenant, or Tenant's representative, shall have the exclusive right to operate a retail fireworks Stand, Tent or other sales outlet, as Tenant may determine and as permitted by applicable law, at and from the Location for the following selling period(s):

From: June 14, 2022 To: July 10, 2022 (July 4th Season)

From: December , 20 To: January , 20 (New Year's Season)

Plus a reasonable period of time before and after each selling period for erecting and dismantling Tenant's equipment and delivering and removing Tenant's inventory. Landlord warrants to Tenant that Landlord has the right to enter into this Lease for the Location.

2. Not to permit the sale, storage or advertising of consumer fireworks by any other person or entity from the Location or any property owned or controlled by Landlord within five (5) miles of the location.
3. To deliver possession of the Location free of debris and ready for erection of Tenant's stand or tent.

B. Tenant agrees:

1. To pay rental as follows

July 4th Season: The Crossing Partners, LLC [REDACTED] By: Upon lease execution

New Year's Season: By:

2. To obtain and pay for all necessary permits and licenses required by law for the conduct of Tenant's business from the Location, to post with appropriate local authorities any bonds or other security which might be required for operation of Tenant's business from the Location, and to ensure that the operation of Tenant's business shall adhere to all applicable laws and regulations.
3. To provide liability insurance coverage in the aggregate amount of [REDACTED] and to deliver to Landlord, prior to occupancy, a certificate of insurance evidencing such insurance covering the erection and operation of Tenant's retail outlet, naming Landlord (and Landlord's mortgagee, if applicable) as additional insured, and to indemnify, defend and hold harmless Landlord from and against any claims arising from the erection, maintenance or operation of Tenant's retail outlet.
4. To keep the Location clean and free from garbage and trash during the Season and to remove all of Tenant's property after each Season and return possession of the Location to Landlord after each Season in substantially the same condition as received, ordinary wear and tear excepted.

C. Landlord and Tenant agree:

1. ~~Tenant shall have the right to terminate this lease for any reason and shall be entitled to a refund of all prepaid rent or Tenant shall have the right to terminate the lease for a single Season and receive a refund of prepaid rent for such Season if the Location has not yet been occupied.~~
2. Tenant may elect not to operate a retail fireworks outlet at the Location for any one or more seasons without requesting a refund of any prepaid rent or terminating the Lease, and the Lease shall continue in full force and effect.
3. Tenant believes that the Location can be operated for the storage and retail sale of consumer fireworks, however, if any governmental authority (whether federal, state, or local) having proper jurisdiction over the Location enacts, issues, or modifies any applicable law, order, ordinance or regulation affecting the storage or retail sale of consumer fireworks, Tenant shall not be obligated for the payment of rent under the lease, or if the payment of rent has already been made to the Landlord, the Landlord shall refund the rent payment within 10 days of request by the Tenant.
4. ~~This Lease shall be automatically renewed on the same terms and conditions as set forth above for each Season through 20__ unless cancelled by Tenant prior to January 1. If Landlord receives an offer to lease the Location for sale of fireworks at any time prior to the first anniversary of the termination of this Lease for any reason other than Tenant's default, Landlord shall give Tenant notice of such offer, and Tenant shall have the right of first refusal to extend the term of the Lease on the same terms and conditions as the offer.~~
5. Landlord acknowledges that Tenant may designate another person or entity to operate the retail fireworks outlet at the Location but Tenant shall remain liable for all of Tenant's obligations hereunder.
6. An Addendum of N/A__ pages is attached hereto.
7. This Lease, or any subsequent amendments, shall not be valid unless signed by Tenant's home office representative.

LANDLORD

Name: The Crossing Partners, LLC

Address: 19241 Birmingham Hwy

City, State, Zip: Alpharetta, Ga 30004

Phone: 770.886.1963

Tax ID #: 58-2562235

Email: ctsephenson@bfkco.com and kwolters@bfkco.com

ADDITIONAL INSURED, IF ANY

Name: The Crossing Partners, LLC

Address: 19241 Birmingham Hwy

City, State, Zip: Alpharetta, Ga 30004

Phone: 770.886.1963

LANDLORD

Signature: 

Print Name: Ben F. Kushner

Date Signed: 1-31-22

TNT FIREWORKS

Signature: 

Print Name: Tracy Hughes

Date Signed: 2/1/2022



**Regular Meeting Agenda
6/6/2022 6:30 PM
Council Chambers**

Title of Item:	Authorization to Surplus and Dispose of Equipment.
Agenda Comments:	The City currently owns a 2003 JLG scissor lift. It is a model ES2632 with serial number 110474. It is in non-functional condition and the expense of repair outweighs its value. If approved for surplus, staff will attempt to sell the lift in the open market; however, if no bids are received then it will be sold as scrap metal. The Public Works Director recommends declaring the lift as surplus.
Funding Line(s)	



**Regular Meeting Agenda
6/6/2022 6:30 PM
Council Chambers**

Title of Item:	Approval of RESOLUTION for Bid and Award of Contract for Community Development Block Grant (CDBG) Woodland Acres Sidewalk Improvements Phase VI.
Agenda Comments:	Staff solicited bids from qualified contractors to install sidewalk in association with the Community Development Block Grant (CDBG) program. The project will consist of installing sidewalk on Woodland Drive NW from Butler Creek Road to White Oak Court and along Black Gum Drive NW from Woodland Drive to Pine Mountain Road. The bid announcement was advertised in the Marietta Journal pursuant to City procurement policy. Two bids were received: Curb Atlanta, Inc. - \$144,220.00; R&B Developer, Inc. - \$181,681.00. The Public Works Director recommends approval of bid and award of contract to Curb Atlanta, Inc. for the amount of \$144,220.00 and requests the Mayor to sign the attached resolution and contract.
Funding Line(s)	100.1050.54.142000.00000 CDBG Projects

ATTACHMENTS:

Description	Upload Date	Type
Resolution	5/27/2022	Resolution
Contract	5/27/2022	Contract/Agreement
Bid Log	5/25/2022	Backup Material
04-08-22 Legal Ad	5/27/2022	Legal Ad
04-22-22 Legal Ad	5/27/2022	Legal Ad
04-29-22 Legal Ad	5/27/2022	Legal Ad

**CITY OF KENNESAW
GEORGIA**

RESOLUTION NO. 2022-__, 2022

**RESOLUTION TO APPROVE A CONTRACT WITH CURB ATLANTA, INC FOR
SIDEWALK CONSTRUCTION PROJECT ON KENNESAW DRIVE AS A PART OF
THE COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM**

**BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF KENNESAW,
COBB COUNTY, GEORGIA, AS FOLLOWS:**

WHEREAS, the City of Kennesaw received funding from a Community Development Block Grant (CDBG) for sidewalk construction along Woodland Drive NW and Black Gum Drive NW; and

WHEREAS, Curb Atlanta, Inc. has offered to perform the work associated with this project which includes construction of a 5' wide sidewalk along Woodland Drive NW from Butler Creek Road to White Oak Court and along Black Gum Drive NW from Woodland Drive to Pine Mountain Road; and

BE IT RESOLVED the Kennesaw City Council authorizes the Mayor to execute a contract with Curb Atlanta, Inc. for an amount not to exceed \$144,220.00 to perform this project.

BE IT FURTHER RESOLVED this Resolution shall become effective from and after its adoption and execution by the mayor.

PASSED AND ADOPTED by the Kennesaw City Council on this ____ day of June, 2022.

ATTEST:

CITY OF KENNESAW

Lea Alvarez, City Clerk

Derek Easterling, Mayor

CONTRACTOR AGREEMENT
CITY OF KENNESAW
WOODLAND ACRES SIDEWALK IMPROVEMENTS, PHASE VI

This Agreement is executed this ____ day of June 2022 by and between the City of Kennesaw, a political subdivision of the State of Georgia, hereinafter referred to as the “City”, and Curb Atlanta, Inc, hereinafter designated as the “Contractor.” The Contractor hereby agrees to deliver to and perform for the City, and the City agrees to pay for those items and services described in the special provisions to this Agreement, which are attached hereto by Exhibit “A” (hereinafter the “Project”) and by this reference made a part hereof. The parties hereby agree to each and every general condition and special provision contained herein as follows:

1. Adequate Personnel; Conditions.

The Contractor hereby warrants that it possesses adequate personnel, equipment, and financial strength to perform each and every obligation contained in the Contract Documents. The Contractor further warrants that it does not have preexisting business commitments which would prevent it from successfully completing each and every term of this Agreement. Contractor warrants that it is professionally and fully qualified to act as the general contractor for the work designated herein and is and will remain licensed to practice engineering and architecture and general contracting by all public entities having jurisdiction over Contractor or the work designated herein.

2. Duration.

This Agreement shall be deemed in effect on the date of execution. Contractor shall commence performing the services herein described upon receipt of the letter to proceed delivered by the City. Contractor shall complete the services herein described within 90 days, unless sooner terminated pursuant to the provisions contained herein.

3. Price.

The parties have stated the contract price in the special provisions attached hereto as Exhibit “A” and by this reference made a part hereof. The contract price for the Project is one hundred forty four thousand, two hundred twenty dollars (\$144,220.00).

4. Time of Essence.

Time is of the essence for the completion of all work pursuant to this Agreement. It is hereby understood and mutually agreed by the parties that the beginning date, rate of progress, and time for completion of the work designated herein are essential conditions of this Agreement. The Contractor agrees that said work shall be prosecuted regularly, diligently, and uninterrupted at such rate of progress as will insure full completion thereof within the time specified. It is expressly understood that the time for completion of the work described herein is a reasonable time for the completion of the same.

5. Governing Law.

Each and every provision of this Agreement shall be construed in accordance with and governed by Georgia law. The parties acknowledge that this Agreement is executed in Cobb County, Georgia and that the Agreement is to be performed in the City of Kennesaw, Georgia. Each party hereby consents to the Cobb County Superior Court’s sole jurisdiction over any dispute, which arises as a result of the execution or performance of this Agreement, and each party hereto waives any and all objections to venue in the Cobb County Superior Court.

6. Assignments.

The Contractor shall not assign or subcontract, in whole or on part, its rights, or obligations pursuant to this Agreement, or any moneys due or to become due hereunder, without the prior written consent of the City.

7. Modification.

This Agreement shall not be modified verbally. Any modification of the terms of this Agreement shall be reduced to writing and signed by the duly authorized representative of each party hereto.

8. Due Diligence.

The Contractor shall perform all authorized work pursuant to this Agreement promptly and diligently in a good, proper, and workmanlike manner in accordance with the terms of this Agreement.

9. Risk of Loss.

The Contractor shall be responsible for, and bear the expense of, any damage to or destruction of the goods and supplies furnished pursuant to this Agreement until such goods or supplies are delivered to, and accepted by, the City at 2529 J.O. Stephenson Avenue, Kennesaw, Cobb County, Georgia or such other destination as is indicated in the special provisions attached hereto.

10. Invoices.

The City shall have no obligation to pay for the materials furnished pursuant to this Agreement until the Contractor has submitted proper invoices or vouchers describing with specificity the nature of the supplies furnished, the quantity of supplies furnished, and a statement that the supplies are furnished free from any lien or encumbrance.

11. Taxes.

The Contractor shall pay all applicable taxes assessed against the supplies, which form the subject of this Agreement.

12. Permits and Licenses; Inspection; Tests.

The Contractor shall procure all permits and licenses or other authorization necessary, pay all charges and fees, and give all notices necessary and incidental to the performance of the terms of this Agreement. Contractor has visited and inspected the work site and local conditions under which the work is to be performed and Contractor has performed such tests, if any, as are necessary to determine the conditions under which the work will be performed, and Contractor accepts the conditions of the work site and taken those conditions into account in entering into this Agreement.

13. Termination for Cause.

If the Contractor shall be adjudged as bankrupt, or if it shall make a general assignment for the benefit of its creditors, or if a receiver shall be appointed for the Contractor, or if it shall consistently or repeatedly refuse or fail to supply the products designated herein, or if it should refuse or fail to make payment to persons supplying labor or materials for the products pursuant to the Agreement, or if the Contractor fails to observe or perform the provisions of this Agreement or is guilty of a substantial violation of any provision of the Contract Documents, then the City, after serving at least ten (10) days prior written notice to the Contractor of its intent to terminate this Agreement pursuant to such default, may terminate this Agreement without prejudice to any other rights or remedies provided by law and may take possession of the supplies delivered to the City prior to such termination. The Contractor shall be liable to the City for any damage resulting from the Contractor's default.

14. Inspection and Testing.

The Contractor shall make the materials or supplies, which are the subject of this Agreement available to the City for inspection and testing by the City at the Contractor's expense prior to the Contractor's delivery of the materials or supplies to the City. All supplies (which term throughout this Agreement includes without limitation raw materials, components, intermediate assemblies, and end products) shall be subject to inspection and testing by the City, to the extent practicable at all times and places including the period of manufacture, and in any event prior to acceptance.

15. Liquidated Damages.

In the event that the materials or services which form the subject of this Agreement are not delivered as set forth in this Agreement, the City may terminate this Agreement and recover liquidated damages in an amount set forth in the special provisions to this Agreement. The liquidated damages enumerated herein are not intended to penalize the Contractor, but the parties agree that due to each party's difficulty in specifically quantifying the damages which would be occasioned due to the breach of this Agreement, the parties deem it advisable to stipulate a specific sum per day as damages as a result of the Contractor's failure to deliver the supplies or services which form the subject of this Agreement in a timely manner. The Contractor shall not be liable for liquidated damages due to a delay occasioned by unforeseeable causes beyond the control of the Contractor if such causes do not result from the default or negligence of the Contractor. The Contractor shall not be liable for damages due to delay in the performance of this Agreement if such delay is caused by acts of God or of the public enemy, acts of the government, fires, epidemics, quarantine restrictions, strikes or freight embargoes. Such liquidated damages enumerated herein shall be in addition to and not in preclusion of the recovery of actual damages resulting from other defects on Contractors performance hereunder for other matters other than delays in completion. When the City believes that completion may be delayed, the City shall be entitled, but not required, to withhold from any amounts otherwise due Contractor and amount then believed by City to be adequate to recover liquidated damages applicable to such delays. If and when the Contractor overcomes the delay in achieving completion, or any part thereof, for which City has withheld payment, the City shall promptly release to Contractor those funds withheld, but no longer applicable as liquidated damages.

16. Contract Documents.

Copies of the Contractor's proposal to furnish the labor, materials, and supplies which form the subject of this Agreement and all drawings and specifications submitted during the bidding process are attached hereto and incorporated herein by reference. The Contractor shall list each such document and describe each original document's location as a part of the special provisions to this Agreement. In the event of conflicting terms or ambiguity between this Agreement and the Contractor's proposal, the Contractor's proposal shall control.

17. Additional Security.

The Contractor shall provide additional bond security in the event that the City deems additional security necessary to insure performance of the Agreement.

18. Accounting and Records Retention.

Contractor shall maintain accounts and records, including books, records, documents, personal property, financial records and other evidence adequate to identify and account for all costs and expenses pertaining to this Agreement and such other records as may be requested by the City to

assure proper accounting for all funds, both public and private. Said records shall be made available for audit purposes to the City or its representative(s) upon request and without additional charge to the City and shall be retained for at least six (6) years after expiration of this Agreement, termination or completion of this project unless permission to destroy them is granted by the City. Contractor's records and accounts shall at all times meet or exceed the applicable requirements of Federal, State and City law, rules and regulations.

19. Indemnification.

To the fullest extent permitted by law, the Contractor shall, at its sole cost and expense, indemnify, defend, satisfy all judgments, and hold harmless the City, its agents, officers, elected officials, attorneys, and employees from and against all claims, damages, actions, judgments, costs, penalties, liabilities, losses and expenses including, but not limited to, attorney's fees arising out of or resulting from the performance of this Agreement, provided that any such claim, damage, action, judgment, cost, penalty, liability, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property including the loss of use resulting there from, and is caused in whole or in part by any act or omission of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, regardless whether such injury is caused in whole or in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce any of the rights or obligations of indemnity which would otherwise exist as to any party or person described herein.

20. Severability.

In the event that any provision of this Agreement is determined to be invalid or unenforceable by a Court of competent jurisdiction, such provision shall be deemed severed from this Agreement, and the remaining provisions of this Agreement shall remain in full force and effect.

21. New Materials.

The Contractor hereby represents and warrants to the City that any and all materials will be new unless otherwise specified, and the Contractor further represents that all work will be of good and workmanlike quality and free from defects in accordance with the specifications.

22. Set-off.

In the event that the City accepts supplies with minor defects, the Contractor shall deduct the proportionate cost of such defects from its invoice to the City concerning such supplies.

23. Defective Materials.

The Contractor agrees to remedy promptly, and without cost to the City, any defective materials or workmanship which appear within the warranty period stated in the special provisions attached to this Agreement.

24. Defective Materials-Liability.

No provision contained in this Agreement shall be held to limit the Contractor's liability to the City for defects in the supplies furnished to an amount less than the legal limit of liability in accordance with law.

25. Manufacturer's Warranties.

No provision contained in this Agreement shall be construed to limit the terms and conditions of any manufacturer's warranty concerning the supplies furnished pursuant to this Agreement.

26. Notices.

Any and all notices pursuant to this Agreement shall be deemed to have been properly delivered when deposited in the United States mail for delivery to the Contractor at the address provided on the Contractor's proposal. Notices to the City shall be deemed to have been properly delivered when mailed to the City Manager, City of Kennesaw, 2529 J.O. Stephenson Avenue, Kennesaw, Georgia 30144-2797.

27. Bid Bond.

If a bid bond is required pursuant to the City's specifications, such bond must be in an amount of not less than five percent of the bid submitted by the Contractor. The bid bond will be forfeited if the Contractor fails to execute an agreement with the City substantially similar to this Agreement within fifteen days after notification of the award of the Project.

28. Performance and Payment Bonds.

The Contractor shall furnish the City a performance bond in the form enclosed in the City's request for bids in an amount of one hundred percent (100%) of the lump sum amount bid for the full and complete performance of this Agreement. The Contractor shall also furnish a payment bond on the form enclosed in the City's request for bids insuring the payment of all persons performing labor and furnishing materials or equipment in connection with this Agreement in an amount of one hundred and ten percent (110%) of the lump sum amount bid for the full and complete performance of this Agreement. Accordingly, the Contractor warrants and agrees that, for any Change Order increasing the Contract Sum by five percent or more or when the total cost of the work has increased by five percent (5%) or more, it shall obtain a written amendment to the performance bond increasing the penal amounts of the bond to one hundred percent (100%) of the new Contract Sum and it shall obtain a written amendment to the payment bond increasing the penal amounts of the bond to one hundred and ten percent (110%) of the new Contract Sum effective as of the date of the Change Order. The premium increase, if any, may be properly included in the cost of the Change Order. The City shall approve no payment for the work provided by the Change Order until the Contractor has provided the written amendment to the City. The Contractor shall furnish in writing both a performance bond and a payment bond executed by a duly authorized representative within (30) days of the execution of this Agreement. The Contractor's failure to provide said bonds shall authorize the City to terminate this Agreement and pursue all remedies available to the City at law or in equity. All bonds at the time of issuance must be issued by a company authorized by the Georgia Insurance Commissioner to transact the business of suretyship in the State of Georgia, and shall have a Best Policyholders Rating of "A-" or better and with a financial size rating of Class V or larger.

29. Change Orders.

The City may at any time, by written order, and without notice to the sureties, make changes, within the general scope of this Agreement, in any one or more of, but not limited to, the following: (a) drawings, designs, or specifications, where the supplies to be furnished are to be specially manufactured for the City in accordance therewith; (b) method of shipment or packing; (c) construction materials; (d) construction design; (e) construction specifications; and (f) place of delivery. If any such change causes an increase or decrease in the cost of, or the time required for, the performance of any part of this Agreement, an equitable adjustment shall be made in the contract price of delivery schedule, or both, and the Agreement shall be modified in writing accordingly. Any claim by the Contractor for adjustment under this clause must be asserted within

thirty (30) days from the date of receipt by the Contractor of the notification of change; provided, however, that the City, if it decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment pursuant to this Agreement. Where the cost of property made obsolete or rendered unnecessary as a result of a change is included in the Contractor's claim for adjustment, the City shall have the right to prescribe the manner of disposition of such property. However, nothing in this clause shall excuse the Contractor from proceeding with the Project as changed.

30. Variation in Quantity.

No variation in the quantity of any item or materials called for by this Agreement shall be accepted unless such variation has been caused by conditions of loading, shipping, or packing, or allowances in the manufacturing or construction processes, and then only to the extent, if any, specified elsewhere in this Agreement.

31. Rejection of Nonconforming Materials.

In case any supplies or lots of supplies are defective in material or workmanship or otherwise not in conformity with the requirements of this Agreement, the City shall have the right either to reject them (with or without instructions as to their disposition) or to require their correction. Supplies or lots of supplies which have been rejected or required to be corrected shall be removed, or, if permitted or required by the City, corrected in place by and at the expense of the Contractor promptly after notice, and shall not thereafter be tendered for acceptance unless the former rejection or requirement of correction is disclosed. If the Contractor fails promptly to remove such supplies/materials or lots of supplies/materials which are required to be removed, or promptly to replace or correct such supplies or lots of supplies, the City either: (a) may by contract or otherwise replace or correct such supplies and charge to the Contractor the cost occasioned to the City thereby, or (b) may terminate this Agreement for default. Unless the Contractor corrects or replaces such supplies within the delivery schedule, the City may require the delivery of such supplies at a reduction in price, which is equitable under the circumstances.

32. Inspection Facilities.

If any inspection or test is made by the City on the premises of the Contractor or a subcontractor, the Contractor without additional charge shall provide all reasonable facilities and assistance for the safety and convenience of the City inspectors in the performance of their duties. If City inspections or tests are made at a point other than the premises of the Contractor or a subcontractor, said inspections or tests shall be at the expense of the City except as otherwise provided in this Agreement; provided that in case of rejection, the City shall not be liable for any reduction in value of samples used in connection with such inspections or tests. All inspections and tests by the City shall be performed in such a manner as not to unduly delay the work. The City reserves the right to charge to the Contractor any additional costs of City inspections and tests when supplies are not ready at the time such inspections and tests are requested by the Contractor or when reinspection or retest is necessitated by prior rejection. Acceptance or rejection of supplies shall be made as promptly as practicable after delivery, except as otherwise provided in this Agreement; but failure to inspect and accept or reject the supplies shall neither relieve the Contractor from responsibility for such supplies which are not in accordance with the Project requirements nor impose liability on the City therefore.

33. Testing-Liability.

The inspection and testing by the City of any supplies or lots thereof does not relieve the Contractor from any responsibility regarding defects or other failures to meet the Project requirements which may be discovered prior to acceptance. Except as otherwise provided, in this Agreement,

acceptance shall be conclusive except as regards to latent defects, fraud, or such gross mistake as amounts to fraud.

34. Inspections-Records.

The Contractor shall provide and maintain an inspection system acceptable to the City covering the supplies/materials and construction hereunder. Records of all inspection work by the Contractor shall be kept complete and available to the City during the performance of this Agreement and for such longer period as may be specified elsewhere in this Agreement.

35. Payments.

The Contractor shall be paid, upon the submission of proper invoices or vouchers, the prices stipulated herein for supplies/materials delivered and accepted or services or labor rendered and accepted, less deductions, if any, as herein provided.

- (a) The Contractor shall submit to the City an itemized Invoice for Payment in an AIA format. The invoice shall include backup material including, but not limited to, receipts or other vouchers, showing the payments for materials and labor, including payments previously made to Subcontractors.
- (b) The City may withhold or, on account of subsequently discovered evidence, nullify the whole or a part of any certificate to such extent as may be necessary to protect the City from loss because of the following conditions:
 - (i) Defective work not remedied;
 - (ii) Claims or liens filed;
 - (iii) Failure of the Contractor to make payments properly to Subcontractor or Supplier for materials or labor;
 - (iv) A reasonable doubt that the Contract can be completed for the balance then unpaid;
 - (v) Damage to a Separate Contractor or to the City or a third party;
 - (vi) Failure to maintain a rate of progress consistent with the schedule; or
 - (vii) Failure to supply enough skilled workers or proper materials.

When the above grounds are removed, payment shall be made for amounts withheld because of them. With regard to cases (ii) and (iii) above, the City may agree to payment upon receipt of a satisfactory Bond to Discharge Claim in the amount of double the claim. At the option of the City, adherence to the Overall Project Schedule shall be a condition precedent to the right of the Contractor to demand payment of an application for payment or certificate. No omission on the part of the City to exercise the aforesaid option shall be construed to be a waiver of breach of the Overall Project Schedule or acquiescence therein, and the City may exercise its option from time to time and as often as may be expedient.

36. Termination for Cause.

The City may, in addition to the provisions of Paragraph 13 herein, and subject to the provisions of Paragraph 46, by written notice of default to the Contractor, terminate the whole or any part of this Agreement in any one of the following circumstances:

- (a) If the Contractor fails to make delivery of the supplies or to perform the services within the time specified herein or any extension thereof; or
- (b) If the Contractor fails to perform any of the other provisions of this Agreement, or so fails to make progress as to endanger performance of this Agreement in accordance with its terms, and in either of these two circumstances does not cure such failure within a period of ten (10) days (or such longer period as the City may authorize in writing) after receipt of notice from the City specifying such failure.

37. Costs to Cure.

In the event the City terminates this Agreement in whole or in part as provided in Paragraph 13, Paragraph 36, or Paragraph 46, the City may procure, upon such terms and in such manner as the City may deem appropriate, supplies or services similar to those so terminated, and the Contractor shall be liable to the City for any excess costs for such similar supplies or services; provided, that the Contractor shall continue the performance of this Agreement to the extent not terminated pursuant to the provisions of Paragraph 13, Paragraph 36, and/or Paragraph 40.

38. Force Majeure.

Except with respect to defaults of subcontractor, the Contractor shall not be liable for any excess costs if the failure to perform the Agreement arises out of causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to, acts of God, or to the public enemy, acts of the City, acts of the City, fires, flood, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather exceeding the average climatic conditions in the area of the Work. If the failure to perform is caused by the default of a subcontractor, and if such default arises out of causes beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either of them, the Contractor shall not be liable for any excess costs for failure to perform unless the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery schedule. The Contractor shall, within seven (7) days from the beginning of such delay, notify the City, in writing, of the causes of the delay, who shall ascertain the facts and the extent of the delay and notify the Contractor within a reasonable time of its decision in the matter.

39. Title to Materials Upon Termination.

If this Agreement is terminated for any reason, the City, in addition to any other rights provided in this Agreement, may require the Contractor to transfer title and deliver to the City: (i) any completed supplies, and (ii) such partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and agreement rights (hereinafter called "construction materials") as the Contractor has specifically produced or specifically acquired for the performance of such part of this Agreement as has been terminated. The Contractor shall, upon direction of the City, protect and preserve property in possession of the Contractor in which the City has an interest. Payment for completed supplies delivered to and accepted by the City shall be at the contract price. Payment for construction materials delivered to and accepted by the City and for the protection and preservation of property shall be in an amount agreed upon by the Contractor and the City. The City may withhold from amounts otherwise due the Contractor for such completed supplies, construction services, or construction materials such sum as the City determines to be necessary to protect the City against loss because of outstanding liens or claims of former lien holders.

40. Review of Termination.

If, after notice of termination of this Agreement, it is determined for any reason that the Contractor was not in default under the provisions of this Agreement, or that the default was excusable, the rights and obligations of the parties shall be the same as if the notice of termination had been issued as a Termination for Convenience of the City.

41. Additional Remedies.

The rights and remedies of the City provided in this Agreement shall not be exclusive and are in addition to any other rights and remedies provided by law.

42. Subcontractors.

As used in this Agreement, the terms “subcontractor” and “subcontractors” mean subcontractor(s) at any tier. Contractor assumes full responsibility for the improper acts and omissions of its subcontractors or others employed or retained by Contractor in connection with the work designated herein.

43. Solicitation of Contract.

The Contractor, in accordance with Title 13 of the Code of Georgia, warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the City shall have the right to annul this Agreement without liability or, in its discretion, to deduct from the agreement price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

44. Termination for Convenience.

The performance of work under this Agreement may be terminated by the City in accordance with this clause in whole, or in part, whenever the City shall determine that such termination is in the best interest of the City. Any such termination shall become effective by delivery to the Contractor of a Notice of Termination specifying the extent to which performance of work under the Agreement is terminated, and the date upon which such termination becomes effective. Upon termination for convenience by the City, the provisions of Paragraphs 13, 36, 37, 39, and 41 herein shall apply to the extent applicable.

45. Contractor's Duties upon Termination.

After receipt of a Notice of Termination pursuant to any of the applicable Paragraphs herein, and except as otherwise directed by the City, the Contractor shall:

- (a) Stop work under the Agreement on the date and to the extent specified in the Notice of Termination;
- (b) Place no further orders or subcontracts for materials, services or facilities, except as may be necessary for completion of such portion of the work under the Agreement as is not terminated;
- (c) Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination;
- (d) Assign to the City, in the manner, at the time, and to the extent directed by the City, all of the right, title and interest of the Contractor under the orders and subcontracts so terminated, in which case the City shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
- (e) Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the City, to the extent it may require, which approval or ratification shall be final for all the purposes of this clause;
- (f) Transfer title to the City and deliver in the manner, at the times, and to the extent, if any, directed by the City:
 - (i) the fabricated or unfabricated parts, work in process, completed work, supplies and other materials produced as a part of, or acquired in connection with the performance of, the work terminated by the Notice of Termination, and
 - (ii) The completed or partially completed plans, drawings, information, and other property, which, if the Agreement had been completed, would have been required to be furnished to the City.

- (g) Use its best efforts to sell, in the manner, at the times, to the extent, and at the price or prices directed or authorized by the City, any property of the types referred to in (f), above; provided, however, that the City:
 - (i) Shall not be required to extend credit to any purchaser, and
 - (ii) May acquire any such property under the conditions prescribed by and at a price or prices approved by the City; provided further, that the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the City to the Contractor under this Agreement or shall otherwise be credited to the price or cost of the work covered by this Agreement or paid in such other manner as the City may direct;
- (h) Complete performance of such part of the work as shall not have been terminated by the Notices of Termination; and
- (i) Take such action as may be necessary, or as the City may direct, for the protection and preservation of the property related to this Agreement, which is in the possession of the Contractor, and in which the City has or may acquire an interest.

46. Termination-Claims.

After receipt of a Notice of Termination pursuant to any of the applicable Paragraphs herein, the Contractor shall submit to the City its termination claim, in the form and with the certification prescribed by the City. Such claim shall be submitted promptly but in no event later than one (1) month from the effective date of termination, unless one or more extensions in writing are granted by the City upon request of the Contractor made in writing within such one-month period or authorized extension thereof. However, if the City determines that the facts justify such action it may receive and act upon any termination claim at any time after such one-month period of any extensions thereof. Upon failure of the Contractor to submit his termination claim within the time allowed, the City may, subject to any review required by the City's procedures in effect as of the date of execution of this Agreement, determine, on the basis of information available to it, the amount, if any, due to the Contractor by reason of the termination and shall thereupon pay to the Contractor the amount so determined.

47. Settlement of Claims.

Subject to the provisions of Paragraph 48, the Contractor and the City may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of the total or partial termination of work, which amount or amounts may include a reasonable allowance for profit on work done; provided, however, that such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total contract price as reduced by the amount of payments otherwise made and as further reduced by the contract price of work not terminated. The Agreement shall be amended accordingly, and the Contractor shall be paid the agreed amount. Nothing in Paragraph 50 prescribing the amount to be paid to the Contractor in the event of failure of the Contractor and the City to agree upon the whole amount to be paid to the Contractor by reason of the termination of work shall be deemed to limit, restrict, or otherwise determine or affect the amount which may be agreed upon to be paid to the Contractor.

48. Payment of Claims.

In the event of the failure of the Contractor and the City to agree upon the amount to be paid to the Contractor by reason of the termination of work, the City shall determine, on the basis of information available to it, the amount, if any, due to the Contractor by reason of the termination and shall pay to the Contractor the amounts determined as follows:

- (a) For completed work, services, or materials accepted by the City (or sold or acquired as provided above) and not previously paid for, a sum equivalent to the aggregate price for

such supplies computed in accordance with the price specified in the Agreement, appropriately adjusted for any saving of freight or other charges;

(b) The total of:

- (i) The costs incurred in the performance of the work terminated, including initial costs and preparatory expense allocable thereto, but exclusive of any costs attributable to supplies/materials paid or to be paid for under Subparagraph (a) hereof;
- (ii) The cost of settling and paying claims arising out of the termination of work under subcontracts or orders, which are properly chargeable to the terminated portion of the Agreement (exclusive of amounts paid or payable on account of supplies or materials delivered or services furnished by subcontractors or vendors prior to the effective date of the Notice of Termination, which amounts shall be included in the costs payable above).

The total sum to be paid to the Contractor under (a) and (b) of this Paragraph shall not exceed the total contract price as reduced by the amount of payments otherwise made and as further reduced by the contract price of work not terminated. Except for normal spoilage, and except to the extent that the City shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to the Contractor, the fair market value, as determined by the City, of property which is destroyed, lost, stolen or damaged so as to become undeliverable to the City or to a buyer.

49. Set-Offs from Payment.

In arriving at the amount due the Contractor there shall be deducted:

- (a) all unliquidated advance or other payments on account heretofore made to the Contractor, applicable to the terminated portion of this Agreement;
- (b) any claim which the City may have against the Contractor in connection with this Agreement; and
- (c) the agreed price for, or the proceeds for, any work, services, materials, supplies or other things not provided or performed by the Contractor or sold pursuant to the provisions of this Agreement, and not otherwise recovered by or credited to the City.

50. Partial Termination.

If the termination hereunder is partial, prior to the settlement of the terminated portion of this Agreement, the Contractor may file with the City a request in writing for an equitable adjustment of the price or prices specified in the Agreement relating to the continued portion of the Agreement (the portion not terminated by the Notice of Termination), and such equitable adjustment as may be agreed upon shall be made in such price.

51. Partial Price.

The City may from time to time, under such terms and conditions as it may prescribe, make partial payments and payments on account against costs incurred by the Contractor in connection with the terminated portion of this Agreement whenever in the opinion of the City the aggregate of such payments shall be within the amount to which the Contractor will be entitled hereunder. If the total of such payments is in excess of the amount finally agreed or determined to be due such excess shall be payable by the Contractor to the City upon demand, together with interest computed at the rate of seven (7) percent per annum for the period from the date such excess payment is received by the Contractor to the date on which such excess is repaid to the City; provided, however, that no interest shall be charged with respect to any such excess payment attributable to a reduction in the Contractor's claim by reason of retention or other disposition of termination inventory until ten (10) days after the date of such retention or disposition, or such later date as determined by the City by reason of the circumstances.

52. Records Inspection.

Unless otherwise provided for in this Agreement, or by applicable statute, the Contractor, from the effective date of termination and for a period of six (6) years after final settlement under this Agreement, shall preserve and make available to the City at all reasonable times at the office of the Contractor but without direct charge to the City, all his books, records, documents and other evidence bearing on the costs and expenses of the Contractor under this Agreement and relating to the work terminated hereunder, or, to the extent approved by the City, photographs, microphotographs or other authentic reproductions thereof.

53. Compliance

This Contract shall be governed by the law of Georgia. The Contractor shall comply with all laws, rules, regulations, ordinances, and orders of any government agency having jurisdiction in the performance of the Work and shall ensure the compliance of its Subcontractors. Without limiting the generality of the foregoing Paragraph, the following laws are specifically referenced:

- (a) Contractor agrees that any payments made by it to any subcontractor, agent, or representative in performance of the obligations hereunder shall fully comply with the terms and requirements of the Federal enacted Davis-Bacon Act as applicable.
- (b) Contractor agrees to comply with Federal Buy America regulations as applicable.
- (c) Contractor agrees to comply with Department of Transportation Seismic Safety Regulations as applicable.
- (d) Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act as applicable.
- (e) Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act.
- (f) Contractor agrees to comply with all applicable standards, orders or regulations related to lobbying, including the Byrd Anti-Lobbying Amendment. The undersigned Contractor certifies, to the best of his or her knowledge and belief that:
 - (i) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
 - (ii) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form—LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions [as amended by “Government wide Guidance for New Restrictions on Lobbying,” 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, et seq.)].
 - (iii) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

- (iv) This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
- (g) Contractor agrees to comply with all applicable standards, orders or regulations related to access to records and reports under state and federal law.
- (h) Contractor agrees to comply with all applicable standards, orders or regulations related to Federal Changes.
- (i) Contractor agrees to comply with all applicable standards, orders or regulations related to bonding requirements.
- (j) Contractor agrees to comply with all applicable standards, orders or regulations related to the Clean Air Act.
- (k) The City and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Agreement and shall not be subject to any obligation or liabilities to the City, Contractor, or any other party pertaining to any matter resulting from the underlying contract.
- (l) Contractor agrees to comply with all applicable standards, orders or regulations related to Program Fraud and False or Fraudulent Statements and Related Acts.
- (m) Contractor agrees to comply with all applicable standards, orders or regulations related to Civil Rights, including Nondiscrimination, Equal Employment Opportunity, Race, Color, Creed, National Origin, Sex, Age or Disabilities.
- (n) Contractor agrees to comply with all applicable standards, orders or regulations related to Disadvantaged Business Enterprise.

54. Insurance.

The Contractor shall be responsible to the City from the time of the signing of the Agreement or the beginning of the first work, whichever shall be earlier, for all injury or damage of any kind resulting from any negligent act or omission or breach, failure or other default regarding the Work by the Contractor, or any of its Subcontractors, its agents, employees or others working at the direction of the Contractor or on its behalf. The Contractor shall procure the insurance coverage identified below at the Contractor's expense and shall furnish the City an insurance certificate listing the City of Kennesaw as the certificate holder and as an additional insured and should read "The City of Kennesaw, Georgia, 2529 J.O. Stephenson Ave., Kennesaw, GA 30144". Occurrence coverage is required. Claims-made coverage is not acceptable. The insurance certificate must provide the following:

- (a) Name and address of authorized agent;
- (b) Name and address of insured;
- (c) Name of insurance company(ies);
- (d) Description of policies;
- (e) Policy Number(s);
- (f) Policy Period(s);
- (g) Limits of liability;
- (h) Name and address of City as certificate holder;
- (i) Project Name and Number;
- (j) Signature of authorized agent;
- (k) Telephone number of authorized agent; and

- (l) Mandatory thirty-day notice of cancellation or non-renewal.

The insurance coverage required below shall be issued by a company licensed by the Georgia Insurance Commissioner to transact the business of insurance in the State of Georgia for the applicable line of insurance and shall be an insurer with a Best Policyholders Rating of "A-" or better and with a financial size rating of Class V or larger. Each such policy shall contain the following provisions:

- (a) The insurance company agrees that the policy shall not be canceled, changed, allowed to lapse or allowed to expire until sixty days after the City has received written notice thereof, as evidenced by return receipt of certified mail or statutory mail, or until such time as other insurance coverage providing protection equal to protection called for in this Contract shall have been received, accepted and acknowledged by the City.
- (b) The policy shall not be subject to invalidation as to any insured by reason of any act or omission of another insured or any of its officers, employees, agents or other representatives.
- (c) All deductibles shall be paid for by the Contractor.
- (d) These policies shall be primary, noncontributing with any applicable insurance carried by the City of Kennesaw and shall contain a severability of interests clause in respect to cross liability, protecting each additional insured as though a separate policy had been issued to each.
- (e) Certification of each policy shall be furnished, in duplicate, to the City, at least fifteen (15) days prior to commencement of services under the signed Agreement.

The Contractor also agrees to purchase insurance and have the authorized agent state on the insurance certificate that the Contractor has purchased the following types of insurance coverage, consistent with the policies and requirements of O.C.G.A. § 50-21-37. The minimum required coverage and liability limits are as follows:

- (a) The Contractor agrees to provide Workers' Compensation coverage in accordance with the statutory limits as established by the General Assembly of the State of Georgia. A group insurer must submit a certificate of authority from the Insurance Commissioner approving the group insurance plan. The Contractor shall require all Subcontractors performing work under this Contract to obtain an insurance certificate showing proof of Workers' Compensation Coverage and shall submit a certificate on the letterhead of the Contractor in the following language: *This is to certify that all Subcontractors performing work on this Project are covered by their own workers' compensation insurance or are covered by the Contractor's workers' compensation insurance.*

State of Georgia statutory limits required:

- (i) \$1,000,000.00;
 - (ii) \$1,000,000.00 each accident;
 - (iii) \$1,000,000.00 disease policy limit; and
 - (iv) \$1,000,000.00 disease each employee.
- (b) The Contractor shall provide Commercial General Liability Insurance that shall include, but need not be limited to, coverage for bodily injury and property damage arising from premises and operations liability, products and completed operations liability, blasting and explosion, collapse of structures, underground damage, personal injury liability and contractual liability. The CGL policy must include separate aggregate limits per Project and shall provide at a minimum the following limits:
 - (i) Premises and Operations \$ 1,000,000.00 per Occurrence;

- (ii) Products and Completed Operations \$ 1,000,000.00 per Occurrence;
- (iii) Personal Injury \$ 1,000,000.00 per Occurrence;
- (iv) Contractual \$ 1,000,000.00 per Occurrence; and
- (v) General Aggregate \$ 2,000,000.00.
- (c) The Contractor shall provide Commercial Business Automobile Liability Insurance that shall include coverage for bodily injury and property damage arising from the operation of any owned, non-owned, or hired automobile. The Commercial Business Automobile Liability Insurance Policy shall provide not less than \$1,000,000 Combined Single Limit Bodily Injury, Property Damage for each occurrence.

55. Georgia Security and Immigration Compliance Act Requirements.

The Contractor hereby certifies its compliance with the Immigration Reform and Control Act of 1986 (IRCA), D.L. 99-603 and the Georgia Security and Immigration Compliance Act OCGA 13-10-90 *et seq.*, by registering and verifying information of all new employees; and by executing any affidavits required by the rules and regulations issued by the Georgia Department of Labor set forth at Rule 300-10-1-.01 *et seq.* Contractor warrants that Contractor has included or will include a similar provision in all written agreements with any subcontractors engaged to perform services under this Contract.

56. Dispute Resolution.

- (a) If a dispute arises out of or relates to this Contract or its breach, the parties shall endeavor to settle the dispute first through direct discussions between the parties' representatives who have the authority to settle the dispute. If the parties' representatives are not able to promptly settle the dispute, they shall refer the dispute to the City Manager who shall have the authority to settle the dispute. If the dispute is not settled by the City Manager, the parties may submit the dispute to mediation.
- (b) If the dispute cannot be settled pursuant to Section (a) above, the parties may elect to submit the dispute to mediation. The parties agree to conclude such mediation within sixty days of electing mediation. The parties shall select a mutually agreeable mediator and shall share the cost of the mediator equally. Either party may terminate the mediation at any time after the first session, but the decision to terminate shall be communicated in writing directly by the party's representative to the other party's representative and the mediator.
- (c) No litigation may be commenced without first following the process in paragraphs (a) and (b) above. Litigation may be filed in the Superior Court of Cobb County, Georgia, after the filing party provides thirty days written notice to the opposing party. The parties hereby agree that the Superior Court of Cobb County, Georgia shall have exclusive jurisdiction and venue in all matters concerning this Agreement.
- (d) Unless otherwise directed by the City, Contractor shall continue performance under this Agreement while matters in dispute are being resolved.

IN WITNESS WHEREOF, the parties hereby execute this Agreement on the date first above written.

ATTEST:

CITY OF KENNESAW, GEORGIA

Lea Alvarez, City Clerk

Derek Easterling, Mayor

CONTRACTOR: _____

By: _____

Title: _____

ATTEST:

Corporate Secretary (Seal)

Sworn and subscribed before me this
____ day of _____, 202__.

Notary Public
Commission Expires:

WITNESS

EXHIBIT "A"
SPECIAL STIPULATIONS

1. 1. GENERAL

- 1.1 It is the intention of this specification to establish and define the work to be performed and, in addition, to determine the capability and experience of the contractor desiring to provide such services.
- 1.2 The project includes furnishing all labor, material, equipment for construction and related improvements as stated in the Scope of Work for subject project.

2. SCOPE OF WORK

- 2.1 The project consists of installing a 5' sidewalk, 4" thick, and ADA ramps along the western side of Woodland Dr NW from Butler Creek Rd to White Oak Ct and along the southern side of Black Gum Dr NW from Woodland Dr to Pine Mountain Rd.
- 2.2 The removal of trees in the path of the sidewalks will be necessary and will be the responsibility of the contractor.
- 2.3 The contractor shall be responsible for all excavation, sub-grade compaction, forming, pouring and finishing the concrete, and cleaning up the site including installing necessary topsoil and grassing to restore the disturbed area to its original condition.
- 2.4 All major utilities: electric, water, communications, gas and sewer are present within the project corridor. Contractor will be responsible for coordinating and obtaining the necessary approvals and permits associated with this project.
- 2.5 The quantities shown on the Unit Price Sheet are approximate only. The Bidder is solely responsible for verifying all quantities, means and methods for the work. The contract sum will only increase or decrease by a change in the project scope and change order approved by the City prior to the work being done.

CITY OF KENNESAW
PUBLIC WORKS DEPARTMENT
REQUEST FOR BIDS

BID FORM

Community Development Block Grant (CDBG) Sidewalk Improvement Project

TO: CITY OF KENNESAW

FROM: Curb Atlanta Inc.
(Contractor)

THE UNDERSIGNED BIDDER, having familiarized themselves with the work required by the bid documents, the site where the work is to be performed, all laws, regulations, and other factors affecting performance of the work, and having satisfied itself/himself/herself of the expense and difficulties attending performance of the work:

HEREBY agrees if selected to enter into a contract and perform all work necessary to the successful completion of the contract as indicated and specified in the RFB for the total contract price of:

\$ 144,220.00

Bidder must also complete the unit price information in the Specification section.

Name of Firm: Curb Atlanta Inc

Firm Address: 636 Radford Circle Woodstock 30188

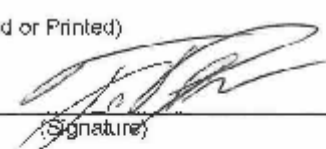
Federal Identification No: 58-1813885 Email: CurbAtlanta@gmail.com

Telephone No: (404) 542-5049 Fax No: (770) 928-8862

By: Tim J. Plemmons 5-3-22

(Typed or Printed)

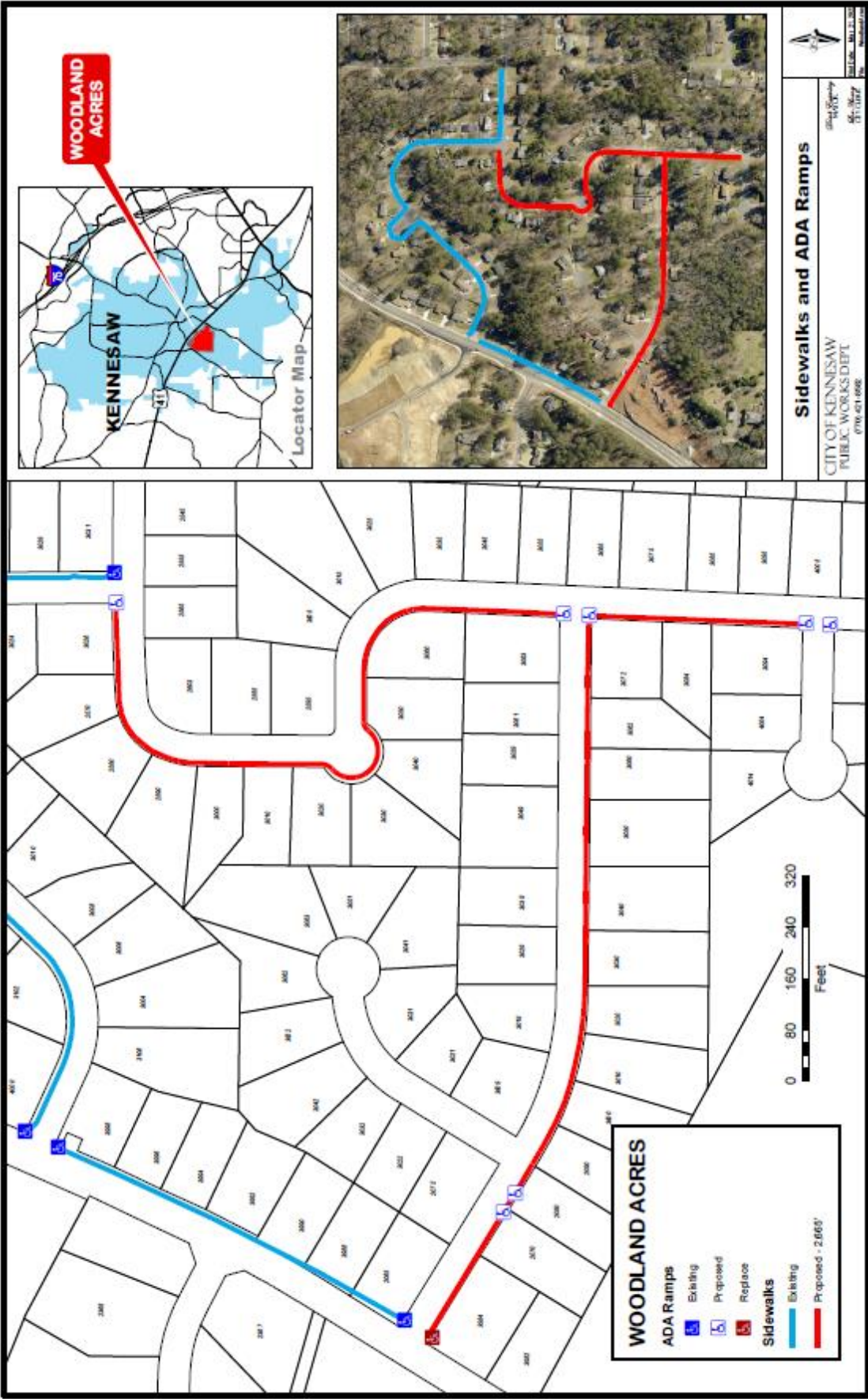
(Date)

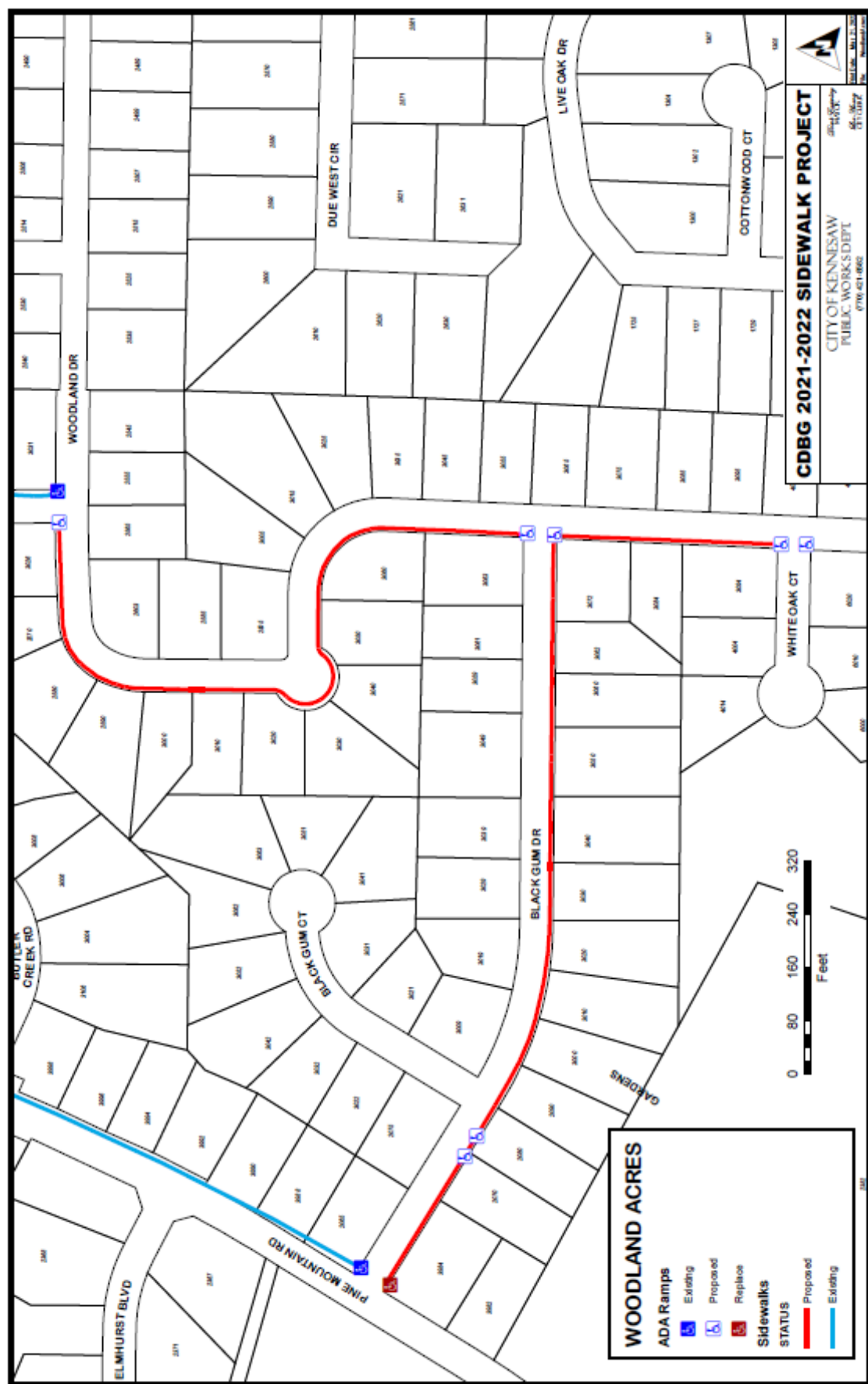
Signature:  CBO
(Signature) (Title)

CITY OF KENNESAW
REQUEST FOR BIDS

ATTACHMENT 1

	Quantity	Unit	Unit Price	Total
Grading Complete	1	LS		<u>62,112.00</u>
5' Sidewalk	1472	SY	<u>39.00</u>	<u>57,408.00</u>
Sign Reset	3	EA	<u>200.00</u>	<u>600.00</u>
Grassing	1	LS		<u>4,000.00</u>
Tree Removal	12	EA	<u>900.00</u>	<u>10,800.00</u>
ADA Ramps	6	EA	<u>800.00</u>	<u>4,800.00</u>
Traffic Control	1	LS		<u>4,500.00</u>
			TOTAL	<u>149,220.00</u>





3. The contract price for such materials and construction services shall not exceed the amount of \$ 144,220.00.
4. Pursuant to Paragraph 16 of this Agreement, the Contractor shall provide copies of its proposal and all drawings and specifications submitted during the bidding process. Each such document and the location of the original is listed as follows:
 - 1) Description of Specifications
 - 2) Proposal and Contract
 - 3) Bid quotation
 - 4) E-Verify Forms for All Contracts
 - 5) _____
 - 6) _____
 - 7) _____
 - 8) _____
 - 9) _____
 - 10) _____
5. Pursuant to Paragraphs 23, 24 and 25 of this Agreement, the Contractor agrees to remedy promptly, and without cost to the City, any defective materials or workmanship which appear within two (2) years of the date of completion of the services outlined in this Agreement.
6. Pursuant to Paragraph 15 of this Agreement, the Contractor agrees to pay liquidated damages in the amount of \$250.00 per day for each day the Contractor fails to complete its duties and obligations under this Agreement beyond the time period set forth within.

PRIME CONTRACTOR'S WORK AUTHORIZATION CERTIFICATION

Pursuant to O.C.G.A. § 13-10-91, all qualifying contractors and sub-contractors performing work within the State of Georgia on a contract with a public employer must register and participate in a federal work authorization program. Prime contractors may participate in 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").

Certify compliance with O.C.G.A. § 13-10-91 by checking the appropriate line below:

_____ The undersigned has registered for and is participating in a qualifying federal work authorization program.

The undersigned further agrees that, should it employ or contract with any subcontractor(s) in connection with the physical performance of services within this state pursuant to this contract with a public employer, the undersigned will secure from such subcontractor(s) a verification of compliance with O.C.G.A. § 13-10-91 using the form "Subcontractor's Work Authorization Certification" or a substantially similar form. The undersigned will maintain records of compliance and provide a copy of each subcontractor's verification to the public employer at the time the sub-contractor is retained to perform such service.

By: Authorized Officer or Agent

Date

Title of Authorized Officer or Agent of Contractor

Basic Pilot User Identification Number
(if applicable)

Printed Name of Authorized Officer or Agent

With express authority on behalf of:

Printed Name of Prime Contractor

SUBSCRIBED AND SWORN BEFORE ME ON THIS THE

_____ DAY OF _____, 20__

Notary Public

My Commission Expires: _____

300-10-1-.08 Subcontractor Affidavit (Georgia Administrative Code)
O.C.G.A. § 13-10-91 (2007), TITLE 13. CONTRACTS
CHAPTER 10. CONTRACTS FOR PUBLIC WORKS
ARTICLE 3. SECURITY AND IMMIGRATION COMPLIANCE

By executing this affidavit, the undersigned subcontractor verifies its compliance with O.C.G.A. 13-10-91, stating affirmatively that the individual, firm, or corporation which is engaged in the physical performance of services under a contract with the City of Kennesaw has registered with and is participating in a federal work authorization program* [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], 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 Kennesaw, contractor will secure from each subcontractor(s) similar verification of compliance with O.C.G.A. 13-10-91 on the Subcontractor Affidavit provided in Rule 300-10-01-.08 or a substantially similar form. Contractor further agrees to maintain records of such compliance and provide a copy of each such verification to the City of Kennesaw at the time the subcontractor(s) is retained to perform such service.

EEV/Basic Pilot Program* User Identification Number

By: Authorized Officer or Agent
(Subcontractor Name)

Date

Title of Authorized Officer or Agent of Subcontractor

Printed Name of Authorized Officer or Agent

SUBSCRIBED AND SWORN BEFORE ME ON THIS THE

_____ DAY OF _____, 202__

Notary Public

My Commission Expires: _____

SUBMITTAL REQUIREMENTS

Specific Requirements

Georgia Security and Immigration Compliance Act

Complete Section I. Contractor Affidavit

Contractor agrees to comply with all of the contractor requirements of the:

“Georgia Security and Immigration Compliance Act of 2006,” as codified on O.C.G.A. sections 13-10-90 and 13-10-91 and regulated and regulated in chapter 300-10-1 of the Rules and Regulations of the State of Georgia, “Public Employers, Their Contractor and Sub-Contractors Required to Verify New Employee Work Eligibility Through a Federal Work Authorization Program,” Accessed at <http://www.dol.state.ga.us> as further set forth below.

- A. Contractor Agreement to Verify the Work Eligibility of its New Hires through the U. S. Department of Homeland Security’s “Employment Eligibility Verification(EEV)/Basic Pilot Program.”
 - **Contractor** agrees to verify the work eligibility of all of **Contractor’s** newly hired employees through the U. S. Department of Homeland Security’s **Employment Eligibility Verification(EEV)/Basic Pilot Program**, accessed through the Internet at <https://www.vis-dhs.com/EmployerRegistration>, in accordance with the provisions and timeline found in O.C.G.A. 13-10-91 and Rule 300-10-1-02 of the Rules and Regulations of the State of Georgia.
- B. Contracts Affected by the “Georgia Security and Immigration Compliance Act.”
 - **Contractor** agrees that the contractor and subcontractor requirements of the “Georgia Security and Immigration Compliance Act of 2006” apply to contracts for, or in connection with, the physical performance of services within the State of Georgia.
- C. Contractor’s Agreement to Require “Georgia Security Immigration Compliance Act” Compliance of its Subcontractors connected with this Contract.
 1. **Contractor** agrees to require O.C.G.A. Sections 13-10-90 and 13-10-91 compliance in all written agreements with any subcontractor employed by **Contractor** to provide services connected with this Agreement, as required pursuant to O.C.G.A. 13-10-91.
 2. **Contractor** agrees to obtain from any subcontractor that is employed by **Contractor** to provide services connected with this Agreement, the subcontractor’s indication of the employee-number category applicable to the subcontractor.
 3. **Contractor** agrees to secure from any subcontractor engaged to perform services under this Agreement an executed “Subcontractor Affidavit,” as required pursuant to O.C.G.A. 13-10-91 and Rule 300-10-1-.08 of the Rules and Regulations of the State of Georgia, which rule can be accessed at <http://www.dol.state.ga.us>.

4. **Contractor** agrees to maintain all records of the subcontractor's compliance with O.C.G.A. 13-10-91 and Rule 300-10-1 of the Rules and Regulations of the State of Georgia.
5. **Contractor** must have and maintain telephone, fax and email contacts for all subcontractors.

Receptionists: Please enter all bid packages delivered and give to City Clerk's office.

City Bid Log/Results

Project: CDBG – Woodland Acres Sidewalk Improvement RFP

Deadline: May 4, 2022 at 3:00 pm

Date Rec'd.	Time	Company	Bid Amounts (to be filled out by Clerk at opening)	Awarded Bid	Comments
05/04/22	1:58 PM	R&B Developer Inc.	\$181,681.00		Attended MPB
05/04/22	2:50 PM	Curb Atlanta Inc.	\$144,220.00		Attended MPB



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Notice Publish Date:

Friday, April 08, 2022

Notice Content

gpn05 MDJ-2947 GPN-05 MDJ-3884 GPN-05 SEALED BIDS Sealed bids will be received by the City of Kennesaw City Clerk, 2529 J.O. Stephenson Avenue, Kennesaw, Georgia 30144, until 3:00 PM local time on Wednesday, May 4, 2022 for sidewalk improvements in Woodland Acres Subdivision. This is a Community Development Block Grant (CDBG) project consisting of constructing a 5' sidewalk, 4" thick, and ADA ramps along the western side of Woodland Drive NW from Butler Creek Road to White Oak Court and along the southern side of Black Gum Drive NW from Woodland Drive to Pine Mountain Road. Work includes furnishing all labor, material, and equipment required for the project. Copies of the bid document may be attained by contacting the City Clerk at lavarez@kennesaw-ga.gov. The project must be completed within ninety (90) days. A mandatory pre-bid meeting will be held at 1:00 PM local time, Thursday, April 21, 2022 at Public Works, 3080 Moon Station Road, Kennesaw, Georgia. Proposals from contractors whose representative(s) did not attend the mandatory pre-bid meeting will be rejected. Any technical questions should be emailed to the City Clerk: lavarez@kennesaw-ga.gov and Ricky Stewart: rstewart@kennesaw-ga.gov no later than seventy-two (72) hours prior to the bid opening. This project must comply with E-Verify and all applicable components of the Davis-Bacon Act. No bid will be considered unless accompanied by a certified check or acceptable bid bond in an amount not less than five percent (5%) of the bid, made payable to the City of Kennesaw. Disadvantage Business Enterprise (DBE) Participation and Small Business Participation goal is ten percent (10%). Project funded by Federal, State and/or Local Funds. The successful Bidder shall furnish a Contract Performance Bond equal to one hundred percent (100%) of the contract price and a Payment Bond equal to one hundred ten percent (110%) of the contract price, with the terms and surety to be approved by the City of Kennesaw and furnish satisfactory proof of carriage of the insurance required. The quantities shown on the Unit Price Sheet are approximate only. The Bidder is solely responsible for verifying all quantities, means and methods for the work. The contract sum will only increase or decrease by a change in the project scope and change order approved by the City prior to the work being done. The unit prices provided on the Unit Price Sheet shall apply to any increase or decrease in quantities caused by a change in project scope. No bidder may withdraw his/her bid within one hundred twenty (120) days after the actual date of the opening. The City reserves the right to reject any and all proposals, and the right to waive any informalities or technicalities. The successful bidder will be notified by the City of acceptance of the bid. The successful bidder must submit an executed contract and Certificate of Insurance before a Notice to Commencement can be issued. Upon receipt of the Notice to Commence, the successful bidder shall begin work with the adequate force and equipment on the date specified. Professional Service firms, contractors and subcontractors, should be familiar with the requirements regarding conditions of employment, correct job classifications and minimum wage rates for all workers on this project. Professional Service firms, contractors and subcontractors must comply with all Federal, State, and local requirements. Minority and female firms are encouraged to participate in this Federal funded project. Procurement shall be in compliance with the Common Rule, 24 CFR 85.36. Potential contractors and subcontractors should be familiar with

the requirements of Title VI of the Civil Rights Act of 1964 and 24 CFR 570.602 and Executive Order 11246 Equal Employment Opportunity and Affirmative Action. The work performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 USC 1701 u [Section 3]. The purpose of Section 3 is to ensure employment and other economic opportunities generated by HUD assistance or HUD assisted projects covered by Section 3 shall to the greatest extent feasible, be directed to low and very-low income persons, particularly persons who are recipients of HUD assistance for housing. For more information on Section 3, contact the HUD Office of Fair Housing and Equal Opportunity at [404] 331-5140. For more information regarding conditions of employment, HUD certifications, and job and wage rate classifications, contact the Cobb County CDBG Program Office at [770] 528-1455. Neither the United States nor any of its departments, agencies or employees is or will be a party of any contract awarded pursuant to this invitation to bid. 4:8,22,29-2022

[Back](#)



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[Back](#)

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Friday, April 22, 2022

Notice Content

gpn05 MDJ-2947 GPN-05 MDJ-3884 GPN-05 SEALED BIDS Sealed bids will be received by the City of Kennesaw City Clerk, 2529 J.O. Stephenson Avenue, Kennesaw, Georgia 30144, until 3:00 PM local time on Wednesday, May 4, 2022 for sidewalk improvements in Woodland Acres Subdivision. This is a Community Development Block Grant (CDBG) project consisting of constructing a 5' sidewalk, 4" thick, and ADA ramps along the western side of Woodland Drive NW from Butler Creek Road to White Oak Court and along the southern side of Black Gum Drive NW from Woodland Drive to Pine Mountain Road. Work includes furnishing all labor, material, and equipment required for the project. Copies of the bid document may be attained by contacting the City Clerk at lavarez@kennesaw-ga.gov. The project must be completed within ninety (90) days. A mandatory pre-bid meeting will be held at 1:00 PM local time, Thursday, April 21, 2022 at Public Works, 3080 Moon Station Road, Kennesaw, Georgia. Proposals from contractors whose representative(s) did not attend the mandatory pre-bid meeting will be rejected. Any technical questions should be emailed to the City Clerk: lavarez@kennesaw-ga.gov and Ricky Stewart: rstewart@kennesaw-ga.gov no later than seventy-two (72) hours prior to the bid opening. This project must comply with E-Verify and all applicable components of the Davis-Bacon Act. No bid will be considered unless accompanied by a certified check or acceptable bid bond in an amount not less than five percent (5%) of the bid, made payable to the City of Kennesaw. Disadvantage Business Enterprise (DBE) Participation and Small Business Participation goal is ten percent (10%). Project funded by Federal, State and/or Local Funds. The successful Bidder shall furnish a Contract Performance Bond equal to one hundred percent (100%) of the contract price and a Payment Bond equal to one hundred ten percent (110%) of the contract price, with the terms and surety to be approved by the City of Kennesaw and furnish satisfactory proof of carriage of the insurance required. The quantities shown on the Unit Price Sheet are approximate only. The Bidder is solely responsible for verifying all quantities, means and methods for the work. The contract sum will only increase or decrease by a change in the project scope and change order approved by the City prior to the work being done. The unit prices provided on the Unit Price Sheet shall apply to any increase or decrease in quantities caused by a change in project scope. No bidder may withdraw his/her bid within one hundred twenty (120) days after the actual date of the opening. The City reserves the right to reject any and all proposals, and the right to waive any informalities or technicalities. The successful bidder will be notified by the City of acceptance of the bid. The successful bidder must submit an executed contract and Certificate of Insurance before a Notice to Commencement can be issued. Upon receipt of the Notice to Commence, the successful bidder shall begin work with the adequate force and equipment on the date specified. Professional Service firms, contractors and subcontractors, should be familiar with the requirements regarding conditions of employment, correct job classifications and minimum wage rates for all workers on this project. Professional Service firms, contractors and subcontractors must comply with all Federal, State, and local requirements. Minority and female firms are encouraged to participate in this Federal funded project. Procurement shall be in compliance with the Common Rule, 24 CFR 85.36. Potential contractors and subcontractors should be familiar with

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[Back](#)



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[Back](#)

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Notice Content

gpn05 MDJ-2947 GPN-05 MDJ-3884 GPN-05 SEALED BIDS Sealed bids will be received by the City of Kennesaw City Clerk, 2529 J.O. Stephenson Avenue, Kennesaw, Georgia 30144, until 3:00 PM local time on Wednesday, May 4, 2022 for sidewalk improvements in Woodland Acres Subdivision. This is a Community Development Block Grant (CDBG) project consisting of constructing a 5' sidewalk, 4" thick, and ADA ramps along the western side of Woodland Drive NW from Butler Creek Road to White Oak Court and along the southern side of Black Gum Drive NW from Woodland Drive to Pine Mountain Road. Work includes furnishing all labor, material, and equipment required for the project. Copies of the bid document may be attained by contacting the City Clerk at lvarez@kennesaw-ga.gov. The project must be completed within ninety (90) days. A mandatory pre-bid meeting will be held at 1:00 PM local time, Thursday, April 21, 2022 at Public Works, 3080 Moon Station Road, Kennesaw, Georgia. Proposals from contractors whose representative(s) did not attend the mandatory pre-bid meeting will be rejected. Any technical questions should be emailed to the City Clerk: lvarez@kennesaw-ga.gov and Ricky Stewart: rstewart@kennesaw-ga.gov no later than seventy-two (72) hours prior to the bid opening. This project must comply with E-Verify and all applicable components of the Davis-Bacon Act. No bid will be considered unless accompanied by a certified check or acceptable bid bond in an amount not less than five percent (5%) of the bid, made payable to the City of Kennesaw. Disadvantage Business Enterprise (DBE) Participation and Small Business Participation goal is ten percent (10%). Project funded by Federal, State and/or Local Funds. The successful Bidder shall furnish a Contract Performance Bond equal to one hundred percent (100%) of the contract price and a Payment Bond equal to one hundred ten percent (110%) of the contract price, with the terms and surety to be approved by the City of Kennesaw and furnish satisfactory proof of carriage of the insurance required. The quantities shown on the Unit Price Sheet are approximate only. The Bidder is solely responsible for verifying all quantities, means and methods for the work. The contract sum will only increase or decrease by a change in the project scope and change order approved by the City prior to the work being done. The unit prices provided on the Unit Price Sheet shall apply to any increase or decrease in quantities caused by a change in project scope. No bidder may withdraw his/her bid within one hundred twenty (120) days after the actual date of the opening. The City reserves the right to reject any and all proposals, and the right to waive any informalities or technicalities. The successful bidder will be notified by the City of acceptance of the bid. The successful bidder must submit an executed contract and Certificate of Insurance before a Notice to Commencement can be issued. Upon receipt of the Notice to Commence, the successful bidder shall begin work with the adequate force and equipment on the date specified. Professional Service firms, contractors and subcontractors, should be familiar with the requirements regarding conditions of employment, correct job classifications and minimum wage rates for all workers on this project. Professional Service firms, contractors and subcontractors must comply with all Federal, State, and local requirements. Minority and female firms are encouraged to participate in this Federal funded project. Procurement shall be in compliance with the Common Rule, 24 CFR 85.36. Potential contractors and subcontractors should be familiar with

the requirements of Title VI of the Civil Rights Act of 1964 and 24 CFR 570.602 and Executive Order 11246 Equal Employment Opportunity and Affirmative Action. The work performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 USC 1701 u [Section 3]. The purpose of Section 3 is to ensure employment and other economic opportunities generated by HUD assistance or HUD assisted projects covered by Section 3 shall to the greatest extent feasible, be directed to low and very-low income persons, particularly persons who are recipients of HUD assistance for housing. For more information on Section 3, contact the HUD Office of Fair Housing and Equal Opportunity at [404] 331-5140. For more information regarding conditions of employment, HUD certifications, and job and wage rate classifications, contact the Cobb County CDBG Program Office at [770] 528-1455. Neither the United States nor any of its departments, agencies or employees is or will be a party of any contract awarded pursuant to this invitation to bid. 4:8,22,29-2022

[Back](#)



**Regular Meeting Agenda
6/6/2022 6:30 PM
Council Chambers**

Title of Item:	Approval of RESOLUTION to award contract with Gay Construction Company as the Construction Manager At Risk (CMAR) for Depot Park - Phase 8.
Agenda Comments:	On April 18, 2022, Request for Qualification (RFQ) packages were received from Astra Group, Gay Construction Company, and Hogan Construction Group for the above referenced project. A six-person Selection Committee consisting of City staff, the civil engineer, and the architect reviewed the responses to the RFQ and provided a score for each firm based on firm qualifications, references, experience, and litigation record. The Selection Committee conducted interviews with Gay Construction Company and Hogan Construction Group on May 20, 2022. Based on the overall score earned during this process, the Selection Committee recommends that Gay Construction perform pre-construction services for a fee not to exceed \$20,000 and for the Mayor to sign the attached resolution and contract.
Funding Line(s)	310.4228.54.150600.00000 SPLOST 2022 Depot Park

ATTACHMENTS:

Description	Upload Date	Type
Resolution	5/26/2022	Resolution
Contract - Attachment A	5/27/2022	Contract/Agreement
Proposal Grades	5/26/2022	Backup Material
03-18-22 Legal Ad	5/27/2022	Legal Ad
04-01-22 Legal Ad	5/27/2022	Legal Ad

**CITY OF KENNESAW
GEORGIA**

RESOLUTION NO. 2022-__, 2022

**RESOLUTION TO AWARD A CONTRACT WITH
GAY CONSTRUCTION COMPANY AS THE
CONSTRUCTION MANAGER AT RISK (CMAR) FOR DEPOT PARK – PHASE 8**

BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF KENNESAW, COBB COUNTY, GEORGIA, AS FOLLOWS:

WHEREAS, the City desires to engage a qualified and experienced Contractor to serve as the Construction Manager at Risk (CMAR) for Depot Park – Phase 8; and

WHEREAS, Gay Construction Company has represented to the City they are experienced and qualified to perform those services; and

WHEREAS, Gay Construction Company has offered to provide the required CMAR pre-construction services not to exceed \$20,000.

NOW THEREFORE, BE IT RESOLVED, the Kennesaw City Council authorizes the Mayor to execute a contract with Gay Construction Company to perform described work as shown as Attachment A.

PASSED AND ADOPTED by the Kennesaw City Council on this __ day of June, 2022.

ATTEST:

CITY OF KENNESAW:

Lea Alvarez, City Clerk

Derek Easterling, Mayor

AIA[®] Document A133[™] – 2019

Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

AGREEMENT made as of the Sixth day of June in the year 2022
(In words, indicate day, month, and year.)

BETWEEN the Owner:
(Name, legal status, address, and other information)

City of Kennesaw, Georgia
2529 J.O. Stephenson Avenue
Kennesaw, GA 30144

and the Construction Manager:
(Name, legal status, address, and other information)

Gay Construction Company
2907 Log Cabin Drive
Atlanta, GA 30339

for the following Project:
(Name, location, and detailed description)

Depot Park – Phase 8
2822 Cherokee Street
Kennesaw, GA 30144

The Program Manager:
(Name, legal status, address, and other information)

Croy Engineering, LLC
200 Cobb Parkway N
Building 400, Suite 413
Marietta, GA 30062

The Owner and Construction Manager agree as follows.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

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

AIA Document A201[™]–2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

TABLE OF ARTICLES

1	INITIAL INFORMATION
2	GENERAL PROVISIONS
3	CONSTRUCTION MANAGER'S RESPONSIBILITIES
4	OWNER'S RESPONSIBILITIES
5	COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES
6	COMPENSATION FOR CONSTRUCTION PHASE SERVICES
7	COST OF THE WORK FOR CONSTRUCTION PHASE
8	DISCOUNTS, REBATES, AND REFUNDS
9	SUBCONTRACTS AND OTHER AGREEMENTS
10	ACCOUNTING RECORDS
11	PAYMENTS FOR CONSTRUCTION PHASE SERVICES
12	DISPUTE RESOLUTION
13	TERMINATION OR SUSPENSION
14	MISCELLANEOUS PROVISIONS
15	SCOPE OF THE AGREEMENT

EXHIBIT A GUARANTEED MAXIMUM PRICE AMENDMENT

EXHIBIT B INSURANCE AND BONDS

ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.

(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.")

§ 1.1.1 The Owner's program for the Project, as described in Section 4.1.1:

(Insert the Owner's program, identify documentation that establishes the Owner's program, or state the manner in which the program will be developed.)

§ 1.1.2 The Project's physical characteristics:

(Identify or describe pertinent information about the Project's physical characteristics, such as size; location; dimensions; geotechnical reports; site boundaries; topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site, etc.)

See Attachment A

§ 1.1.3 The Owner's budget for the Guaranteed Maximum Price, as defined in Article 6:

(Provide total and, if known, a line item breakdown.)

§ 1.1.4 The Owner's anticipated design and construction milestone dates:

.1 Design phase milestone dates, if any:

.2 Construction commencement date:

.3 Substantial Completion date or dates:

Construction Manager agrees to commence Construction on a date to be specified in a written "Notice to Proceed" of the Owner and to fully complete the project within three hundred sixty-five (365) consecutive calendar days.

.4 Other milestone dates:

§ 1.1.5 The Owner's requirements for accelerated or fast-track scheduling, or phased construction, are set forth below:
(Identify any requirements for fast-track scheduling or phased construction.)

§ 1.1.6 The Owner's anticipated Sustainable Objective for the Project:
(Identify and describe the Owner's Sustainable Objective for the Project, if any.)

None

§ 1.1.6.1 If the Owner identifies a Sustainable Objective, the Owner and Construction Manager shall complete and incorporate AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, into this Agreement to define the terms, conditions and services related to the Owner's Sustainable Objective. If E234–2019 is incorporated into this agreement, the Owner and Construction Manager shall incorporate the completed E234–2019 into the agreements with the consultants and contractors performing services or Work in any way associated with the Sustainable Objective.

§ 1.1.7 Other Project information:
(Identify special characteristics or needs of the Project not provided elsewhere.)

§ 1.1.8 The Owner identifies the following representative in accordance with Section 4.2:
(List name, address, and other contact information.)

Robbie Balenger, Building & Facilities Manager
City of Kennesaw, GA
2753 Watts Drive
Kennesaw, GA 30144

§ 1.1.9 The persons or entities, in addition to the Owner's representative, who are required to review the Construction Manager's submittals to the Owner are as follows:
(List name, address and other contact information.)

§ 1.1.10 The Owner shall retain the following consultants and contractors:
(List name, legal status, address, and other contact information.)

.1 Geotechnical Engineer:

Geo-Hydro Engineers
1000 Cobb Place Boulevard
Suite 290
Kennesaw, GA 30144

.2 Civil Engineer:

Croy Engineering, LLC
200 Cobb Parkway N
Building 400, Suite 413
Marietta, GA 30062

.3 Other, if any:

(List any other consultants retained by the Owner, such as a Project or Program Manager.)

§ 1.1.11 The Program Manager's representative:
(List name, address, and other contact information.)

Zach Buffington
Croy Engineering, LLC
200 Cobb Parkway N
Building 400, Suite 413
Marietta, GA 30062
zbuffington@croyeng.com
(770)891-5036

§ 1.1.12 The Construction Manager identifies the following representative in accordance with Article 3:
(List name, address, and other contact information.)

Mark Whitney, Vice President
Gay Construction Company
2907 Log Cabin Drive
Atlanta, GA 30339
mwhitney@gayconstruction.com
(404)557-1552

§ 1.1.13 The Owner's requirements for the Construction Manager's staffing plan for Preconstruction Services, as required under Section 3.1.9:
(List any Owner-specific requirements to be included in the staffing plan.)

§ 1.1.14 The Owner's requirements for subcontractor procurement for the performance of the Work:
(List any Owner-specific requirements for subcontractor procurement.)

§ 1.1.15 Other Initial Information on which this Agreement is based:

Request for Qualifications (RFQ), Depot Park - Phase 8, Construction Manager at Risk (CMAR) for Pre-Construction and Construction Services Contract, first advertised on March 18, 2022, and all subsequent addenda

§ 1.2 The Owner and Construction Manager may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Construction Manager shall appropriately adjust the Project schedule, the Construction Manager's services, and the Construction Manager's compensation. The Owner shall adjust the Owner's budget for the Guaranteed Maximum Price and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

§ 1.3 Neither the Owner's nor the Construction Manager's representative shall be changed without ten days' prior notice to the other party.

ARTICLE 2 GENERAL PROVISIONS

§ 2.1 The Contract Documents

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 3.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 3.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern. An enumeration of the Contract Documents, other than a Modification, appears in Article 15.

§ 2.2 Relationship of the Parties

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Program Manager and exercise the Construction Manager's skill and judgment in furthering the interests of the Owner to furnish efficient construction administration, management services, and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents.

§ 2.3 General Conditions

§ 2.3.1 For the Preconstruction Phase, AIA Document A201™–2017, General Conditions of the Contract for Construction, shall apply as follows: Section 1.5, Ownership and Use of Documents; Section 1.7, Digital Data Use and Transmission; Section 1.8, Building Information Model Use and Reliance; Section 2.2.4, Confidential Information; Section 3.12.10, Professional Services; Section 10.3, Hazardous Materials; Section 13.1, Governing Law. The term "Contractor" as used in A201–2017 shall mean the Construction Manager.

§ 2.3.2 For the Construction Phase, the general conditions of the contract shall be as set forth in A201–2017, which document is incorporated herein by reference. The term "Contractor" as used in A201–2017 shall mean the Construction Manager.

ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 3.1 and 3.2, and in the applicable provisions of A201-2017 referenced in Section 2.3.1. The Construction Manager's Construction Phase responsibilities are set forth in Section 3.3. The Owner and Construction Manager may agree, in consultation with the Program Manager, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

§ 3.1 Preconstruction Phase

§ 3.1.1 Extent of Responsibility

The Construction Manager shall exercise reasonable care in performing its Preconstruction Services. The Owner and Program Manager shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of services and information furnished by the Construction Manager. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Program Manager and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Program Manager may require.

§ 3.1.2 The Construction Manager shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other.

§ 3.1.3 Consultation

§ 3.1.3.1 The Construction Manager shall schedule and conduct meetings with the Program Manager and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work.

§ 3.1.3.2 The Construction Manager shall advise the Owner and Program Manager on proposed site use and improvements, selection of materials, building systems, and equipment. The Construction Manager shall also provide recommendations to the Owner and Program Manager, consistent with the Project requirements, on constructability; availability of materials and labor; time requirements for procurement, installation and construction; prefabrication; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions. The Construction Manager shall consult with the Program Manager regarding professional services to be provided by the Construction Manager during the Construction Phase.

§ 3.1.3.3

§ 3.1.4 Project Schedule

When Project requirements in Section 4.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Program Manager's review and the Owner's acceptance. The Construction Manager shall obtain the Program Manager's approval for the portion of the Project schedule relating to the performance of the Program Manager's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Program Manager's services, other Owner consultants' services, and the Owner's responsibilities; and identify items that affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered in advance of construction; and the occupancy requirements of the Owner.

§ 3.1.5 Phased Construction

The Construction Manager, in consultation with the Program Manager, shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, and sequencing for phased construction. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities, and procurement and construction scheduling issues.

§ 3.1.6 Cost Estimates

§ 3.1.6.1 Based on the preliminary design and other design criteria prepared by the Program Manager, the Construction Manager shall prepare, for the Program Manager's review and the Owner's approval, preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume, or similar conceptual estimating techniques. If the Program Manager or Construction Manager suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

§ 3.1.6.2 As the Program Manager progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Program Manager, an estimate of the Cost of the Work with increasing detail and refinement. The Construction Manager shall include in the estimate those costs to allow for the further development of the design, price escalation, and market conditions, until such time as the Owner and Construction Manager agree on a

Guaranteed Maximum Price for the Work. The estimate shall be provided for the Program Manager's review and the Owner's approval. The Construction Manager shall inform the Owner and Program Manager in the event that the estimate of the Cost of the Work exceeds the latest approved Project budget, and make recommendations for corrective action.

§ 3.1.6.3 If the Program Manager is providing cost estimating services as a Supplemental Service, and a discrepancy exists between the Construction Manager's cost estimates and the Program Manager's cost estimates, the Construction Manager and the Program Manager shall work together to reconcile the cost estimates.

§ 3.1.7 As the Program Manager progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall consult with the Owner and Program Manager and make recommendations regarding constructability and schedules, for the Program Manager's review and the Owner's approval.

§ 3.1.8 The Construction Manager shall provide recommendations and information to the Owner and Program Manager regarding equipment, materials, services, and temporary Project facilities.

§ 3.1.9 The Construction Manager shall provide a staffing plan for Preconstruction Phase services for the Owner's review and approval.

§ 3.1.10 If the Owner identified a Sustainable Objective in Article 1, the Construction Manager shall fulfill its Preconstruction Phase responsibilities as required in AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement.

§ 3.1.11 Subcontractors and Suppliers

§ 3.1.11.1 If the Owner has provided requirements for subcontractor procurement in section 1.1.14, the Construction Manager shall provide a subcontracting plan, addressing the Owner's requirements, for the Owner's review and approval.

§ 3.1.11.2 The Construction Manager shall develop bidders' interest in the Project.

§ 3.1.11.3 The processes described in Article 9 shall apply if bid packages will be issued during the Preconstruction Phase.

§ 3.1.12 Procurement

The Construction Manager shall prepare, for the Program Manager's review and the Owner's acceptance, a procurement schedule for items that must be ordered in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

§ 3.1.13 Compliance with Laws

The Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi-governmental authorities.

§ 3.1.14 Other Preconstruction Services

Insert a description of any other Preconstruction Phase services to be provided by the Construction Manager, or reference an exhibit attached to this document

(Describe any other Preconstruction Phase services, such as providing cash flow projections, development of a project information management system, early selection or procurement of subcontractors, etc.)

§ 3.2 Guaranteed Maximum Price Proposal

§ 3.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's and Program Manager's review, and the Owner's acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of

the Cost of the Work, the Construction Manager's contingency described in Section 3.2.4, and the Construction Manager's Fee described in Section 6.1.2.

§ 3.2.2 To the extent that the Contract Documents are anticipated to require further development, the Guaranteed Maximum Price includes the costs attributable to such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes, or equipment, all of which, if required, shall be incorporated by Change Order.

§ 3.2.3 The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include the following:

- .1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- .2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 3.2.2;
- .3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, including allowances; the Construction Manager's contingency set forth in Section 3.2.4; and the Construction Manager's Fee;
- .4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; and
- .5 A date by which the Owner must accept the Guaranteed Maximum Price.

§ 3.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include a contingency for the Construction Manager's exclusive use to cover those costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order.

§ 3.2.5 The Construction Manager shall meet with the Owner and Program Manager to review the Guaranteed Maximum Price proposal. In the event that the Owner or Program Manager discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.

§ 3.2.6 If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Program Manager. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

§ 3.2.7 The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the execution of the Guaranteed Maximum Price Amendment, unless the Owner provides prior written authorization for such costs.

§ 3.2.8 The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish such revised Contract Documents to the Construction Manager. The Construction Manager shall notify the Owner and Program Manager of any inconsistencies between the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment and the revised Contract Documents.

§ 3.2.9 The Construction Manager shall include in the Guaranteed Maximum Price all sales, consumer, use and similar taxes for the Work provided by the Construction Manager that are legally enacted, whether or not yet effective, at the time the Guaranteed Maximum Price Amendment is executed.

§ 3.3 Construction Phase

§ 3.3.1 General

§ 3.3.1.1 For purposes of Section 8.1.2 of A201–2017, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

§ 3.3.1.2 The Construction Phase shall commence upon the Owner's execution of the Guaranteed Maximum Price Amendment or, prior to acceptance of the Guaranteed Maximum Price proposal, by written agreement of the parties. The written agreement shall set forth a description of the Work to be performed by the Construction Manager, and any insurance and bond requirements for Work performed prior to execution of the Guaranteed Maximum Price Amendment.

§ 3.3.2 Administration

§ 3.3.2.1 The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes of the meetings to the Owner and Program Manager.

§ 3.3.2.2 Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Program Manager a construction schedule for the Work and a submittal schedule in accordance with Section 3.10 of A201–2017.

§ 3.3.2.3 Monthly Report

The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Program Manager, showing percentages of completion and other information required by the Owner.

§ 3.3.2.4 Daily Logs

The Construction Manager shall keep, and make available to the Owner and Program Manager, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner.

§ 3.3.2.5 Cost Control

The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Program Manager, and shall provide this information in its monthly reports to the Owner and Program Manager, in accordance with Section 3.3.2.3 above.

ARTICLE 4 OWNER'S RESPONSIBILITIES

§ 4.1 Information and Services Required of the Owner

§ 4.1.1 The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems, sustainability and site requirements.

§ 4.1.2 Reserved.

§ 4.1.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Article 7, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Program Manager. The Owner and the Program Manager, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 4.1.4 **Structural and Environmental Tests, Surveys and Reports.** During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. The Construction Manager shall not be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 4.1.4.1 The Owner shall furnish tests, inspections, and reports, required by law and as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 4.1.4.2 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and other necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 4.1.4.3 The Owner, when such services are requested, shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 4.1.5 During the Construction Phase, the Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services.

§ 4.1.6 If the Owner identified a Sustainable Objective in Article 1, the Owner shall fulfill its responsibilities as required in AIA Document E234™-2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement.

§ 4.2 Owner's Designated Representative

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201-2017, the Program Manager does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 4.2.1 **Legal Requirements.** The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 4.3 Architect

The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B133™-2019, Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition, including any additional services requested by the Construction Manager that are necessary for the Preconstruction and Construction Phase services under this Agreement. The Owner shall provide the Construction Manager with a copy of the scope of services in the executed agreement between the Owner and the Architect, and any further modifications to the Architect's scope of services in the agreement.

ARTICLE 5 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 5.1 Compensation

§ 5.1.1 For the Construction Manager's Preconstruction Phase services described in Sections 3.1 and 3.2, the Owner shall compensate the Construction Manager as follows:

(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)

\$20,000

§ 5.1.2 The hourly billing rates for Preconstruction Phase services of the Construction Manager and the Construction Manager's Consultants and Subcontractors, if any, are set forth below.

(If applicable, attach an exhibit of hourly billing rates or insert them below.)

Individual or Position

Rate

§ 5.1.2.1 Hourly billing rates for Preconstruction Phase services include all costs to be paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, and shall remain unchanged unless the parties execute a Modification.

§ 5.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within () months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.

§ 5.2 Payments

§ 5.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed.

§ 5.2.2 Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid () days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager.

(Insert rate of monthly or annual interest agreed upon.)

%

ARTICLE 6 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 6.1 Contract Sum

§ 6.1.1 The Owner shall pay the Construction Manager the Contract Sum in current funds for the Construction Manager's performance of the Contract after execution of the Guaranteed Maximum Price Amendment. The Contract Sum is the Cost of the Work as defined in Article 7 plus the Construction Manager's Fee.

§ 6.1.2 The Construction Manager's Fee:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Construction Manager's Fee.)

4.75% of the Cost of the Work

§ 6.1.3 The method of adjustment of the Construction Manager's Fee for changes in the Work:

4.75% of the Cost of the Work

§ 6.1.4 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:

§ 6.1.5 Rental rates for Construction Manager-owned equipment shall not exceed percent (%) of the standard rental rate paid at the place of the Project.

§ 6.1.6 Liquidated damages, if any:

(Insert terms and conditions for liquidated damages, if any.)

Construction Manager agrees to pay as liquidated damages the sum of \$1,000 per each consecutive calendar day that the Construction Manager shall be in default after the Completion Date stipulated in the Contract for completing work.

§ 6.1.7 Other:

(Insert provisions for bonus, cost savings or other incentives, if any, that might result in a change to the Contract Sum.)

§ 6.2 Guaranteed Maximum Price

The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, subject to additions and deductions by Change Order as provided in the

Contract Documents. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner.

§ 6.3 Changes in the Work

§ 6.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Construction Manager may be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

§ 6.3.1.1 The Program Manager may order minor changes in the Work as provided in Article 7 of AIA Document A201–2017, General Conditions of the Contract for Construction.

§ 6.3.2 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Article 7 of AIA Document A201–2017, General Conditions of the Contract for Construction.

§ 6.3.3 Adjustments to subcontracts awarded on the basis of a stipulated sum shall be determined in accordance with Article 7 of A201–2017, as they refer to "cost" and "fee," and not by Articles 6 and 7 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior written consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 6.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in Article 7 of AIA Document A201–2017 shall mean the Cost of the Work as defined in Article 7 of this Agreement and the term "fee" shall mean the Construction Manager's Fee as defined in Section 6.1.2 of this Agreement.

§ 6.3.5 If no specific provision is made in Section 6.1.3 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 6.1.3 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

ARTICLE 7 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 7.1 Costs to Be Reimbursed

§ 7.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. The Cost of the Work shall include only the items set forth in Sections 7.1 through 7.7.

§ 7.1.2 Where, pursuant to the Contract Documents, any cost is subject to the Owner's prior approval, the Construction Manager shall obtain such approval in writing prior to incurring the cost.

§ 7.1.3 Costs shall be at rates not higher than the standard rates paid at the place of the Project, except with prior approval of the Owner.

§ 7.2 Labor Costs

§ 7.2.1 Wages or salaries of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops.

§ 7.2.2 Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site and performing Work, with the Owner's prior approval.

§ 7.2.2.1 Wages or salaries of the Construction Manager's supervisory and administrative personnel when performing Work and stationed at a location other than the site, but only for that portion of time required for the Work, and limited to the personnel and activities listed below:

(Identify the personnel, type of activity and, if applicable, any agreed upon percentage of time to be devoted to the Work.)

§ 7.2.3 Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged at factories, workshops or while traveling, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

§ 7.2.4 Costs paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 7.2.1 through 7.2.3.

§ 7.2.5 If agreed rates for labor costs, in lieu of actual costs, are provided in this Agreement, the rates shall remain unchanged throughout the duration of this Agreement, unless the parties execute a Modification.

§ 7.3 Subcontract Costs

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts and this Agreement.

§ 7.4 Costs of Materials and Equipment Incorporated in the Completed Construction

§ 7.4.1 Costs, including transportation and storage at the site, of materials and equipment incorporated, or to be incorporated, in the completed construction.

§ 7.4.2 Costs of materials described in the preceding Section 7.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

§ 7.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items

§ 7.5.1 Costs of transportation, storage, installation, dismantling, maintenance, and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment, and tools, that are not fully consumed, shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Construction Manager shall mean fair market value.

§ 7.5.2 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site, and the costs of transportation, installation, dismantling, minor repairs, and removal of such temporary facilities, machinery, equipment, and hand tools. Rates and quantities of equipment owned by the Construction Manager, or a related party as defined in Section 7.8, shall be subject to the Owner's prior approval. The total rental cost of any such equipment may not exceed the purchase price of any comparable item.

§ 7.5.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.

§ 7.5.4 Costs of the Construction Manager's site office, including general office equipment and supplies.

§ 7.5.5 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval.

§ 7.6 Miscellaneous Costs

§ 7.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract.

§ 7.6.1.1 Costs for self-insurance, for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval.

§ 7.6.1.2 Costs for insurance through a captive insurer owned or controlled by the Construction Manager, with the Owner's prior approval.

§ 7.6.2 Sales, use, or similar taxes, imposed by a governmental authority, that are related to the Work and for which the Construction Manager is liable.

§ 7.6.3 Fees and assessments for the building permit, and for other permits, licenses, and inspections, for which the Construction Manager is required by the Contract Documents to pay.

§ 7.6.4 Fees of laboratories for tests required by the Contract Documents; except those related to defective or nonconforming Work for which reimbursement is excluded under Article 13 of AIA Document A201–2017 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 7.7.3.

§ 7.6.5 Royalties and license fees paid for the use of a particular design, process, or product, required by the Contract Documents.

§ 7.6.5.1 Reserved.

§ 7.6.6 Costs for communications services, electronic equipment, and software, directly related to the Work and located at the site, with the Owner's prior approval.

§ 7.6.7 Costs of document reproductions and delivery charges.

§ 7.6.8 Reserved.

§ 7.6.9 Reserved.

§ 7.6.10 Expenses incurred in accordance with the Construction Manager's standard written personnel policy for relocation and temporary living allowances of the Construction Manager's personnel required for the Work, with the Owner's prior approval.

§ 7.6.11 That portion of the reasonable expenses of the Construction Manager's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.

§ 7.7 Other Costs and Emergencies

§ 7.7.1 Other costs incurred in the performance of the Work, with the Owner's prior approval.

§ 7.7.2 Costs incurred in taking action to prevent threatened damage, injury, or loss, in case of an emergency affecting the safety of persons and property, as provided in Article 10 of AIA Document A201–2017.

§ 7.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors, or suppliers, provided that such damaged or nonconforming Work was not caused by the negligence of, or failure to fulfill a specific responsibility by, the Construction Manager, and only to the extent that the cost of repair or correction is not recovered by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others.

§ 7.7.4 The costs described in Sections 7.1 through 7.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201–2017 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 7.9.

§ 7.8 Related Party Transactions

§ 7.8.1 For purposes of this Section 7.8, the term "related party" shall mean (1) a parent, subsidiary, affiliate, or other entity having common ownership of, or sharing common management with, the Construction Manager; (2) any entity in which any stockholder in, or management employee of, the Construction Manager holds an equity interest in excess of ten percent in the aggregate; (3) any entity which has the right to control the business or affairs of the Construction Manager; or (4) any person, or any member of the immediate family of any person, who has the right to control the business or affairs of the Construction Manager.

§ 7.8.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost

incurred. If the Owner, after such notification, authorizes the proposed transaction in writing, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods, or service, from the related party, as a Subcontractor, according to the terms of Article 9. If the Owner fails to authorize the transaction in writing, the Construction Manager shall procure the Work, equipment, goods, or service from some person or entity other than a related party according to the terms of Article 9.

§ 7.9 Costs Not To Be Reimbursed

§ 7.9.1 The Cost of the Work shall not include the items listed below:

- .1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 7.2, or as may be provided in Article 14;
- .2 Bonuses, profit sharing, incentive compensation, and any other discretionary payments, paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, unless the Owner has provided prior approval;
- .3 Expenses of the Construction Manager's principal office and offices other than the site office;
- .4 Overhead and general expenses, except as may be expressly included in Sections 7.1 to 7.7;
- .5 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- .6 Except as provided in Section 7.7.3 of this Agreement, costs due to the negligence of, or failure to fulfill a specific responsibility of the Contract by, the Construction Manager, Subcontractors, and suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable;
- .7 Any cost not specifically and expressly described in Sections 7.1 to 7.7;
- .8 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and
- .9 Costs for services incurred during the Preconstruction Phase.

ARTICLE 8 DISCOUNTS, REBATES, AND REFUNDS

§ 8.1 Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included the amount to be paid, less such discount, in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds, and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained.

§ 8.2 Amounts that accrue to the Owner in accordance with the provisions of Section 8.1 shall be credited to the Owner as a deduction from the Cost of the Work.

ARTICLE 9 SUBCONTRACTS AND OTHER AGREEMENTS

§ 9.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors, and from suppliers of materials or equipment fabricated especially for the Work, who are qualified to perform that portion of the Work in accordance with the requirements of the Contract Documents. The Construction Manager shall deliver such bids to the Program Manager and Owner with an indication as to which bids the Construction Manager intends to accept. The Owner then has the right to review the Construction Manager's list of proposed subcontractors and suppliers in consultation with the Program Manager and, subject to Section 9.1.1, to object to any subcontractor or supplier. Any advice of the Program Manager, or approval or objection by the Owner, shall not relieve the Construction Manager of its responsibility to perform the Work in accordance with the Contract Documents. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

§ 9.1.1 When a specific subcontractor or supplier (1) is recommended to the Owner by the Construction Manager; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may request that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 9.2 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the Owner's prior written approval. If a subcontract is awarded on the basis of cost plus a fee, the Construction Manager shall provide in the subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Article 10.

ARTICLE 10 ACCOUNTING RECORDS

The Construction Manager shall keep full and detailed records and accounts related to the Cost of the Work, and exercise such controls, as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, job cost reports, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, Subcontractor's invoices, purchase orders, vouchers, memoranda, and other data relating to this Contract. The Construction Manager shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

ARTICLE 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 11.1 Progress Payments

§ 11.1.1 Based upon Applications for Payment submitted to the Program Manager by the Construction Manager, and Certificates for Payment issued by the Program Manager, the Owner shall make progress payments on account of the Contract Sum, to the Construction Manager, as provided below and elsewhere in the Contract Documents.

§ 11.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

§ 11.1.3 Provided that an Application for Payment is received by the Program Manager not later than the last day of a month, the Owner shall make payment of the amount certified to the Construction Manager not later than the last day of the following month. If an Application for Payment is received by the Program Manager after the application date fixed above, payment of the amount certified shall be made by the Owner not later than 30 () days after the Program Manager receives the Application for Payment.

(Federal, state or local laws may require payment within a certain period of time.)

§ 11.1.4 With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Program Manager to demonstrate that payments already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Construction Manager's Fee.

§ 11.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among: (1) the various portions of the Work; (2) any contingency for costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order; and (3) the Construction Manager's Fee.

§ 11.1.5.1 The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Program Manager may require. The schedule of values shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

§ 11.1.5.2 The allocation of the Guaranteed Maximum Price under this Section 11.1.5 shall not constitute a separate guaranteed maximum price for the Cost of the Work of each individual line item in the schedule of values.

§ 11.1.5.3 When the Construction Manager allocates costs from a contingency to another line item in the schedule of values, the Construction Manager shall submit supporting documentation to the Program Manager.

§ 11.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed, or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Construction Manager on account of that portion of the Work and for which the Construction Manager has made payment or intends to make payment prior to the next Application for Payment, by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

§ 11.1.7 In accordance with AIA Document A201–2017 and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

§ 11.1.7.1 The amount of each progress payment shall first include:

- .1 That portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the most recent schedule of values;
- .2 That portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction or, if approved in writing in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 That portion of Construction Change Directives that the Program Manager determines, in the Program Manager's professional judgment, to be reasonably justified; and
- .4 The Construction Manager's Fee, computed upon the Cost of the Work described in the preceding Sections 11.1.7.1.1 and 11.1.7.1.2 at the rate stated in Section 6.1.2 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work included in Sections 11.1.7.1.1 and 11.1.7.1.2 bears to a reasonable estimate of the probable Cost of the Work upon its completion.

§ 11.1.7.2 The amount of each progress payment shall then be reduced by:

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Program Manager has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017;
- .3 Any amount for which the Construction Manager does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Construction Manager intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Program Manager may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017;
- .5 The shortfall, if any, indicated by the Construction Manager in the documentation required by Section 11.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .6 Retainage withheld pursuant to Section 11.1.8.

§ 11.1.8 Retainage

§ 11.1.8.1 For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:

(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)

Ten Percent (10%)

§ 11.1.8.1.1 The following items are not subject to retainage:

(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)

§ 11.1.8.2 Reduction or limitation of retainage, if any, shall be as follows:

(If the retainage established in Section 11.1.8.1 is to be modified prior to Substantial Completion of the entire Work, insert provisions for such modification.)

§ 11.1.8.3 Except as set forth in this Section 11.1.8.3, upon Substantial Completion of the Work, the Construction Manager may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 11.1.8. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:

(Insert any other conditions for release of retainage, such as upon completion of the Owner's audit and reconciliation, upon Substantial Completion.)

§ 11.1.9 If final completion of the Work is materially delayed through no fault of the Construction Manager, the Owner shall pay the Construction Manager any additional amounts in accordance with Article 9 of AIA Document A201–2017.

§ 11.1.10 Except with the Owner's prior written approval, the Construction Manager shall not make advance payments to suppliers for materials or equipment which have not been delivered and suitably stored at the site.

§ 11.1.11 The Owner and the Construction Manager shall agree upon a mutually acceptable procedure for review and approval of payments to Subcontractors, and the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements.

§ 11.1.12 In taking action on the Construction Manager's Applications for Payment the Program Manager shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager, and such action shall not be deemed to be a representation that (1) the Program Manager has made a detailed examination, audit, or arithmetic verification, of the documentation submitted in accordance with Section 11.1.4 or other supporting data; (2) that the Program Manager has made exhaustive or continuous on-site inspections; or (3) that the Program Manager has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits, and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ 11.2 Final Payment

§ 11.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Construction Manager when

- .1 the Construction Manager has fully performed the Contract, except for the Construction Manager's responsibility to correct Work as provided in Article 12 of AIA Document A201–2017, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- .3 a final Certificate for Payment has been issued by the Program Manager in accordance with Section 11.2.2.2.

§ 11.2.2 Within 30 days of the Owner's receipt of the Construction Manager's final accounting for the Cost of the Work, the Owner shall conduct an audit of the Cost of the Work or notify the Program Manager that it will not conduct an audit.

§ 11.2.2.1 If the Owner conducts an audit of the Cost of the Work, the Owner shall, within 10 days after completion of the audit, submit a written report based upon the auditors' findings to the Program Manager.

§ 11.2.2.2 Within seven days after receipt of the written report described in Section 11.2.2.1, or receipt of notice that the Owner will not conduct an audit, and provided that the other conditions of Section 11.2.1 have been met, the Program Manager will either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Program Manager's reasons for withholding a certificate as provided in Article 9 of AIA Document A201–2017. The time periods stated in this Section 11.2.2 supersede those stated in Article 9 of AIA Document A201–2017. The Program Manager is not responsible for verifying the accuracy of the Construction Manager's final accounting.

§ 11.2.2.3 If the Owner's auditors' report concludes that the Cost of the Work, as substantiated by the Construction Manager's final accounting, is less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Article 15 of AIA Document

A201–2017. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Program Manager's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Program Manager's final Certificate for Payment.

§ 11.2.3 The Owner's final payment to the Construction Manager shall be made no later than 30 days after the issuance of the Program Manager's final Certificate for Payment, or as follows:

§ 11.2.4 If, subsequent to final payment, and at the Owner's request, the Construction Manager incurs costs, described in Sections 7.1 through 7.7, and not excluded by Section 7.9, to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager for such costs, and the Construction Manager's Fee applicable thereto, on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If adjustments to the Contract Sum are provided for in Section 6.1.7, the amount of those adjustments shall be recalculated, taking into account any reimbursements made pursuant to this Section 11.2.4 in determining the net amount to be paid by the Owner to the Construction Manager.

§ 11.3 Reserved.

(Insert rate of interest agreed upon, if any.)

%

ARTICLE 12 DISPUTE RESOLUTION

§ 12.1 Initial Decision Maker

§ 12.1.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 12 and Article 15 of A201–2017. However, for Claims arising from or relating to the Construction Manager's Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution, and Section 12.1.2 of this Agreement shall not apply.

§ 12.1.2 The Program Manager will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017 for Claims arising from or relating to the Construction Manager's Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker.
(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Program Manager.)

§ 12.2 Binding Dispute Resolution

For any Claim subject to, but not resolved by mediation pursuant to Article 15 of AIA Document A201–2017, the method of binding dispute resolution shall be as follows:

(Check the appropriate box.)

☐ Arbitration pursuant to Article 15 of AIA Document A201–2017

☐ Litigation in a court of competent jurisdiction

☒ Other: *(Specify)*

Jurisdiction and venue of all claims not resolved or covered by General Conditions as set forth in AIA Document A201 - 2017, shall lie exclusively in the Superior Court of Cobb County, Georgia.

If the Owner and Construction Manager do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.

ARTICLE 13 TERMINATION OR SUSPENSION

§ 13.1 Termination Prior to Execution of the Guaranteed Maximum Price Amendment

§ 13.1.1 If the Owner and the Construction Manager do not reach an agreement on the Guaranteed Maximum Price, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner.

§ 13.1.2 In the event of termination of this Agreement pursuant to Section 13.1.1, the Construction Manager shall be compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination, in accordance with the terms of this Agreement. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 5.1.

§ 13.1.3 Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner, for the reasons set forth in Article 14 of A201-2017.

§ 13.1.4 In the event of termination of this Agreement pursuant to Section 13.1.3, the Construction Manager shall be equitably compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 5.1.

§ 13.1.5 If the Owner terminates the Contract pursuant to Section 13.1.3 after the commencement of the Construction Phase but prior to the execution of the Guaranteed Maximum Price Amendment, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 13.1.4:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
- .3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services.

§ 13.1.6 The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.1.5.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

§ 13.1.6.1 If the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described above, the Owner will reimburse or indemnify the Construction Manager for all costs arising under the subcontract, purchase order or rental agreement, if those costs would have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner chooses not to accept assignment of any subcontract, purchase order or rental agreement that would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager will terminate the subcontract, purchase order or rental agreement and the Owner will pay the Construction Manager the costs necessarily incurred by the Construction Manager because of such termination.

§ 13.2 Termination or Suspension Following Execution of the Guaranteed Maximum Price Amendment

§ 13.2.1 Termination

The Contract may be terminated by the Owner or the Construction Manager as provided in Article 14 of AIA Document A201–2017.

§ 13.2.2 Termination by the Owner for Cause

§ 13.2.2.1 If the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A201–2017, the amount, if any, to be paid to the Construction Manager under Article 14 of AIA Document A201–2017 shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed an amount calculated as follows:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager's Fee, computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract the costs and damages incurred, or to be incurred, by the Owner under Article 14 of AIA Document A201–2017.

§ 13.2.2.2 The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.2.2.1.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders.

§ 13.2.3 Termination by the Owner for Convenience

If the Owner terminates the Contract for convenience in accordance with Article 14 of AIA Document A201–2017, then the Owner shall pay the Construction Manager a termination fee as follows:

(Insert the amount of or method for determining the fee, if any, payable to the Construction Manager following a termination for the Owner's convenience.)

§ 13.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017; in such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Article 14 of AIA Document A201–2017, except that the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 6.1 and 6.3.5 of this Agreement.

ARTICLE 14 MISCELLANEOUS PROVISIONS

§ 14.1 Terms in this Agreement shall have the same meaning as those in A201–2017. Where reference is made in this Agreement to a provision of AIA Document A201–2017 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 14.2 Successors and Assigns

§ 14.2.1 The Owner and Construction Manager, respectively, bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 14.2.2 of this Agreement, and in Section 13.2.2 of A201–2017, the Construction Manager shall not assign the Contract as a whole or in part without written consent of the Owner. If the Construction Manager attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 14.2.2 The Owner may, without consent of the Construction Manager, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Construction Manager shall execute all consents reasonably required to facilitate the assignment.

§ 14.3 Insurance and Bonds

§ 14.3.1 Preconstruction Phase

The Construction Manager shall maintain the following insurance for the duration of the Preconstruction Services performed under this Agreement. If any of the requirements set forth below exceed the types and limits the Construction Manager normally maintains, the Owner shall reimburse the Construction Manager for any additional cost.

§ 14.3.1.1 Commercial General Liability with policy limits of not less than (\$) for each occurrence and (\$) in the aggregate for bodily injury and property damage.

§ 14.3.1.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Construction Manager with policy limits of not less than (\$) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

§ 14.3.1.3 The Construction Manager may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided that such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 14.3.1.1 and 14.3.1.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 14.3.1.4 Workers' Compensation at statutory limits and Employers Liability with policy limits not less than (\$) each accident, (\$) each employee, and (\$) policy limit.

§ 14.3.1.5 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than (\$) per claim and (\$) in the aggregate.

§ 14.3.1.6 Other Insurance

(List below any other insurance coverage to be provided by the Construction Manager and any applicable limits.)

Coverage

Limits

§ 14.3.1.7 **Additional Insured Obligations.** To the fullest extent permitted by law, the Construction Manager shall cause the primary and excess or umbrella policies for Commercial General Liability and Automobile Liability to include the Owner as an additional insured for claims caused in whole or in part by the Construction Manager's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to both ongoing and completed operations.

§ 14.3.1.8 The Construction Manager shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 14.3.1.

§ 14.3.2 Construction Phase

After execution of the Guaranteed Maximum Price Amendment, the Owner and the Construction Manager shall purchase and maintain insurance as set forth in AIA Document A133™–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, Exhibit B, Insurance and Bonds, and elsewhere in the Contract Documents.

§ 14.3.2.1 The Construction Manager shall provide bonds as set forth in AIA Document A133™–2019 Exhibit B, and elsewhere in the Contract Documents.

§ 14.4 Notice in electronic format, pursuant to Article 1 of AIA Document A201–2017, may be given in accordance with AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:

(If other than in accordance with AIA Document E203–2013, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)

§ 14.5 Other provisions:

ARTICLE 15 SCOPE OF THE AGREEMENT

§ 15.1 This Agreement represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Construction Manager.

§ 15.2 The following documents comprise the Agreement:

- .1 AIA Document A133™–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price
- .2 AIA Document A133™–2019, Exhibit A, Guaranteed Maximum Price Amendment, if executed
- .3 AIA Document A133™–2019, Exhibit B, Insurance and Bonds
- .4 AIA Document A201™–2017, General Conditions of the Contract for Construction

(Paragraph deleted)

(Insert the date of the E203-2013 incorporated into this Agreement.)

- .6 Other Exhibits:
(Check all boxes that apply.)

☐ AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, dated as indicated below:
(Insert the date of the E234-2019 incorporated into this Agreement.)

☐ Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
----------	-------	------	-------

- .7 Other documents, if any, listed below: All document listed in A201–2017 § 1.1.1.
(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201–2017 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Construction Manager's bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)

This Agreement is entered into as of the day and year first written above.

Init.

OWNER *(Signature)*

C. Derek Easterling Mayor
(Printed name and title)

ATTEST:

Lea Alvarez, City Clerk

CONSTRUCTION MANAGER *(Signature)*

Mark Whitney Vice President
(Printed name and title)

ATTEST:

Secretary

(Printed Name)

Additions and Deletions Report for AIA[®] Document A133™ – 2019

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 10:07:50 ET on 05/25/2022.

PAGE 1

AGREEMENT made as of the Thirty First day of May in the year 2022

...

City of Kennesaw, Georgia
2529 J.O. Stephenson Avenue
Kennesaw, GA 30144

...

Gay Construction Company
2907 Log Cabin Drive
Atlanta, GA 30339

...

Depot Park – Phase 8
2822 Cherokee Street
Kennesaw, GA 30144

The Architect:Program Manager:

...

Croy Engineering, LLC
200 Cobb Parkway N
Building 400, Suite 413
Marietta, GA 30062

PAGE 2

See Attachment A

PAGE 3

Construction Manager agrees to commence Construction on a date to be specified in a written "Notice to Proceed" of the Owner and to fully complete the project within three hundred sixty-five (365) consecutive calendar days.

...

None

...

Robbie Balenger, Building & Facilities Manager
City of Kennesaw, GA
2753 Watts Drive
Kennesaw, GA 30144
PAGE 4

Geo-Hydro Engineers
1000 Cobb Place Boulevard
Suite 290
Kennesaw, GA 30144

...

Croy Engineering, LLC
200 Cobb Parkway N
Building 400, Suite 413
Marietta, GA 30062

...

§ 1.1.11 The Architect's Program Manager's representative:

...

Zach Buffington
Croy Engineering, LLC
200 Cobb Parkway N
Building 400, Suite 413
Marietta, GA 30062

...

(770)891-5036

...

Mark Whitney, Vice President
Gay Construction Company
2907 Log Cabin Drive
Atlanta, GA 30339
mwhitney@gayconstruction.com
(404)557-1552

PAGE 5

Request for Qualifications (RFQ), Depot Park - Phase 8, Construction Manager at Risk (CMAR) for Pre-Construction and Construction Services Contract, first advertised on March 18, 2022, and all subsequent addenda

...

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect Program Manager and exercise the Construction Manager's skill and judgment in furthering the interests of the Owner to furnish efficient construction administration, management services, and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents.

...

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 3.1 and 3.2, and in the applicable provisions of A201-2017 referenced in Section 2.3.1. The Construction Manager's Construction Phase responsibilities are set forth in Section 3.3. The Owner and Construction Manager may agree, in consultation with the ~~Architect~~, Program Manager, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

PAGE 6

The Construction Manager shall exercise reasonable care in performing its Preconstruction Services. The Owner and ~~Architect~~, Program Manager shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of services and information furnished by the Construction Manager. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the ~~Architect~~, Program Manager and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the ~~Architect~~, Program Manager may require.

...

§ 3.1.3.1 The Construction Manager shall schedule and conduct meetings with the ~~Architect~~, Program Manager and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work.

§ 3.1.3.2 The Construction Manager shall advise the Owner and ~~Architect~~, Program Manager on proposed site use and improvements, selection of materials, building systems, and equipment. The Construction Manager shall also provide recommendations to the Owner and ~~Architect~~, Program Manager, consistent with the Project requirements, on constructability; availability of materials and labor; time requirements for procurement, installation and construction; prefabrication; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions. The Construction Manager shall consult with the ~~Architect~~, Program Manager regarding professional services to be provided by the Construction Manager during the Construction Phase.

§ 3.1.3.3 ~~The Construction Manager shall assist the Owner and Architect in establishing building information modeling and digital data protocols for the Project, using AIA Document E203™ 2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.~~

...

When Project requirements in Section 4.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the ~~Architect's~~, Program Manager's review and the Owner's acceptance. The Construction Manager shall obtain the ~~Architect's~~, Program Manager's approval for the portion of the Project schedule relating to the performance of the ~~Architect's~~, Program Manager's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the ~~Architect's~~, Program Manager's services, other Owner consultants' services, and the Owner's responsibilities; and identify items that affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered in advance of construction; and the occupancy requirements of the Owner.

...

The Construction Manager, in consultation with the ~~Architect~~, Program Manager, shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, and sequencing for phased construction. The

Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities, and procurement and construction scheduling issues.

...

§ 3.1.6.1 Based on the preliminary design and other design criteria prepared by the ~~Architect~~, Program Manager, the Construction Manager shall prepare, for the ~~Architect's~~ Program Manager's review and the Owner's approval, preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume, or similar conceptual estimating techniques. If the ~~Architect~~ Program Manager or Construction Manager suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

§ 3.1.6.2 As the ~~Architect~~ Program Manager progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and ~~Architect~~, Program Manager, an estimate of the Cost of the Work with increasing detail and refinement. The Construction Manager shall include in the estimate those costs to allow for the further development of the design, price escalation, and market conditions, until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. The estimate shall be provided for the ~~Architect's~~ Program Manager's review and the Owner's approval. The Construction Manager shall inform the Owner and ~~Architect~~ Program Manager in the event that the estimate of the Cost of the Work exceeds the latest approved Project budget, and make recommendations for corrective action.

§ 3.1.6.3 If the ~~Architect~~ Program Manager is providing cost estimating services as a Supplemental Service, and a discrepancy exists between the Construction Manager's cost estimates and the ~~Architect's~~ Program Manager's cost estimates, the Construction Manager and the ~~Architect~~ Program Manager shall work together to reconcile the cost estimates.

§ 3.1.7 As the ~~Architect~~ Program Manager progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall consult with the Owner and ~~Architect~~ Program Manager and make recommendations regarding constructability and schedules, for the ~~Architect's~~ Program Manager's review and the Owner's approval.

§ 3.1.8 The Construction Manager shall provide recommendations and information to the Owner and ~~Architect~~ Program Manager regarding equipment, materials, services, and temporary Project facilities.

PAGE 7

The Construction Manager shall prepare, for the ~~Architect's~~ Program Manager's review and the Owner's acceptance, a procurement schedule for items that must be ordered in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

...

§ 3.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's and ~~Architect's~~ Program Manager's review, and the Owner's acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, the Construction Manager's contingency described in Section 3.2.4, and the Construction Manager's Fee described in Section 6.1.2.

PAGE 8

§ 3.2.5 The Construction Manager shall meet with the Owner and ~~Architect~~ Program Manager to review the Guaranteed Maximum Price proposal. In the event that the Owner or ~~Architect~~ Program Manager discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.

§ 3.2.6 If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the ~~Architect~~ Program Manager. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

...

§ 3.2.8 The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish such revised Contract Documents to the Construction Manager. The Construction Manager shall notify the Owner and ~~Architect~~ Program Manager of any inconsistencies between the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment and the revised Contract Documents.

PAGE 9

§ 3.3.2.1 The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes of the meetings to the Owner and ~~Architect~~ Program Manager.

§ 3.3.2.2 Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and ~~Architect~~ Program Manager a construction schedule for the Work and a submittal schedule in accordance with Section 3.10 of A201-2017.

...

The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and ~~Architect~~ Program Manager, showing percentages of completion and other information required by the Owner.

...

The Construction Manager shall keep, and make available to the Owner and ~~Architect~~ Program Manager, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner.

...

The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and ~~Architect~~ Program Manager, and shall provide this information in its monthly reports to the Owner and ~~Architect~~ Program Manager, in accordance with Section 3.3.2.3 above.

...

§ 4.1.2 ~~Prior to the execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. After execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request such information as set forth in A201-2017 Section 2.2.~~ **Reserved.**

§ 4.1.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Article 7, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the

Owner shall notify the Construction Manager and ~~Architect~~ Program Manager. The Owner and the ~~Architect~~, Program Manager, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 4.1.4 Structural and Environmental Tests, Surveys and Reports. During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. The Construction Manager shall not be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

PAGE 10

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201–2017, the ~~Architect~~ Program Manager does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

...

\$20,000

PAGE 11

4.75% of the Cost of the Work

...

4.75% of the Cost of the Work

...

Construction Manager agrees to pay as liquidated damages the sum of \$1,000 per each consecutive calendar day that the Construction Manager shall be in default after the Completion Date stipulated in the Contract for completing work.

PAGE 12

§ 6.3.1.1 The ~~Architect~~ Program Manager may order minor changes in the Work as provided in Article 7 of AIA Document A201–2017, General Conditions of the Contract for Construction.

PAGE 14

§ 7.6.5.1 ~~The cost of defending suits or claims for infringement of patent rights arising from requirements of the Contract Documents, payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims, and payments of settlements made with the Owner's consent, unless the Construction Manager had reason to believe that the required design, process, or product was an infringement of a copyright or a patent, and the Construction Manager failed to promptly furnish such information to the Architect as required by Article 3 of AIA Document A201–2017. The costs of legal defenses, judgments, and settlements shall not be included in the Cost of the Work used to calculate the Construction Manager's Fee or subject to the Guaranteed Maximum Price.~~Reserved.

...

§ 7.6.8 ~~Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility in the Contract Documents.~~Reserved.

§ 7.6.9 ~~Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.~~Reserved.

§ 9.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors, and from suppliers of materials or equipment fabricated especially for the Work, who are qualified to perform that portion of the Work in accordance with the requirements of the Contract Documents. The Construction Manager shall deliver such bids to the ~~Architect-Program Manager~~ and Owner with an indication as to which bids the Construction Manager intends to accept. The Owner then has the right to review the Construction Manager's list of proposed subcontractors and suppliers in consultation with the ~~Architect-Program Manager~~ and, subject to Section 9.1.1, to object to any subcontractor or supplier. Any advice of the ~~Architect-Program Manager~~, or approval or objection by the Owner, shall not relieve the Construction Manager of its responsibility to perform the Work in accordance with the Contract Documents. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

§ 9.1.1 When a specific subcontractor or supplier (1) is recommended to the Owner by the Construction Manager; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may ~~require~~ request that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 11.1.1 Based upon Applications for Payment submitted to the ~~Architect-Program Manager~~ by the Construction Manager, and Certificates for Payment issued by the ~~Architect-Program Manager~~, the Owner shall make progress payments on account of the Contract Sum, to the Construction Manager, as provided below and elsewhere in the Contract Documents.

...

§ 11.1.3 Provided that an Application for Payment is received by the ~~Architect-Program Manager~~ not later than the last day of a month, the Owner shall make payment of the amount certified to the Construction Manager not later than the last day of the following month. If an Application for Payment is received by the ~~Architect-Program Manager~~ after the application date fixed above, payment of the amount certified shall be made by the Owner not later than 30 () days after the ~~Architect-Program Manager~~ receives the Application for Payment.

...

§ 11.1.4 With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or ~~Architect-Program Manager~~ to demonstrate that payments already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Construction Manager's Fee.

...

§ 11.1.5.1 The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the ~~Architect-Program Manager~~ may require. The schedule of values shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

...

§ 11.1.5.3 When the Construction Manager allocates costs from a contingency to another line item in the schedule of values, the Construction Manager shall submit supporting documentation to the ~~Architect-Program Manager~~.

- .3 That portion of Construction Change Directives that the Architect-Program Manager determines, in the Architect's-Program Manager's professional judgment, to be reasonably justified; and

...

- .2 The amount, if any, for Work that remains uncorrected and for which the Architect-Program Manager has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017;

...

- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect-Program Manager may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017;

...

Ten Percent (10%)

PAGE 18

§ 11.1.12 In taking action on the Construction Manager's Applications for Payment the Architect-Program Manager shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager, and such action shall not be deemed to be a representation that (1) the Architect-Program Manager has made a detailed examination, audit, or arithmetic verification, of the documentation submitted in accordance with Section 11.1.4 or other supporting data; (2) that the Architect-Program Manager has made exhaustive or continuous on-site inspections; or (3) that the Architect-Program Manager has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits, and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

...

- .3 a final Certificate for Payment has been issued by the Architect-Program Manager in accordance with Section 11.2.2.2.

§ 11.2.2 Within 30 days of the Owner's receipt of the Construction Manager's final accounting for the Cost of the Work, the Owner shall conduct an audit of the Cost of the Work or notify the Architect-Program Manager that it will not conduct an audit.

§ 11.2.2.1 If the Owner conducts an audit of the Cost of the Work, the Owner shall, within 10 days after completion of the audit, submit a written report based upon the auditors' findings to the Architect-Program Manager.

§ 11.2.2.2 Within seven days after receipt of the written report described in Section 11.2.2.1, or receipt of notice that the Owner will not conduct an audit, and provided that the other conditions of Section 11.2.1 have been met, the Architect-Program Manager will either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's-Program Manager's reasons for withholding a certificate as provided in Article 9 of AIA Document A201–2017. The time periods stated in this Section 11.2.2 supersede those stated in Article 9 of AIA Document A201–2017. The Architect-Program Manager is not responsible for verifying the accuracy of the Construction Manager's final accounting.

§ 11.2.2.3 If the Owner's auditors' report concludes that the Cost of the Work, as substantiated by the Construction Manager's final accounting, is less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Article 15 of AIA Document A201–2017. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Architect's-Program Manager's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the

Owner shall pay the Construction Manager the amount certified in the Architect's Program Manager's final Certificate for Payment.

§ 11.2.3 The Owner's final payment to the Construction Manager shall be made no later than 30 days after the issuance of the Architect's Program Manager's final Certificate for Payment, or as follows:

PAGE 19

§ 11.3 Interest

~~Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.~~Reserved.

...

§ 12.1.2 The ~~Architect~~Program Manager will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201-2017 for Claims arising from or relating to the Construction Manager's Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker.

(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the ~~Architect~~Program Manager.)

...

[X] Other: *(Specify)*

Jurisdiction and venue of all claims not resolved or covered by General Conditions as set forth in AIA Document A201 - 2017, shall lie exclusively in the Superior Court of Cobb County, Georgia.

PAGE 21

§ 14.2.1 The Owner and Construction Manager, respectively, bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 14.2.2 of this Agreement, and in Section 13.2.2 of A201-2017, ~~neither party to the Contract shall the Construction Manager shall not assign the Contract as a whole or in part without written consent of the other. If either party-Owner. If the Construction Manager attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.~~

PAGE 23

~~.5 — AIA Document E203™ 2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:~~

...

.7 Other documents, if any, listed below: All document listed in A201-2017 § 1.1.1.

PAGE 24

C. Derek Easterling Mayor

Mark Whitney Vice President

...

ATTEST: _____ ATTEST: _____

Lea Alvarez, City Clerk

Secretary

(Printed Name)

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, _____, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 10:07:50 ET on 05/25/2022 under Order No. 2114291115 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A133™ – 2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)

Document A133™ – 2019 Exhibit B

Insurance and Bonds

This Insurance and Bonds Exhibit is part of the Agreement, between the Owner and the Construction Manager, dated the day of in the year
(In words, indicate day, month and year.)

for the following **PROJECT**:
(Name and location or address)

Depot Park – Phase 8
2822 Cherokee Street
Kennesaw, GA 30144

THE OWNER:
(Name, legal status, and address)

City of Kennesaw, Georgia
2529 J.O. Stephenson Avenue
Kennesaw, GA 30144

THE CONSTRUCTION MANAGER:
(Name, legal status, and address)

Gay Construction Company
2907 Log Cabin Drive
Atlanta, GA 30339

TABLE OF ARTICLES

- B.1 GENERAL**
- B.2 OWNER'S INSURANCE**
- B.3 CONSTRUCTION MANAGER'S INSURANCE AND BONDS**
- B.4 SPECIAL TERMS AND CONDITIONS**

ARTICLE B.1 GENERAL

The Construction Manager shall purchase and maintain insurance, and provide bonds, as set forth in this Exhibit. As used in this Exhibit, the term General Conditions refers to AIA Document A201™–2017, General Conditions of the Contract for Construction.

ARTICLE B.2 Reserved.

§ B.2.1 Reserved.

§ B.2.2 Reserved.

(Paragraphs deleted)

(Table deleted)

(Paragraphs deleted)

(Table deleted)

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

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

This document is intended to be used in conjunction with AIA Document A201™–2017, General Conditions of the Contract for Construction. Article 11 of A201™–2017 contains additional insurance provisions.

(Paragraphs deleted)

§ B.2.4

(Paragraphs deleted)

Reserved.

(Paragraphs deleted)

ARTICLE B.3 CONSTRUCTION MANAGER'S INSURANCE AND BONDS

§ B.3.1 General

§ B.3.1.1 Certificates of Insurance. The Construction Manager shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Article B.3 at the following times: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Owner's written request. An additional certificate evidencing continuation of commercial liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the periods required by Section B.3.2.1 and Section B.3.3.1. The certificates will show the Owner as an additional insured on the Construction Manager's Commercial General Liability and excess or umbrella liability policy or policies.

§ B.3.1.2 Deductibles and Self-Insured Retentions. The Construction Manager shall disclose to the Owner any deductible or self-insured retentions applicable to any insurance required to be provided by the Construction Manager.

§ B.3.1.3 Additional Insured Obligations. To the fullest extent permitted by law, the Construction Manager shall cause the commercial general liability coverage to include (1) the Owner, the Architect, and the Architect's consultants as additional insureds for claims caused in whole or in part by the Construction Manager's negligent acts or omissions during the Construction Manager's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Construction Manager's negligent acts or omissions for which loss occurs during completed operations. The additional insured coverage shall be primary and non-contributory to any of the Owner's general liability insurance policies and shall apply to both ongoing and completed operations. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 20 10 07 04, CG 20 37 07 04, and, with respect to the Architect and the Architect's consultants, CG 20 32 07 04.

§ B.3.2 Construction Manager's Required Insurance Coverage

§ B.3.2.1 The Construction Manager shall purchase and maintain the following types and limits of insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the State of Georgia. The Construction Manager shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:

(If the Construction Manager is required to maintain insurance for a duration other than the expiration of the period for correction of Work, state the duration.)

§ B.3.2.2 Commercial General Liability

§ B.3.2.2.1 Commercial General Liability insurance for the Project written on an occurrence form with policy limits of not less than One Million Dollars (\$ 1,000,000) each occurrence, Two Million Dollars (\$ 2,000,000) general aggregate, and One Million Dollars (\$ 1,000,000) aggregate for products-completed operations hazard, providing coverage for claims including

- .1 damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;
- .2 personal injury and advertising injury;
- .3 damages because of physical damage to or destruction of tangible property, including the loss of use of such property;
- .4 bodily injury or property damage arising out of completed operations; and
- .5 the Construction Manager's indemnity obligations under Section 3.18 of the General Conditions.

§ B.3.2.2.2 The Construction Manager's Commercial General Liability policy under this Section B.3.2.2 shall not contain an exclusion or restriction of coverage for the following:

- .1 Claims by one insured against another insured, if the exclusion or restriction is based solely on the fact that the claimant is an insured, and there would otherwise be coverage for the claim.
- .2 Claims for property damage to the Construction Manager's Work arising out of the products-completed operations hazard where the damaged Work or the Work out of which the damage arises was performed by a Subcontractor.
- .3 Claims for bodily injury other than to employees of the insured.
- .4 Claims for indemnity under Section 3.18 of the General Conditions arising out of injury to employees of the insured.
- .5 Claims or loss excluded under a prior work endorsement or other similar exclusionary language.
- .6 Claims or loss due to physical damage under a prior injury endorsement or similar exclusionary language.
- .7 Claims related to residential, multi-family, or other habitational projects, if the Work is to be performed on such a project.
- .8 Claims related to roofing, if the Work involves roofing.
- .9 Claims related to exterior insulation finish systems (EIFS), synthetic stucco or similar exterior coatings or surfaces, if the Work involves such coatings or surfaces.
- .10 Claims related to earth subsidence or movement, where the Work involves such hazards.
- .11 Claims related to explosion, collapse and underground hazards, where the Work involves such hazards.

§ B.3.2.3 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Construction Manager, with policy limits of not less than One Million Dollars (\$ 1,000,000) per accident, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles along with any other statutorily required automobile coverage.

§ B.3.2.4 The Construction Manager may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella insurance policies result in the same or greater coverage as the coverages required under Section B.3.2.2 and B.3.2.3, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ B.3.2.5 Workers' Compensation at statutory limits.

§ B.3.2.6 Employers' Liability with policy limits not less than One Million Dollars (\$ 1,000,000) each accident, One Million Dollars (\$ 1,000,000) each employee, and One Million Dollars (\$ 1,000,000) policy limit.

§ B.3.2.7 Reserved.

§ B.3.2.8 If the Construction Manager is required to furnish professional services as part of the Work, the Construction Manager shall procure Professional Liability insurance covering performance of the professional services, with policy limits of not less than (\$) per claim and (\$) in the aggregate.

§ B.3.2.9 If the Work involves the transport, dissemination, use, or release of pollutants, the Construction Manager shall procure Pollution Liability insurance, with policy limits of not less than (\$) per claim and (\$) in the aggregate.

§ B.3.2.10 Coverage under Sections B.3.2.8 and B.3.2.9 may be procured through a Combined Professional Liability and Pollution Liability insurance policy, with combined policy limits of not less than (\$) per claim and (\$) in the aggregate.

§ B.3.2.11 Reserved.

§ B.3.2.12 Insurance for the use or operation of manned or unmanned aircraft, if the Work requires such activities, with policy limits of not less than (\$) per claim and (\$) in the aggregate.

§ B.3.2.13 Required Property Insurance

§ B.3.2.13.1 The Construction Manager shall purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the State of Georgia, property insurance written on a builder's risk "all-risks" completed value or equivalent policy form and sufficient to cover the total value of the entire Project on a replacement cost basis. The Construction Manager's property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed and materials or equipment supplied by others. The property insurance shall be maintained until Substantial Completion and thereafter as provided in Section B.3.2.13.1.3, unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Agreement. This insurance shall include the interests of the Owner, Construction Manager, Subcontractors, and Sub-subcontractors in the Project as insureds. This insurance shall include the interests of mortgagees as loss payees.

§ B.3.2.13.1.1 **Causes of Loss.** The insurance required by this Section B.3.2.13.1 shall provide coverage for direct physical loss or damage, and shall not exclude the risks of fire, explosion, theft, vandalism, malicious mischief, collapse, earthquake, flood, or windstorm. The insurance shall also provide coverage for ensuing loss or resulting damage from error, omission, or deficiency in construction methods, design, specifications, workmanship, or materials. Sub-limits, if any, are as follows:

(Indicate below the cause of loss and any applicable sub-limit.)

Cause of Loss	Sub-Limit
---------------	-----------

§ B.3.2.13.1.2 **Specific Required Coverages.** The insurance required by this Section B.3.2.13.1 shall provide coverage for loss or damage to falsework and other temporary structures, and to building systems from testing and startup. The insurance shall also cover debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and reasonable compensation for the Architect's and Construction Manager's services and expenses required as a result of such insured loss, including claim preparation expenses. Sub-limits, if any, are as follows:

(Indicate below type of coverage and any applicable sub-limit for specific required coverages.)

Coverage	Sub-Limit
----------	-----------

§ B.3.2.13.1.3 Unless the parties agree otherwise, upon Substantial Completion, the Construction Manager shall continue the insurance required by Section B.3.2.13.1 or, if necessary, replace the insurance policy required under Section B.3.2.13.1 with property insurance written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 12.2.2 of the General Conditions.

§ B.3.2.13.1.4 **Deductibles and Self-Insured Retentions.** If the insurance required by this Section B.3.2.13 is subject to deductibles or self-insured retentions, the Construction Manager shall be responsible for all loss not covered because of such deductibles or retentions.

§ B.3.2.13.2 **Occupancy or Use Prior to Substantial Completion.** The Owner's occupancy or use of any completed or partially completed portion of the Work prior to Substantial Completion shall not commence until the insurance company or companies providing the insurance under Section B.3.2.13.1 have consented in writing to the continuance of coverage. The Owner and the Construction Manager shall take no action with respect to partial occupancy or use that would cause cancellation, lapse, or reduction of insurance, unless they agree otherwise in writing.

§ B.3.2.13.3 Insurance for Existing Structures

If the Work involves remodeling an existing structure or constructing an addition to an existing structure, the Construction Manager shall purchase and maintain, until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, "all-risks" property insurance, on a replacement cost basis, protecting the existing structure against direct physical loss or damage from the causes of loss identified in Section B.3.2.13.1, notwithstanding the undertaking of the Work. The Construction Manager shall be responsible for all co-insurance penalties.

§ B.3.3 Construction Manager's Other Insurance Coverage

§ B.3.3.1 Insurance selected and described in this Section B.3.3 shall be purchased from an insurance company or insurance companies lawfully authorized to issue insurance in the State of Georgia. The Construction Manager shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:

(If the Construction Manager is required to maintain any of the types of insurance selected below for a duration other than the expiration of the period for correction of Work, state the duration.)

§ B.3.3.2 The Construction Manager shall purchase and maintain the following types and limits of insurance in accordance with Section B.3.3.1.

(Select the types of insurance the Construction Manager is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. Where policy limits are provided, include the policy limit in the appropriate fill point.)

☐ **§ B.3.3.2.1** Reserved.
(Paragraph deleted)

☒ **§ B.3.3.2.2 Railroad Protective Liability Insurance**, with policy limits of not less than Five Million Dollars (\$ 5,000,000) per claim and Ten Million Dollars (\$ 10,000,000) in the aggregate, for Work within fifty (50) feet of railroad property.

☐ **§ B.3.3.2.3 Asbestos Abatement Liability Insurance**, with policy limits of not less than (\$) per claim and (\$) in the aggregate, for liability arising from the encapsulation, removal, handling, storage, transportation, and disposal of asbestos-containing materials.

☐ **§ B.3.3.2.4** Insurance for physical damage to property while it is in storage and in transit to the construction site on an "all-risks" completed value form.

☐ **§ B.3.3.2.5** Property insurance on an "all-risks" completed value form, covering property owned by the Construction Manager and used on the Project, including scaffolding and other equipment.

☐ **§ B.3.3.2.6 Other Insurance**
(List below any other insurance coverage to be provided by the Construction Manager and any applicable limits.)

Coverage

Limits

§ B.3.4 Performance Bond and Payment Bond

The Construction Manager shall provide surety bonds, from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located, as follows:

(Specify type and penal sum of bonds.)

Type	Penal Sum (\$0.00)
Payment Bond	
Performance Bond	

Payment and Performance Bonds shall be AIA Document A312™, Payment Bond and Performance Bond, or contain provisions identical to AIA Document A312™, current as of the date of this Agreement.

ARTICLE B.4 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Insurance and Bonds Exhibit, if any, are as follows:

Init.

/

Additions and Deletions Report for

AIA® Document A133™ – 2019 Exhibit B

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 10:06:29 ET on 05/25/2022.

PAGE 1

Depot Park – Phase 8
2822 Cherokee Street
Kennesaw, GA 30144

...

City of Kennesaw, Georgia
2529 J.O. Stephenson Avenue
Kennesaw, GA 30144

...

Gay Construction Company
2907 Log Cabin Drive
Atlanta, GA 30339

...

The ~~Owner and~~ Construction Manager shall purchase and maintain insurance, and provide bonds, as set forth in this Exhibit. As used in this Exhibit, the term General Conditions refers to AIA Document A201™–2017, General Conditions of the Contract for Construction.

~~ARTICLE B.2 OWNER'S INSURANCE~~

ARTICLE B.2 Reserved.

§ B.2.1 General

~~Prior to commencement of the Work, the Owner shall secure the insurance, and provide evidence of the coverage, required under this Article B.2 and, upon the Construction Manager's request, provide a copy of the property insurance policy or policies required by Section B.2.3. The copy of the policy or policies provided shall contain all applicable conditions, definitions, exclusions, and endorsements.~~Reserved.

§ B.2.2 Liability InsuranceReserved.

~~The Owner shall be responsible for purchasing and maintaining the Owner's usual general liability insurance.~~

§ B.2.3 Required Property Insurance

~~§ B.2.3.1 Unless this obligation is placed on the Construction Manager pursuant to Section B.3.3.2.1, the Owner shall purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, property insurance written on a builder's risk "all risks" completed value or equivalent policy form and sufficient to cover the total value of the entire Project on a replacement cost basis. The Owner's property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed and materials or equipment supplied by others. The property insurance shall be maintained until Substantial Completion and thereafter as provided in Section B.2.3.1.3, unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Agreement. This insurance~~

shall include the interests of the Owner, Construction Manager, Subcontractors, and Sub-subcontractors in the Project as insureds. This insurance shall include the interests of mortgagees as loss payees.

~~§ B.2.3.1.1 Causes of Loss.~~ The insurance required by this Section B.2.3.1 shall provide coverage for direct physical loss or damage, and shall not exclude the risks of fire, explosion, theft, vandalism, malicious mischief, collapse, earthquake, flood, or windstorm. The insurance shall also provide coverage for ensuing loss or resulting damage from error, omission, or deficiency in construction methods, design, specifications, workmanship, or materials. Sub-limits, if any, are as follows:

(Indicate below the cause of loss and any applicable sub-limit.)

Cause of Loss

Sub-Limit

~~§ B.2.3.1.2 Specific Required Coverages.~~ The insurance required by this Section B.2.3.1 shall provide coverage for loss or damage to falsework and other temporary structures, and to building systems from testing and startup. The insurance shall also cover debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and reasonable compensation for the Architect's and Construction Manager's services and expenses required as a result of such insured loss, including claim preparation expenses. Sub-limits, if any, are as follows:

(Indicate below type of coverage and any applicable sub-limit for specific required coverages.)

Coverage

Sub-Limit

~~§ B.2.3.1.3~~ Unless the parties agree otherwise, upon Substantial Completion, the Owner shall continue the insurance required by Section B.2.3.1 or, if necessary, replace the insurance policy required under Section B.2.3.1 with property insurance written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 12.2.2 of the General Conditions.

~~§ B.2.3.1.4 Deductibles and Self-Insured Retentions.~~ If the insurance required by this Section B.2.3 is subject to deductibles or self-insured retentions, the Owner shall be responsible for all loss not covered because of such deductibles or retentions.

~~§ B.2.3.2 Occupancy or Use Prior to Substantial Completion.~~ The Owner's occupancy or use of any completed or partially completed portion of the Work prior to Substantial Completion shall not commence until the insurance company or companies providing the insurance under Section B.2.3.1 have consented in writing to the continuance of coverage. The Owner and the Construction Manager shall take no action with respect to partial occupancy or use that would cause cancellation, lapse, or reduction of insurance, unless they agree otherwise in writing.

~~§ B.2.3.3 Insurance for Existing Structures~~

If the Work involves remodeling an existing structure or constructing an addition to an existing structure, the Owner shall purchase and maintain, until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, "all risks" property insurance, on a replacement cost basis, protecting the existing structure against direct physical loss or damage from the causes of loss identified in Section B.2.3.1, notwithstanding the undertaking of the Work. The Owner shall be responsible for all co-insurance penalties.

~~§ B.2.4 Optional Extended Property Insurance.~~

The Owner shall purchase and maintain the insurance selected and described below.

(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. For each type of insurance selected, indicate applicable limits of coverage or other conditions in the fill point below the selected item.)

Reserved.

☐ ~~§ B.2.4.1 Loss of Use, Business Interruption, and Delay in Completion Insurance,~~ to reimburse the Owner for loss of use of the Owner's property, or the inability to conduct normal operations due to a covered cause of loss.

☐ ~~§ B.2.4.2 Ordinance or Law Insurance,~~ for the reasonable and necessary costs to satisfy the minimum requirements of the enforcement of any law or ordinance regulating the demolition, construction,

repair, replacement or use of the Project.

☐ ~~§ B.2.4.3 Expediting Cost Insurance~~, for the reasonable and necessary costs for the temporary repair of damage to insured property, and to expedite the permanent repair or replacement of the damaged property.

☐ ~~§ B.2.4.4 Extra Expense Insurance~~, to provide reimbursement of the reasonable and necessary excess costs incurred during the period of restoration or repair of the damaged property that are over and above the total costs that would normally have been incurred during the same period of time had no loss or damage occurred.

☐ ~~§ B.2.4.5 Civil Authority Insurance~~, for losses or costs arising from an order of a civil authority prohibiting access to the Project, provided such order is the direct result of physical damage covered under the required property insurance.

☐ ~~§ B.2.4.6 Ingress/Egress Insurance~~, for loss due to the necessary interruption of the insured's business due to physical prevention of ingress to, or egress from, the Project as a direct result of physical damage.

☐ ~~§ B.2.4.7 Soft Costs Insurance~~, to reimburse the Owner for costs due to the delay of completion of the Work, arising out of physical loss or damage covered by the required property insurance: including construction loan fees; leasing and marketing expenses; additional fees, including those of architects, engineers, consultants, attorneys and accountants, needed for the completion of the construction, repairs, or reconstruction; and carrying costs such as property taxes, building permits, additional interest on loans, realty taxes, and insurance premiums over and above normal expenses.

~~§ B.2.5 Other Optional Insurance.~~

The Owner shall purchase and maintain the insurance selected below.

(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance.)

☐ ~~§ B.2.5.1 Cyber Security Insurance~~ for loss to the Owner due to data security and privacy breach, including costs of investigating a potential or actual breach of confidential or private information.
(Indicate applicable limits of coverage or other conditions in the fill point below.)

☐ ~~§ B.2.5.2 Other Insurance~~
(List below any other insurance coverage to be provided by the Owner and any applicable limits.)

Coverage

Limits

ARTICLE B.3 CONSTRUCTION MANAGER'S INSURANCE AND BONDS

PAGE 2

§ B.3.2.1 The Construction Manager shall purchase and maintain the following types and limits of insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the ~~jurisdiction where the Project is located.~~ State of Georgia. The Construction Manager shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:

...

§ B.3.2.2.1 Commercial General Liability insurance for the Project written on an occurrence form with policy limits of not less than One Million Dollars (\$ 1,000,000) each occurrence, Two Million Dollars (\$ 2,000,000) general aggregate, and One Million Dollars (\$ 1,000,000) aggregate for products-completed operations hazard, providing coverage for claims including

PAGE 3

§ B.3.2.3 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Construction Manager, with policy limits of not less than One Million Dollars (\$ 1,000,000) per accident, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles along with any other statutorily required automobile coverage.

...

§ B.3.2.6 Employers' Liability with policy limits not less than One Million Dollars (\$ 1,000,000) each accident, One Million Dollars (\$ 1,000,000) each employee, and One Million Dollars (\$ 1,000,000) policy limit.

§ B.3.2.7 ~~Jones Act, and the Longshore & Harbor Workers' Compensation Act, as required, if the Work involves hazards arising from work on or near navigable waterways, including vessels and docks.~~ Reserved.

...

§ B.3.2.11 ~~Insurance for maritime liability risks associated with the operation of a vessel, if the Work requires such activities, with policy limits of not less than (\$) per claim and (\$) in the aggregate.~~ Reserved.

PAGE 4

§ B.3.2.13 Required Property Insurance

§ B.3.2.13.1 The Construction Manager shall purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the State of Georgia, property insurance written on a builder's risk "all-risks" completed value or equivalent policy form and sufficient to cover the total value of the entire Project on a replacement cost basis. The Construction Manager's property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed and materials or equipment supplied by others. The property insurance shall be maintained until Substantial Completion and thereafter as provided in Section B.3.2.13.1.3, unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Agreement. This insurance shall include the interests of the Owner, Construction Manager, Subcontractors, and Sub-subcontractors in the Project as insureds. This insurance shall include the interests of mortgagees as loss payees.

§ B.3.2.13.1.1 **Causes of Loss.** The insurance required by this Section B.3.2.13.1 shall provide coverage for direct physical loss or damage, and shall not exclude the risks of fire, explosion, theft, vandalism, malicious mischief, collapse, earthquake, flood, or windstorm. The insurance shall also provide coverage for ensuing loss or resulting damage from error, omission, or deficiency in construction methods, design, specifications, workmanship, or materials. Sub-limits, if any, are as follows:

(Indicate below the cause of loss and any applicable sub-limit.)

Cause of Loss

Sub-Limit

§ B.3.2.13.1.2 Specific Required Coverages. The insurance required by this Section B.3.2.13.1 shall provide coverage for loss or damage to falsework and other temporary structures, and to building systems from testing and startup. The insurance shall also cover debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and reasonable compensation for the Architect's and Construction Manager's services and expenses required as a result of such insured loss, including claim preparation expenses. Sub-limits, if any, are as follows: *(Indicate below type of coverage and any applicable sub-limit for specific required coverages.)*

Coverage

Sub-Limit

§ B.3.2.13.1.3 Unless the parties agree otherwise, upon Substantial Completion, the Construction Manager shall continue the insurance required by Section B.3.2.13.1 or, if necessary, replace the insurance policy required under Section B.3.2.13.1 with property insurance written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 12.2.2 of the General Conditions.

§ B.3.2.13.1.4 Deductibles and Self-Insured Retentions. If the insurance required by this Section B.3.2.13 is subject to deductibles or self-insured retentions, the Construction Manager shall be responsible for all loss not covered because of such deductibles or retentions.

§ B.3.2.13.2 Occupancy or Use Prior to Substantial Completion. The Owner's occupancy or use of any completed or partially completed portion of the Work prior to Substantial Completion shall not commence until the insurance company or companies providing the insurance under Section B.3.2.13.1 have consented in writing to the continuance of coverage. The Owner and the Construction Manager shall take no action with respect to partial occupancy or use that would cause cancellation, lapse, or reduction of insurance, unless they agree otherwise in writing.

§ B.3.2.13.3 Insurance for Existing Structures

If the Work involves remodeling an existing structure or constructing an addition to an existing structure, the Construction Manager shall purchase and maintain, until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, "all-risks" property insurance, on a replacement cost basis, protecting the existing structure against direct physical loss or damage from the causes of loss identified in Section B.3.2.13.1, notwithstanding the undertaking of the Work. The Construction Manager shall be responsible for all co-insurance penalties.

§ B.3.3.1 Insurance selected and described in this Section B.3.3 shall be purchased from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. State of Georgia. The Construction Manager shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:

PAGE 5

- [] **§ B.3.3.2.1** Property insurance of the same type and scope satisfying the requirements identified in Section B.2.3, which, if selected in this Section B.3.3.2.1, relieves the Owner of the responsibility to purchase and maintain such insurance except insurance required by Section B.2.3.1.3 and Section B.2.3.3. The Construction Manager shall comply with all obligations of the Owner under Section B.2.3 except to the extent provided below. The Construction Manager shall disclose to the Owner the amount of any deductible, and the Owner shall be responsible for losses within the deductible. Upon request, the Construction Manager shall provide the Owner with a copy of the property insurance policy or policies required. The Owner shall adjust and settle the loss with the insurer and be the trustee of the proceeds of the property insurance in accordance with Article 11 of the General Conditions unless otherwise set forth below: Reserved.
(Where the Construction Manager's obligation to provide property insurance differs from the Owner's obligations as described under Section B.2.3, indicate such differences in the space below. Additionally, if a party other than the Owner will be responsible for adjusting and settling a loss with the insurer and acting as the trustee of the proceeds of property insurance in accordance with Article 11 of the General Conditions, indicate the responsible party below.)

...

[X] § B.3.3.2.2 Railroad Protective Liability Insurance, with policy limits of not less than Five Million Dollars (\$ 5,000,000) per claim and Ten Million Dollars (\$ 10,000,000) in the aggregate, for Work within fifty (50) feet of railroad property.



AIA® Document A201® – 2017

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

Depot Park – Phase 8
2822 Cherokee Street
Kennesaw, GA 30144

THE OWNER:

(Name, legal status and address)

City of Kennesaw, GA
2529 J.O. Stephenson Avenue
Kennesaw, GA 30144

THE PROGRAM MANAGER:

(Name, legal status and address)

Croy Engineering, LLC
200 Cobb Parkway N
Building 400, Suite 413
Marietta, GA 30062

TABLE OF ARTICLES

1	GENERAL PROVISIONS
2	OWNER
3	CONTRACTOR
4	PROGRAM MANAGER
5	SUBCONTRACTORS
6	CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS
7	CHANGES IN THE WORK
8	TIME
9	PAYMENTS AND COMPLETION
10	PROTECTION OF PERSONS AND PROPERTY
11	INSURANCE AND BONDS
12	UNCOVERING AND CORRECTION OF WORK
13	MISCELLANEOUS PROVISIONS

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

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

For guidance in modifying this document to include supplementary conditions, see AIA Document A503™, Guide for Supplementary Conditions.

14 TERMINATION OR SUSPENSION OF THE CONTRACT

15 CLAIMS AND DISPUTES

Init.

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INDEX

(Topics and numbers in bold are Section headings.)

Acceptance of Nonconforming Work

9.6.6, 9.9.3, **12.3**

Acceptance of Work

9.6.6, 9.8.2, 9.9.3, 9.10.1, 9.10.3, **12.3**

Access to Work

3.16, 6.2.1, **12.1**

Accident Prevention

10

Acts and Omissions

3.2, 3.3.2, 3.12.8, 3.18, 4.2.3, 8.3.1, 9.5.1, 10.2.5, 10.2.8, 13.3.2, 14.1, 15.1.2, **15.2**

Addenda

1.1.1

Additional Costs, Claims for

3.7.4, 3.7.5, 10.3.2, **15.1.5**

Additional Inspections and Testing

9.4.2, 9.8.3, **12.2.1**, **13.4**

Additional Time, Claims for

3.2.4, 3.7.4, 3.7.5, 3.10.2, 8.3.2, **15.1.6**

Administration of the Contract

3.1.3, **4.2**, 9.4, 9.5

Advertisement or Invitation to Bid

1.1.1

Aesthetic Effect

4.2.13

Allowances

3.8

Applications for Payment

4.2.5, 7.3.9, 9.2, **9.3**, 9.4, 9.5.1, 9.5.4, 9.6.3, 9.7, 9.10

Approvals

2.1.1, 2.3.1, 2.5, 3.1.3, 3.10.2, 3.12.8, 3.12.9, 3.12.10.1, 4.2.7, 9.3.2, 13.4.1

Arbitration

8.3.1, 15.3.2, **15.4**

ARCHITECT

4

Architect, Definition of

4.1.1

Architect, Extent of Authority

2.5, 3.12.7, 4.1.2, 4.2, 5.2, 6.3, 7.1.2, 7.3.4, 7.4, 9.2, 9.3.1, 9.4, 9.5, 9.6.3, 9.8, 9.10.1, 9.10.3, 12.1, 12.2.1, 13.4.1, 13.4.2, 14.2.2, 14.2.4, 15.1.4, 15.2.1

Architect, Limitations of Authority and Responsibility

2.1.1, 3.12.4, 3.12.8, 3.12.10, 4.1.2, 4.2.1, 4.2.2, 4.2.3, 4.2.6, 4.2.7, 4.2.10, 4.2.12, 4.2.13, 5.2.1, 7.4, 9.4.2, 9.5.4, 9.6.4, 15.1.4, **15.2**

Architect's Additional Services and Expenses

2.5, 12.2.1, 13.4.2, 13.4.3, 14.2.4

Architect's Administration of the Contract

3.1.3, 3.7.4, 15.2, 9.4.1, 9.5

Architect's Approvals

2.5, 3.1.3, 3.5, 3.10.2, 4.2.7

Architect's Authority to Reject Work

3.5, 4.2.6, 12.1.2, 12.2.1

Architect's Copyright

1.1.7, **1.5**

Architect's Decisions

3.7.4, 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 4.2.14, 6.3, 7.3.4, 7.3.9, 8.1.3, 8.3.1, 9.2, 9.4.1, 9.5, 9.8.4, 9.9.1, 13.4.2, **15.2**

Architect's Inspections

3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, **13.4**

Architect's Instructions

3.2.4, 3.3.1, 4.2.6, 4.2.7, **13.4.2**

Architect's Interpretations

4.2.11, 4.2.12

Architect's Project Representative

4.2.10

Architect's Relationship with Contractor

1.1.2, 1.5, 2.3.3, 3.1.3, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2, 3.5, 3.7.4, 3.7.5, 3.9.2, 3.9.3, 3.10, 3.11, 3.12, 3.16, 3.18, 4.1.2, 4.2, 5.2, 6.2.2, 7, 8.3.1, 9.2, 9.3, 9.4, 9.5, 9.7, 9.8, 9.9, 10.2.6, 10.3, 11.3, 12, 13.3.2, 13.4, **15.2**

Architect's Relationship with Subcontractors

1.1.2, 4.2.3, 4.2.4, 4.2.6, 9.6.3, 9.6.4, **11.3**

Architect's Representations

9.4.2, 9.5.1, 9.10.1

Architect's Site Visits

3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.5.1, 9.9.2, 9.10.1, **13.4**

Asbestos

10.3.1

Attorneys' Fees

3.18.1, 9.6.8, 9.10.2,

Award of Separate Contracts

6.1.1, 6.1.2

Award of Subcontracts and Other Contracts for Portions of the Work

5.2

Basic Definitions

1.1

Bidding Requirements

1.1.1

Binding Dispute Resolution

8.3.1, 9.7, 11.5, 13.1, 15.1.2, 15.1.3, 15.2.1, 15.2.5, 15.2.6.1, 15.3.1, 15.3.2, 15.3.3, 15.4.1

Bonds, Lien

7.3.4.4, 9.6.8, 9.10.2, 9.10.3

Bonds, Performance, and Payment

7.3.4.4, 9.6.7, 9.10.3, **11.1.2**, **11.1.3**, **11.5**

Building Information Models Use and Reliance

1.8

Building Permit

3.7.1

Capitalization

1.3

Certificate of Substantial Completion

9.8.3, 9.8.4, 9.8.5

Certificates for Payment

4.2.1, 4.2.5, 4.2.9, 9.3.3, **9.4**, 9.5, 9.6.1, 9.6.6, 9.7, 9.10.1, 9.10.3, 14.1.1.3, 14.2.4, 15.1.4

Certificates of Inspection, Testing or Approval
13.4.4

Certificates of Insurance
9.10.2

Change Orders

1.1.1, 3.4.2, 3.7.4, 3.8.2.3, 3.11, 3.12.8, 4.2.8, 5.2.3, 7.1.2, 7.1.3, **7.2**, 7.3.2, 7.3.7, 7.3.9, 7.3.10, 8.3.1, 9.3.1.1, 9.10.3, 10.3.2, 11.2, 11.5, 12.1.2

Change Orders, Definition of
7.2.1

CHANGES IN THE WORK

2.2.2, 3.11, 4.2.8, 7, 7.2.1, 7.3.1, 7.4, 8.3.1, 9.3.1.1, 11.5

Claims, Definition of

15.1.1

Claims, Notice of
1.6.2, 15.1.3

CLAIMS AND DISPUTES

3.2.4, 6.1.1, 6.3, 7.3.9, 9.3.3, 9.10.4, , **15**, 15.4

Claims and Timely Assertion of Claims
15.4.1

Claims for Additional Cost

3.2.4, 3.3.1, 3.7.4, 7.3.9, 9.5.2, 10.2.5, 10.3.2, **15.1.5**

Claims for Additional Time

3.2.4, 3.3.1, 3.7.4, 6.1.1, 8.3.2, 9.5.2, 10.3.2, **15.1.6**

Concealed or Unknown Conditions, Claims for
3.7.4

Claims for Damages

3.2.4, 3.18, 8.3.3, 9.5.1, 9.6.7, 10.2.5, , 11.3, , 14.2.4, 15.1.7

Claims Subject to Arbitration
15.4.1

Cleaning Up

3.15, 6.3

Commencement of the Work, Conditions Relating to
2.2.1, 3.2.2, 3.4.1, 3.7.1, 3.10.1, 3.12.6, 5.2.1, 5.2.3, 6.2.2, 8.1.2, 8.2.2, 8.3.1, 11.1, 11.2, **15.1.5**

Commencement of the Work, Definition of
8.1.2

Communications

3.9.1, **4.2.4**

Completion, Conditions Relating to

3.4.1, 3.11, 3.15, 4.2.2, 4.2.9, 8.2, 9.4.2, 9.8, 9.9.1, 9.10, 12.2, , 15.1.2

COMPLETION, PAYMENTS AND **9**

Completion, Substantial

3.10.1, 4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, 9.8, 9.9.1, 9.10.3, 12.2, 15.1.2

Compliance with Laws

2.3.2, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 9.6.4, 10.2.2, 13.1, 13.3, 13.4.1, 13.4.2, , 14.1.1, 14.2.1.3, 15.2.8, 15.4.2, 15.4.3

Concealed or Unknown Conditions

3.7.4, 4.2.8, 8.3.1, 10.3

Conditions of the Contract

1.1.1, 6.1.1, 6.1.4

Consent, Written

3.4.2, 3.14.2, 4.1.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3, 13.2, 15.4.4.2

Consolidation or Joinder

15.4.4

CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

1.1.4, 6

Construction Change Directive, Definition of
7.3.1

Construction Change Directives

1.1.1, 3.4.2, 3.11, 3.12.8, 4.2.8, 7.1.1, 7.1.2, 7.1.3, **7.3**, 9.3.1.1

Construction Schedules, Contractor's

3.10, 3.11, 3.12.1, 3.12.2, 6.1.3, 15.1.6.2

Contingent Assignment of Subcontracts
5.4, 14.2.2.2

Continuing Contract Performance

15.1.4

Contract, Definition of

1.1.2

CONTRACT, TERMINATION OR SUSPENSION OF THE

5.4.1.1, 5.4.2, 11.5, **14**

Contract Administration

3.1.3, 4, 9.4, 9.5

Contract Award and Execution, Conditions Relating to

3.7.1, 3.10, 5.2, 6.1

Contract Documents, Copies Furnished and Use of
1.5.2, 2.3.6, 5.3

Contract Documents, Definition of

1.1.1

Contract Sum

2.2.2, 2.2.4, 3.7.4, 3.7.5, 3.8, 3.10.2, 5.2.3, 7.3, 7.4, **9.1**, 9.2, 9.4.2, 9.5.1.4, 9.6.7, 9.7, 10.3.2, 11.5, 12.1.2, 12.3, 14.2.4, 14.3.2, 15.1.4.2, **15.1.5**, **15.2.5**

Contract Sum, Definition of
9.1

Contract Time

1.1.4, 2.2.1, 2.2.2, 3.7.4, 3.7.5, 3.10.2, 5.2.3, 6.1.5, 7.2.1.3, 7.3.1, 7.3.5, 7.3.6, 7, 7, 7.3.10, 7.4, 8.1.1, 8.2.1, 8.2.3, 8.3.1, 9.5.1, 9.7, 10.3.2, 12.1.1, 12.1.2, 14.3.2, 15.1.4.2, 15.1.6.1, 15.2.5

Contract Time, Definition of

8.1.1

CONTRACTOR

3

Contractor, Definition of

3.1, 6.1.2

Contractor's Construction and Submittal Schedules

3.10, 3.12.1, 3.12.2, 4.2.3, 6.1.3, 15.1.6.2

Contractor's Employees
2.2.4, 3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6, 10.2, 10.3, 11.3, 14.1, 14.2.1.1

Contractor's Liability Insurance
11.1
Contractor's Relationship with Separate Contractors and Owner's Forces
3.12.5, 3.14.2, 4.2.4, 6, 11.3, 12.2.4
Contractor's Relationship with Subcontractors
1.2.2, 2.2.4, 3.3.2, 3.18.1, 3.18.2, 4.2.4, 5, 9.6.2, 9.6.7, 9.10.2, 11.2, 11.3, 11.4
Contractor's Relationship with the Architect
1.1.2, 1.5, 2.3.3, 3.1.3, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2, 3.5.1, 3.7.4, 3.10, 3.11, 3.12, 3.16, 3.18, 4.2, 5.2, 6.2.2, 7, 8.3.1, 9.2, 9.3, 9.4, 9.5, 9.7, 9.8, 9.9, 10.2.6, 10.3, 11.3, 12, 13.4, 15.1.3, 15.2.1
Contractor's Representations
3.2.1, 3.2.2, 3.5, 3.12.6, 6.2.2, 8.2.1, 9.3.3, 9.8.2
Contractor's Responsibility for Those Performing the Work
3.3.2, 3.18, 5.3, 6.1.3, 6.2, 9.5.1, 10.2.8
Contractor's Review of Contract Documents
3.2
Contractor's Right to Stop the Work
2.2.2, 9.7
Contractor's Right to Terminate the Contract
14.1
Contractor's Submittals
3.10, 3.11, 3.12, 4.2.7, 5.2.1, 5.2.3, 9.2, 9.3, 9.8.2, 9.8.3, 9.9.1, 9.10.2, 9.10.3
Contractor's Superintendent
3.9, 10.2.6
Contractor's Supervision and Construction Procedures
1.2.2, 3.3, 3.4, 3.12.10, 4.2.2, 4.2.7, 6.1.3, 6.2.4, 7.1.3, 7.3.4, 7.3.6, 8.2, 10, 12, 14, 15.1.4
Coordination and Correlation
1.2, 3.2.1, 3.3.1, 3.10, 3.12.6, 6.1.3, 6.2.1
Copies Furnished of Drawings and Specifications
1.5, 2.3.6, 3.11
Copyrights
1.5, **3.17**
Correction of Work
2.5, 3.7.3, 9.4.2, 9.8.2, 9.8.3, 9.9.1, 12.1.2, **12.2**, 12.3, 15.1.3.1, 15.1.3.2, 15.2.1
Correlation and Intent of the Contract Documents
1.2
Cost, Definition of
7.3.4
Costs
2.5, 3.2.4, 3.7.3, 3.8.2, 3.15.2, 5.4.2, 6.1.1, 6.2.3, 7.3.3.3, 7.3.4, 7.3.8, 7.3.9, 9.10.2, 10.3.2, , 11.2, 12.1.2, 12.2.1, 12.2.4, 13.4, 14
Cutting and Patching
3.14, 6.2.5

Damage to Construction of Owner or Separate Contractors
3.14.2, 6.2.4, 10.2.1.2, 10.2.5, 10.4, 12.2.4
Damage to the Work
3.14.2, 9.9.1, 10.2.1.2, 10.2.5, 10.4, 12.2.4
Damages, Claims for
3.2.4, 3.18, 6.1.1, 8.3.3, 9.5.1, 9.6.7, , , 11.3, 14.2.4, 15.1.7
Damages for Delay
6.2.3, 8.3.3, 9.5.1.6, 9.7, 10.3.2, 14.3.2
Date of Commencement of the Work, Definition of
8.1.2
Date of Substantial Completion, Definition of
8.1.3
Day, Definition of
8.1.4
Decisions of the Architect
3.7.4, 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 6.3, 7.3.4, 7.3.9, 8.1.3, 8.3.1, 9.2, 9.4, 9.5.1, 9.8.4, 9.9.1, 13.4.2, 14.2.2, 14.2.4, 15.1, 15.2
Decisions to Withhold Certification
9.4.1, **9.5**, 9.7, 14.1.1.3
Defective or Nonconforming Work, Acceptance, Rejection and Correction of
2.5, 3.5, 4.2.6, 6.2.3, 9.5.1, 9.5.3, 9.6.6, 9.8.2, 9.9.3, 9.10.4, 12.2.1
Definitions
1.1, 2.1.1, 3.1.1, 3.5, 3.12.1, 3.12.2, 3.12.3, 4.1.1, 5.1, 6.1.2, 7.2.1, 7.3.1, 8.1, 9.1, 9.8.1, 15.1.1
Delays and Extensions of Time
3.2, **3.7.4**, 5.2.3, 7.2.1, 7.3.1, **7.4**, **8.3**, 9.5.1, **9.7**, 10.3.2, **10.4**, 14.3.2, **15.1.6**, 15.2.5
Digital Data Use and Transmission
1.7
Disputes
6.3, 7.3.9, 15.1, 15.2
Documents and Samples at the Site
3.11
Drawings, Definition of
1.1.5
Drawings and Specifications, Use and Ownership of
3.11
Effective Date of Insurance
8.2.2
Emergencies
10.4, 14.1.1.2, **15.1.5**
Employees, Contractor's
3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6, 10.2, , 11.3, 14.1, 14.2.1.1
Equipment, Labor, or Materials
1.1.3, 1.1.6, 3.4, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1, 4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.4, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1, 10.2.4, 14.2.1.1, 14.2.1.2
Execution and Progress of the Work
1.1.3, 1.2.1, 1.2.2, 2.3.4, 2.3.6, 3.1, 3.3.1, 3.4.1, 3.7.1, 3.10.1, 3.12, 3.14, 4.2, 6.2.2, 7.1.3, 7.3.6, 8.2, 9.5.1, 9.9.1, 10.2, 10.3, 12.1, 12.2, 14.2, 14.3.1, 15.1.4

Extensions of Time
3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3, 7.4, 9.5.1, 9.7, 10.3.2, 10.4, 14.3, 15.1.6, **15.2.5**

Failure of Payment
9.5.1.3, **9.7**, 9.10.2, , 14.1.1.3, 14.2.1.2

Faulty Work
(See Defective or Nonconforming Work)

Final Completion and Final Payment
4.2.1, 4.2.9, 9.8.2, **9.10**, 12.3, 14.2.4, 14.4.3

Financial Arrangements, Owner's
2.2.1, 13.2.2, 14.1.1.4

GENERAL PROVISIONS

1

Governing Law

13.1
Guarantees (See Warranty)

Hazardous Materials and Substances
10.2.4, **10.3**

Identification of Subcontractors and Suppliers
5.2.1

Indemnification
3.17, **3.18**, 9.6.8, 9.10.2, , 11.3

Information and Services Required of the Owner
2.1.2, **2.2**, 2.3, 3.2.2, 3.12.10.1, 6.1.3, 6.1.4, 6.2.5, 9.6.1, 9.9.2, 9.10.3, , 11.2, 13.4.1, 13.4.2, 14.1.1.4, , 15.1.4

Initial Decision

15.2

Initial Decision Maker, Definition of
1.1.8

Initial Decision Maker, Decisions
14.2.4, 15.1.4.2, 15.2.1, 15.2.2, 15.2.3, 15.2.4, 15.2.5

Initial Decision Maker, Extent of Authority
14.2.4, 15.1.4.2, 15.2.1, 15.2.2, 15.2.3, 15.2.4, 15.2.5

Injury or Damage to Person or Property
10.2.8, 10.4

Inspections
3.1.3, 3.3.3, 3.7.1, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 12.2.1, 13.4

Instructions to Bidders
1.1.1

Instructions to the Contractor
3.2.4, 3.3.1, 3.8.1, 5.2.1, 7, 8.2.2, 12, 13.4.2

Instruments of Service, Definition of
1.1.7

Insurance
6.1.1, 7.3.4, 8.2.2, 9.3.2, 9.8.4, 9.9.1, 9.10.2, 10.2.5, **11**

Insurance, Notice of Cancellation or Expiration
11.1.4,

Insurance, Contractor's Liability

11.1
Insurance, Effective Date of
8.2.2, 14.4.2

Insurance, Owner's Liability

11.2

Insurance, Property
10.2.5, 11.2, 11.4, 11.5

Insurance, Stored Materials
9.3.2

INSURANCE AND BONDS

11

Insurance Companies, Consent to Partial Occupancy
9.9.1

Insured loss, Adjustment and Settlement of
11.5

Intent of the Contract Documents
1.2.1, 4.2.7, 4.2.12, 4.2.13

Interest
(Paragraph deleted)

Interpretation
1.1.8, 1.2.3, **1.4**, 4.1.1, 5.1, 6.1.2, 15.1.1

Interpretations, Written
4.2.11, 4.2.12

Judgment on Final Award
15.4.2

Labor and Materials, Equipment
1.1.3, 1.1.6, **3.4**, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1, 5.2.1, 6.2.1, 7.3.4, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1, 10.2.4, 14.2.1.1, 14.2.1.2

Labor Disputes
8.3.1

Laws and Regulations
1.5, 2.3.2, 3.2.3, 3.2.4, 3.6, 3.7, 3.12.10, 3.13, 9.6.4, 9.9.1, 10.2.2, 13.1, 13.3.1, 13.4.2, , 14, 15.2.8, 15.4

Liens
2.1.2, 9.3.1, 9.3.3, 9.6.8, 9.10.2, 9.10.4, 15.2.8

Limitations, Statutes of
12.2.5, 15.1.2, 15.4.1.1

Limitations of Liability
3.2.2, 3.5, 3.12.10, 3.12.10.1, 3.17, 3.18.1, 4.2.6, 4.2.7, 6.2.2, 9.4.2, 9.6.4, 9.6.7, 9.6.8, 10.2.5, , 11.3, 12.2.5, 13.3.1

Limitations of Time
2.1.2, 2.2, 2.5, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2.7, 5.2, 5.3, 5.4.1, 6.2.4, 7.3, 7.4, 8.2, 9.2, 9.3.1, 9.3.3, 9.4.1, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 12.2, 13.4, 14, 15, 15.1.2, 15.1.3, 15.1.5

Materials, Hazardous
10.2.4, **10.3**

Materials, Labor, Equipment and
1.1.3, 1.1.6, 3.4.1, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1, 5.2.1, 6.2.1, 7.3.4, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1.2, 10.2.4, 14.2.1.1, 14.2.1.2

Means, Methods, Techniques, Sequences and Procedures of Construction
3.3.1, 3.12.10, 4.2.2, 4.2.7, 9.4.2

Mechanic's Lien
2.1.2, 9.3.1, 9.3.3, 9.6.8, 9.10.2, 9.10.4, 15.2.8

Mediation
8.3.1, 15.1.3.2, 15.2.1, 15.2.5, 15.2.6, **15.3**, 15.4.1, 15.4.1.1

Minor Changes in the Work
1.1.1, 3.4.2, 3.12.8, 4.2.8, 7.1, **7.4**

MISCELLANEOUS PROVISIONS

13

Modifications, Definition of

1.1.1

Modifications to the Contract

1.1.1, 1.1.2, 2.5, 3.11, 4.1.2, 4.2.1, 5.2.3, 7, 8.3.1, 9.7, 10.3.2

Mutual Responsibility

6.2

Nonconforming Work, Acceptance of

9.6.6, 9.9.3, 12.3

Nonconforming Work, Rejection and Correction of
2.4, 2.5, 3.5, 4.2.6, 6.2.4, 9.5.1, 9.8.2, 9.9.3, 9.10.4, 12.2

Notice

1.6, 1.6.1, 1.6.2, 2.1.2, 2.2.2., 2.2.3, 2.2.4, 2.5, 3.2.4, 3.3.1, 3.7.4, 3.7.5, 3.9.2, 3.12.9, 3.12.10, 5.2.1, 7.4, 8.2.2, 9.6.8, 9.7, 9.10.1, 10.2.8, 10.3.2, 11.5, 12.2.2.1, 13.4.1, 13.4.2, 14.1, 14.2.2, 14.4.2, 15.1.3, 15.1.5, 15.1.6, 15.4.1

Notice of Cancellation or Expiration of Insurance

11.1.4,

Notice of Claims

1.6.2, 2.1.2, 3.7.4, 9.6.8, 10.2.8, 15.1.3, 15.1.5, 15.1.6, 15.2.8, 15.3.2, 15.4.1

Notice of Testing and Inspections

13.4.1, 13.4.2

Observations, Contractor's

3.2, 3.7.4

Occupancy

2.3.1, 9.6.6, 9.8

Orders, Written

1.1.1, 2.4, 3.9.2, 7, 8.2.2, 11.5, 12.1, 12.2.2.1, 13.4.2, 14.3.1

OWNER

2

Owner, Definition of

2.1.1

Owner, Evidence of Financial Arrangements

2.2, 13.2.2, 14.1.1.4

Owner, Information and Services Required of the

2.1.2, 2.2, 2.3, 3.2.2, 3.12.10, 6.1.3, 6.1.4, 6.2.5, 9.3.2, 9.6.1, 9.6.4, 9.9.2, 9.10.3, , 11.2, 13.4.1, 13.4.2, 14.1.1.4, , 15.1.4

Owner's Authority

1.5, 2.1.1, 2.3.2.4, 2.5, 3.4.2, 3.8.1, 3.12.10, 3.14.2, 4.1.2, 4.2.4, 4.2.9, 5.2.1, 5.2.4, 5.4.1, 6.1, 6.3, 7.2.1, 7.3.1, 8.2.2, 8.3.1, 9.3.2, 9.5.1, 9.6.4, 9.9.1, 9.10.2, 10.3.2, 11.4, 11.5, 12.2.2, 12.3, 13.2.2, 14.3, 14.4, 15.2.7

Owner's Insurance

11.2

Owner's Relationship with Subcontractors

1.1.2, 5.2, 5.3, 5.4, 9.6.4, 9.10.2, 14.2.2

Owner's Right to Carry Out the Work

2.5, 14.2.2

Owner's Right to Clean Up

6.3

Owner's Right to Perform Construction and to Award Separate Contracts

6.1

Owner's Right to Stop the Work

2.4

Owner's Right to Suspend the Work

14.3

Owner's Right to Terminate the Contract

14.2, 14.4

Ownership and Use of Drawings, Specifications and Other Instruments of Service

1.1.1, 1.1.6, 1.1.7, 1.5, 2.3.6, 3.2.2, 3.11, 3.17, 4.2.12, 5.3

Partial Occupancy or Use

9.6.6, 9.9

Patching, Cutting and

3.14, 6.2.5

Patents

3.17

Payment, Applications for

4.2.5, 7.3.9, 9.2, 9.3, 9.4, 9.5, 9.6.3, 9.7, 9.8.5, 9.10.1, 14.2.3, 14.2.4, 14.4.3

Payment, Certificates for

4.2.5, 4.2.9, 9.3.3, 9.4, 9.5, 9.6.1, 9.6.6, 9.7, 9.10.1, 9.10.3, 14.1.1.3, 14.2.4

Payment, Failure of

9.5.1.3, 9.7, 9.10.2, , 14.1.1.3, 14.2.1.2

Payment, Final

4.2.1, 4.2.9, 9.10, 12.3, 14.2.4, 14.4.3

Payment Bond, Performance Bond and

7.3.4.4, 9.6.7, 9.10.3, 11.1.2

Payments, Progress

9.3, 9.6, 9.8.5, 9.10.3, 14.2.3, 15.1.4

PAYMENTS AND COMPLETION

9

Payments to Subcontractors

5.4.2, 9.5.1.3, 9.6.2, 9.6.3, 9.6.4, 9.6.7, 14.2.1.2

PCB

10.3.1

Performance Bond and Payment Bond

7.3.4.4, 9.6.7, 9.10.3, 11.1.2

Permits, Fees, Notices and Compliance with Laws

2.3.1, 3.7, 3.13, 7.3.4.4, 10.2.2

PERSONS AND PROPERTY, PROTECTION OF

10

Polychlorinated Biphenyl

10.3.1

Product Data, Definition of

3.12.2

Product Data and Samples, Shop Drawings

3.11, 3.12, 4.2.7

Progress and Completion

4.2.2, 8.2, 9.8, 9.9.1, , 15.1.4

Progress Payments

9.3, 9.6, 9.8.5, 9.10.3, 14.2.3, 15.1.4

Project, Definition of
1.1.4
Project Representatives
4.2.10
Property Insurance
10.2.5, 11.2
Proposal Requirements
1.1.1
PROTECTION OF PERSONS AND PROPERTY
10
Regulations and Laws
1.5, 2.3.2, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 9.6.4, 9.9.1,
10.2.2, 13.1, 13.3, 13.4.1, 13.4.2, , 14, 15.2.8, 15.4
Rejection of Work
4.2.6, 12.2.1
Releases and Waivers of Liens
9.3.1, 9.10.2
Representations
3.2.1, 3.5, 3.12.6, 8.2.1, 9.3.3, 9.4.2, 9.5.1, 9.10.1
Representatives
2.1.1, 3.1.1, 3.9, 4.1.1, 4.2.10, 13.2.1
Responsibility for Those Performing the Work
3.3.2, 3.18, 4.2.2, 4.2.3, 5.3, 6.1.3, 6.2, 6.3, 9.5.1, 10
Retainage
9.3.1, 9.6.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3
Review of Contract Documents and Field
Conditions by Contractor
3.2, 3.12.7, 6.1.3
Review of Contractor's Submittals by Owner and
Architect
3.10.1, 3.10.2, 3.11, 3.12, 4.2, 5.2, 6.1.3, 9.2, 9.8.2
Review of Shop Drawings, Product Data and Samples
by Contractor
3.12
Rights and Remedies
1.1.2, 2.4, 2.5, 3.5, 3.7.4, 3.15.2, 4.2.6, 5.3, 5.4, 6.1,
6.3, 7.3.1, 8.3, 9.5.1, 9.7, 10.2.5, 10.3, 12.2.1, 12.2.2,
12.2.4, 13.3, 14, 15.4
Royalties, Patents and Copyrights
3.17
Rules and Notices for Arbitration
15.4.1
Safety of Persons and Property
10.2, 10.4
Safety Precautions and Programs
3.3.1, 4.2.2, 4.2.7, 5.3, 10.1, 10.2, 10.4
Samples, Definition of
3.12.3
Samples, Shop Drawings, Product Data and
3.11, 3.12, 4.2.7
Samples at the Site, Documents and
3.11
Schedule of Values
9.2, 9.3.1
Schedules, Construction
3.10, 3.12.1, 3.12.2, 6.1.3, 15.1.6.2

Separate Contracts and Contractors
1.1.4, 3.12.5, 3.14.2, 4.2.4, 4.2.7, 6, 8.3.1, 12.1.2
Separate Contractors, Definition of
6.1.1
Shop Drawings, Definition of
3.12.1
Shop Drawings, Product Data and Samples
3.11, 3.12, 4.2.7
Site, Use of
3.13, 6.1.1, 6.2.1
Site Inspections
3.2.2, 3.3.3, 3.7.1, 3.7.4, 4.2, 9.9.2, 9.4.2, 9.10.1, 13.4
Site Visits, Architect's
3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.5.1, 9.9.2, 9.10.1, 13.4
Special Inspections and Testing
4.2.6, 12.2.1, 13.4
Specifications, Definition of
1.1.6
Specifications
1.1.1, 1.1.6, 1.2.2, 1.5, 3.12.10, 3.17, 4.2.14
Statute of Limitations
15.1.2, 15.4.1.1
Stopping the Work
2.2.2, 2.4, 9.7, 10.3, 14.1
Stored Materials
6.2.1, 9.3.2, 10.2.1.2, 10.2.4
Subcontractor, Definition of
5.1.1
SUBCONTRACTORS
5
Subcontractors, Work by
1.2.2, 3.3.2, 3.12.1, 3.18, 4.2.3, 5.2.3, 5.3, 5.4, 9.3.1.2,
9.6.7
Subcontractual Relations
5.3, 5.4, 9.3.1.2, 9.6, 9.10, 10.2.1, 14.1, 14.2.1
Submittals
3.10, 3.11, 3.12, 4.2.7, 5.2.1, 5.2.3, 7.3.4, 9.2, 9.3, 9.8,
9.9.1, 9.10.2, 9.10.3
Submittal Schedule
3.10.2, 3.12.5, 4.2.7
Subrogation, Waivers of
6.1.1, 11.3
Substances, Hazardous
10.3
Substantial Completion
4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, 9.8, 9.9.1, 9.10.3, 12.2,
15.1.2
Substantial Completion, Definition of
9.8.1
Substitution of Subcontractors
5.2.3, 5.2.4
Substitution of Architect
2.3.3
Substitutions of Materials
3.4.2, 3.5, 7.3.8
Sub-subcontractor, Definition of
5.1.2

Subsurface Conditions

3.7.4

Successors and Assigns

13.2

Superintendent

3.9, 10.2.6

Supervision and Construction Procedures

1.2.2, **3.3**, 3.4, 3.12.10, 4.2.2, 4.2.7, 6.1.3, 6.2.4, 7.1.3, 7.3.4, 8.2, 8.3.1, 9.4.2, 10, 12, 14, 15.1.4

Suppliers

1.5, 3.12.1, 4.2.4, 4.2.6, 5.2.1, 9.3, 9.4.2, 9.5.4, 9.6, 9.10.5, 14.2.1

Surety

5.4.1.2, 9.6.8, 9.8.5, 9.10.2, 9.10.3, 11.1.2, 14.2.2, 15.2.7

Surety, Consent of

9.8.5, 9.10.2, 9.10.3

Surveys

1.1.7, 2.3.4

Suspension by the Owner for Convenience

14.3

Suspension of the Work

3.7.5, 5.4.2, 14.3

Suspension or Termination of the Contract

5.4.1.1, 14

Taxes

3.6, 3.8.2.1, 7.3.4.4

Termination by the Contractor

14.1, 15.1.7

Termination by the Owner for Cause

5.4.1.1, **14.2**, 15.1.7

Termination by the Owner for Convenience

14.4

Termination of the Architect

2.3.3

Termination of the Contractor Employment

14.2.2

TERMINATION OR SUSPENSION OF THE CONTRACT

14

Tests and Inspections

3.1.3, 3.3.3, 3.7.1, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 10.3.2, 12.2.1, **13.4**

TIME

8

Time, Delays and Extensions of

3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3.1, 7.4, **8.3**, 9.5.1, 9.7, 10.3.2, 10.4, 14.3.2, 15.1.6, 15.2.5

Time Limits

2.1.2, 2.2, 2.5, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2, 5.2, 5.3, 5.4, 6.2.4, 7.3, 7.4, 8.2, 9.2, 9.3.1, 9.3.3, 9.4.1, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 12.2, 13.4, 14, 15.1.2, 15.1.3, 15.4

Time Limits on Claims

3.7.4, 10.2.8, 15.1.2, 15.1.3

Title to Work

9.3.2, 9.3.3

UNCOVERING AND CORRECTION OF WORK

Uncovering of Work

12.1

Unforeseen Conditions, Concealed or Unknown

3.7.4, 8.3.1, 10.3

Unit Prices

7.3.3.2, 9.1.2

Use of Documents

1.1.1, 1.5, 2.3.6, 3.12.6, 5.3

Use of Site

3.13, 6.1.1, 6.2.1

Values, Schedule of

9.2, 9.3.1

Waiver of Claims by the Architect

13.3.2

Waiver of Claims by the Contractor

9.10.5, 13.3.2, **15.1.7**

Waiver of Claims by the Owner

9.9.3, 9.10.3, 9.10.4, 12.2.2.1, 13.3.2, 14.2.4, **15.1.7**

Waiver of Consequential Damages

14.2.4, 15.1.7

Waiver of Liens

9.3, 9.10.2, 9.10.4

Waivers of Subrogation

6.1.1, **11.3**

Warranty

3.5, 4.2.9, 9.3.3, 9.8.4, 9.9.1, 9.10.2, 9.10.4, 12.2.2, 15.1.2

Weather Delays

8.3, 15.1.6.2

Work, Definition of

1.1.3

Written Consent

1.5.2, 3.4.2, 3.7.4, 3.12.8, 3.14.2, 4.1.2, 9.3.2, 9.10.3, 13.2, 13.3.2, 15.4.4.2

Written Interpretations

4.2.11, 4.2.12

Written Orders

1.1.1, 2.4, 3.9, 7, 8.2.2, 12.1, 12.2, 13.4.2, 14.3.1

ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 The Contract Documents

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Program Manager. Unless specifically enumerated in the Agreement, the Contract Documents include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding or proposal requirements.

§ 1.1.2 The Contract

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Program Manager's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Program Manager or the Program Manager's consultants, or (4) between any persons or entities other than the Owner and the Contractor. The Program Manager shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Program Manager's duties.

§ 1.1.3 The Work

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

§ 1.1.4 The Project

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by Separate Contractors.

§ 1.1.5 The Drawings

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.

§ 1.1.6 The Specifications

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§ 1.1.7 Instruments of Service

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Program Manager and the Program Manager's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.1.8 Initial Decision Maker

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2. The Initial Decision Maker shall not show partiality to the Owner or Contractor and shall not be liable for results of interpretations or decisions rendered in good faith.

§ 1.2 Correlation and Intent of the Contract Documents

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

§ 1.2.1.1 The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.3 Capitalization

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles, or (3) the titles of other documents published by the American Institute of Architects.

§ 1.4 Interpretation

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 1.5 Ownership and Use of Drawings, Specifications, and Other Instruments of Service

§ 1.5.1 The Program Manager and the Program Manager's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Program Manager's or Program Manager's consultants' reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner, Program Manager, and the Program Manager's consultants.

§ 1.6 Notice

§ 1.6.1 Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement.

§ 1.6.2 Notice of Claims as provided in Section 15.1.3 shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

§ 1.7 Digital Data Use and Transmission

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 1.8 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document

G202™–2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

ARTICLE 2 OWNER

§ 2.1 General

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Program Manager does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 2.1.2 The Owner shall furnish to the Contractor, within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of, or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

§ 2.2 Evidence of the Owner's Financial Arrangements

§ 2.2.1 Prior to commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 2.2.1, the Contract Time shall be extended appropriately.

§ 2.2.2 Following commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract only if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due; or (3) a change in the Work materially changes the Contract Sum. If the Owner fails to provide such evidence, as required, within fourteen days of the Contractor's request, the Contractor may immediately stop the Work and, in that event, shall notify the Owner that the Work has stopped. However, if the request is made because a change in the Work materially changes the Contract Sum under (3) above, the Contractor may immediately stop only that portion of the Work affected by the change until reasonable evidence is provided. If the Work is stopped under this Section 2.2.2, the Contract Time shall be extended appropriately.

§ 2.2.3 After the Owner furnishes evidence of financial arrangements under this Section 2.2, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

§ 2.2.4 Where the Owner has designated information furnished under this Section 2.2 as "confidential," the Contractor shall keep the information confidential and shall not disclose it to any other person. However, the Contractor may disclose "confidential" information, after seven (7) days' notice to the Owner, where disclosure is required by law, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or by court or arbitrator(s) order. The Contractor may also disclose "confidential" information to its employees, consultants, sureties, Subcontractors and their employees, Sub-subcontractors, and others who need to know the content of such information solely and exclusively for the Project and who agree to maintain the confidentiality of such information.

§ 2.3 Information and Services Required of the Owner

§ 2.3.1 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.3.2 The Owner shall retain an architect lawfully licensed to practice architecture, or an entity lawfully practicing architecture, in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 2.3.3 If the employment of the Program Manager terminates, the Owner shall employ a successor to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Program Manager.

§ 2.3.4 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall not be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 2.3.4.1 The Owner and/or operators of private or public utilities shall have access to such utility at all times, for the installation, maintenance, adjustment, repair and operation of said utility. No extra compensation will be allowed because of the delay or interference caused by such work.

§ 2.3.4.2 In preparing the plan drawings there has not been an all-inclusive search for identifying existing underground utilities. Therefore, any information pertaining to existing utilities is provided only for preliminary purposes and implies no guarantee as to accuracy or completeness. Prior to blasting or excavation, the Contractor is responsible for contacting all utility owners in the area. Specifically, the Contractor shall contact the "one-call notification center" SEVENTY-TWO (72) hours in advance of blasting or excavation as required by Georgia Law.

§ 2.3.4.3 Wherever existing utilities are encountered which conflict in actual position and location with the proposed work, the Contractor shall promptly notify the Program Manager for resolution of the conflict.

§ 2.3.4.4 Temporary supports, beams or bridging for utilities shall be left in place during backfill operations unless otherwise directed by the Program Manager.

§ 2.3.4.5 All costs in connection with supporting, protecting, relocating, removal, repair of damage, restoration, and other work on affected existing utilities and other existing underground structures whether or not they are shown on the plans, not borne by the Owner or owners of the utilities, shall be borne by the Contractor. No separate payment will be made for any work performed as herein above specified unless otherwise stated in the proposal as a separate payment item. All costs in connection therewith shall be included in the Contract price for the item to which the work pertains.

§ 2.3.4.6 The Contractor shall be solely and directly responsible to the Owner and/or other operator of such utility properties for any damage, injury, expense, loss, inconvenience or delay, or for any suits, actions, claims of any character brought on account of any injuries or damages which may result from the carrying out of the work.

§ 2.3.5 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

§ 2.3.6 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

§ 2.4 Owner's Right to Stop the Work

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

§ 2.5 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Program Manager and the Program Manager may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Program Manager's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Program Manager, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

ARTICLE 3 CONTRACTOR

§ 3.1 General

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

§ 3.1.3 The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Program Manager in the Program Manager's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

§ 3.2 Review of Contract Documents and Field Conditions by Contractor

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Program Manager any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Program Manager may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Program Manager any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Program Manager may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Program Manager issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Program Manager for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

§ 3.3 Supervision and Construction Procedures

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner and Program Manager, and shall propose alternative means, methods, techniques, sequences, or procedures. The Program Manager shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Program Manager objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 3.4 Labor and Materials

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 3.4.2 Except in the case of minor changes in the Work approved by the Program Manager in accordance with Section 3.12.8 or ordered by the Program Manager in accordance with Section 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Program Manager and in accordance with a Change Order or Construction Change Directive.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

§ 3.5 Warranty

§ 3.5.1 The Contractor warrants to the Owner and Program Manager that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Program Manager, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.5.2 All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4.

§ 3.6 Taxes

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

§ 3.7 Permits, Fees, Notices and Compliance with Laws

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.4 Concealed or Unknown Conditions

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Program Manager before conditions are disturbed and in no event later than 14 days after first observance of the conditions. The Program Manager will promptly investigate such conditions and, if the Program Manager determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Program Manager determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Program Manager shall promptly notify the Owner and Contractor, stating the reasons. If either party disputes the Program Manager's determination or recommendation, that party may submit a Claim as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Program Manager. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.8 Allowances

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

§ 3.9 Superintendent

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Program Manager of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Program Manager may notify the Contractor, stating whether the Owner or the Program Manager (1) has reasonable objection to the proposed superintendent or (2) requires additional time for review. Failure of the Program Manager to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Program Manager has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

§ 3.10 Contractor's Construction and Submittal Schedules

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Program Manager's information a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule may be revised at appropriate intervals as required by the conditions of the Work and Project by submission of a Change Order by the Contractor.

§ 3.10.2 The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule for the Program Manager's approval. The Program Manager's approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Program Manager reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, or fails to provide submittals in accordance with the approved submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Program Manager.

§ 3.11 Documents and Samples at the Site

The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Program Manager and Owner, and delivered to the Program Manager for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.12 Shop Drawings, Product Data and Samples

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples that illustrate materials, equipment, or workmanship, and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how the Contractor proposes to conform to the information given and the design concept expressed in

the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Program Manager is subject to the limitations of Section 4.2.7. Informational submittals upon which the Program Manager is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Program Manager without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Program Manager, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the submittal schedule approved by the Program Manager or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of Separate Contractors.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and Program Manager that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples, or similar submittals, until the respective submittal has been approved by the Program Manager.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Program Manager's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Program Manager of such deviation at the time of submittal and (1) the Program Manager has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the Program Manager's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the Program Manager on previous submittals. In the absence of such notice, the Program Manager's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of Program Managerure or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures. The Contractor shall not be required to provide professional services in violation of applicable law.

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Program Manager will specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Program Manager. The Owner and the Program Manager shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Program Manager have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Program Manager will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

§ 3.12.10.2 If the Contract Documents require the Contractor's design professional to certify that the Work has been performed in accordance with the design criteria, the Contractor shall furnish such certifications to the Program Manager at the time and in the form specified by the Program Manager.

§ 3.13 Use of Site

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§ 3.14 Cutting and Patching

§ 3.14.1 The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or Separate Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter construction by the Owner or a Separate Contractor except with written consent of the Owner and of the Separate Contractor. Consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold, from the Owner or a Separate Contractor, its consent to cutting or otherwise altering the Work.

§ 3.15 Cleaning Up

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the Owner shall be entitled to reimbursement from the Contractor.

§ 3.16 Access to Work

The Contractor shall provide the Owner and Program Manager with access to the Work in preparation and progress wherever located.

§ 3.17 Royalties, Patents and Copyrights

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Program Manager harmless from loss on account thereof, including but not limited to attorney fees and costs of litigation, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications, or other documents prepared by the Owner or Program Manager. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Program Manager.

§ 3.18 Indemnification

§ 3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Program Manager, Program Manager's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees and costs of litigation, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

ARTICLE 4 PROGRAM MANAGER

§ 4.1 General

§ 4.1.1 The Program Manager is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement.

§ 4.1.2 Duties, responsibilities, and limitations of authority of the Program Manager as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner, Contractor, and Program Manager. Consent shall not be unreasonably withheld.

§ 4.2 Administration of the Contract

§ 4.2.1 The Program Manager will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Program Manager issues the final Certificate for Payment. The Program Manager will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 The Program Manager will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Program Manager will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Program Manager will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

§ 4.2.3 On the basis of the site visits, the Program Manager will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Program Manager will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Program Manager will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 Communications

The Owner and Contractor shall include the Program Manager in all communications that relate to or affect the Program Manager's services or professional responsibilities. The Owner shall promptly notify the Program Manager of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Program Manager's consultants shall be through the Program Manager. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

§ 4.2.5 Based on the Program Manager's evaluations of the Contractor's Applications for Payment, the Program Manager will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Program Manager has authority to reject Work that does not conform to the Contract Documents. Whenever the Program Manager considers it necessary or advisable, the Program Manager will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Program Manager nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Program

Manager to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Program Manager will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Program Manager's action will be taken in accordance with the submittal schedule approved by the Program Manager or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Program Manager's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Program Manager's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Program Manager's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The Program Manager's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Program Manager will prepare Change Orders and Construction Change Directives, and may order minor changes in the Work as provided in Section 7.4. The Program Manager will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Program Manager will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Program Manager agree, the Program Manager will provide one or more Project representatives to assist in carrying out the Program Manager's responsibilities at the site. The Owner shall notify the Contractor of any change in the duties, responsibilities and limitations of authority of the Project representatives.

§ 4.2.11 The Program Manager will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Program Manager's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.12 Interpretations and decisions of the Program Manager will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Program Manager will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either, and will not be liable for results of interpretations or decisions rendered in good faith.

§ 4.2.13 The Program Manager's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

§ 4.2.14 The Program Manager will review and respond to requests for information about the Contract Documents. The Program Manager's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Program Manager will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 Definitions

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a Separate Contractor or the subcontractors of a Separate Contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.2 Award of Subcontracts and Other Contracts for Portions of the Work

§ 5.2.1 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Program Manager of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Program Manager may notify the Contractor whether the Owner or the Program Manager (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Program Manager to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Program Manager has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner or Program Manager has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Program Manager has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected if the Owner or Program Manager makes reasonable objection to such substitution.

§ 5.3 Subcontractual Relations

By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Owner and Program Manager. Each subcontract agreement shall preserve and protect the rights of the Owner and Program Manager under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.4 Contingent Assignment of Subcontracts

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation may be equitably adjusted for increases in cost resulting from the suspension by submission of a Change Order by the Contractor.

§ 5.4.3 Upon assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall not remain legally responsible for all of the successor contractor's obligations under the subcontract.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 Owner's Right to Perform Construction and to Award Separate Contracts

§ 6.1.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each Separate Contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with any Separate Contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to its construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or with Separate Contractors, the Owner or its Separate Contractors shall have the same obligations and rights that the Contractor has under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11, and 12.

§ 6.2 Mutual Responsibility

§ 6.2.1 The Contractor shall afford the Owner and Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Program Manager of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Program Manager of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not apparent.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a Separate Contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner may be responsible to the Contractor for costs the Contractor incurs because of a Separate Contractor's delays, improperly timed activities, damage to the Work or defective construction, if so determined after submission of a Change Order by the Contractor.

§ 6.2.4 The Contractor shall promptly remedy damage that the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or Separate Contractor as provided in Section 10.2.5.

§ 6.2.5 The Owner and each Separate Contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

§ 6.3 Owner's Right to Clean Up

If a dispute arises among the Contractor, Separate Contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Program Manager will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 General

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor, and Program Manager. A Construction Change Directive requires agreement by the Owner and Program Manager and may or may not be agreed to by the Contractor. An order for a minor change in the Work may be issued by the Program Manager alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work.

§ 7.2 Change Orders

§ 7.2.1 A Change Order is a written instrument prepared by the Program Manager and signed by the Owner, Contractor, and Program Manager stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 7.3 Construction Change Directives

§ 7.3.1 A Construction Change Directive is a written order prepared by the Program Manager and signed by the Owner and Program Manager, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.4.

§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Program Manager shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Program Manager may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

- .1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Program Manager;
- .2 Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;

- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and
- .5 Costs of supervision and field office personnel directly attributable to the change.

§ 7.3.5 If the Contractor disagrees with the adjustment in the Contract Time, the Contractor may make a Claim in accordance with applicable provisions of Article 15.

§ 7.3.6 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Program Manager of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.7 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Program Manager. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Program Manager will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Program Manager determines, in the Program Manager's professional judgment, to be reasonably justified. The Program Manager's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Program Manager concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Program Manager will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.4 Minor Changes in the Work

The Program Manager may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Program Manager's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Program Manager and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Program Manager's order for a minor change without prior notice to the Program Manager that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

ARTICLE 8 TIME

§ 8.1 Definitions

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date certified by the Program Manager in accordance with Section 9.8.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

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§ 8.2 Progress and Completion

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, commence the Work prior to the effective date of insurance required to be furnished by the Contractor.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.3 Delays and Extensions of Time

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Program Manager, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that the Contractor asserts, and the Program Manager determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Program Manager may determine.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

§ 9.1.1 The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 9.1.2 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices may be equitably adjusted, if so determined after the submission of a Change Order by the Contractor.

§ 9.2 Schedule of Values

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Program Manager before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Program Manager. This schedule, unless objected to by the Program Manager, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Program Manager and supported by such data to substantiate its accuracy as the Program Manager may require, and unless objected to by the Program Manager, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

§ 9.3 Applications for Payment

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Program Manager an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Program Manager require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect retainage if provided for in the Contract Documents.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Program Manager, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work.

§ 9.4 Certificates for Payment

§ 9.4.1 The Program Manager will, within seven days after receipt of the Contractor's Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Program Manager determines is properly due, and notify the Contractor and Owner of the Program Manager's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Program Manager's reason for withholding certification in whole as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Program Manager to the Owner, based on the Program Manager's evaluation of the Work and the data in the Application for Payment, that, to the best of the Program Manager's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Program Manager. However, the issuance of a Certificate for Payment will not be a representation that the Program Manager has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.5 Decisions to Withhold Certification

§ 9.5.1 The Program Manager may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Program Manager's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Program Manager is unable to certify payment in the amount of the Application, the Program Manager will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Program Manager cannot agree on a revised amount, the Program Manager will promptly issue a Certificate for Payment for the amount for which the Program Manager is able to make such representations to the Owner. The Program Manager may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Program Manager's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;

- .3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a Separate Contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.

§ 9.5.2 When either party disputes the Program Manager's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, that party may submit a Claim in accordance with Article 15.

§ 9.5.3 When the reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.4 If the Program Manager withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Program Manager and the Contractor shall reflect such payment on its next Application for Payment.

§ 9.6 Progress Payments

§ 9.6.1 After the Program Manager has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Program Manager.

§ 9.6.2 The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.6.3 The Program Manager will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Program Manager and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. Neither the Owner nor Program Manager shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.

§ 9.6.5 The Contractor's payments to suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors or provided by suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.6.8 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If

approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

§ 9.7 Failure of Payment

If the Program Manager does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents, the amount certified by the Program Manager or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' notice to the Owner and Program Manager, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Program Manager a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's list, the Program Manager will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Program Manager's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Program Manager. In such case, the Contractor shall then submit a request for another inspection by the Program Manager to determine Substantial Completion.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Program Manager will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of all Work unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance, and consent of surety if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 9.9 Partial Occupancy or Use

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Program Manager as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Program Manager.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor, and Program Manager shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

§ 9.10 Final Completion and Final Payment

§ 9.10.1 Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Program Manager will promptly make such inspection. When the Program Manager finds the Work acceptable under the Contract Documents and the Contract fully performed, the Program Manager will promptly issue a final Certificate for Payment stating that to the best of the Program Manager's knowledge, information and belief, and on the basis of the Program Manager's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Program Manager's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Program Manager (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Program Manager so confirms, the Owner shall, upon application by the Contractor and certification by the Program Manager, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Program Manager prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

§ 9.10.4 The making of final payment shall not constitute a waiver of Claims by the
(Paragraphs deleted)
Owner.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor, or a supplier, shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.2 Safety of Persons and Property

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

§ 10.2.2 The Contractor shall comply with, and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property or their protection from damage, injury, or loss.

§ 10.2.3 The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Program Manager or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Program Manager.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 Injury or Damage to Person or Property

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter. This provision shall not relieve the Contractor of other notice requirements provided by law.

§ 10.3 Hazardous Materials and Substances

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Program Manager of the condition.

§ 10.3.2 Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or

substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Program Manager the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Program Manager will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Program Manager has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Program Manager have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time may be extended appropriately and the Contract Sum may be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up, if approved after submission of a Change Order by the Contractor.

§ 10.3.3 Reserved.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site.

§ 10.3.5 The Contractor shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 Reserved.

§ 10.4 Emergencies

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 Contractor's Insurance and Bonds

§ 11.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner, Program Manager, and Program Manager's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.

§ 11.1.2 The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.

§ 11.1.3 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

§ 11.1.4 Notice of Cancellation or Expiration of Contractor's Required Insurance. Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

§ 11.2 Owner's Insurance

§ 11.2.1 Reserved.

§ 11.2.2 Reserved.

§ 11.2.3 Reserved.

§ 11.3 Reserved.

§ 11.3.1 Reserved.

§ 11.3.2 Reserved.

§ 11.4 Loss of Use, Business Interruption, and Delay in Completion Insurance

The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, due to fire or other causes of loss.

§11.5 Adjustment and Settlement of Insured Loss

§ 11.5.1 A loss insured under the property insurance required by the Agreement shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.5.2. The Owner shall pay the Program Manager and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements the Program Manager and Contractor shall make payments to their consultants and Subcontractors in similar manner.

§ 11.5.2 Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 Uncovering of Work

§ 12.1.1 If a portion of the Work is covered contrary to the Program Manager's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Program Manager, be uncovered for the Program Manager's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Program Manager has not specifically requested to examine prior to its being covered, the Program Manager may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

§ 12.2 Correction of Work

§ 12.2.1 Before Substantial Completion

The Contractor shall promptly correct Work rejected by the Program Manager or failing to conform to the requirements of the Contract Documents, and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Program Manager's services and expenses made necessary thereby, shall be at the Contractor's expense.

§ 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established

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under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor an express written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Program Manager, the Owner may correct it in accordance with Section 2.5.

§ 12.2.2.2 The one-year period for correction of Work shall begin on the date the Owner issues the final payment to Contractor.

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner or Separate Contractors, whether completed or partially completed, caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

The Contract shall be governed by the law of the State of Georgia, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4. For any claim not covered in Article 15 of this Agreement, jurisdiction and venue for any claim arising from the Agreement shall lie exclusively in the Superior Court of Cobb County, Georgia.

§ 13.2 Successors and Assigns

§ 13.2.1 The Contractor binds themselves, their partners, successors, assigns, and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, The Contractor shall not assign the Contract as a whole or in part without written consent of the Owner. If Contractor attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate the assignment.

§ 13.3 Rights and Remedies

§ 13.3.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.

§ 13.3.2 No action or failure to act by the Owner, Program Manager, or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed upon in writing.

§ 13.4 Tests and Inspections

§ 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Program Manager timely notice of when and where tests and inspections are to be made so that the Program Manager may be present for such procedures.

§ 13.4.2 If the Program Manager, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Program Manager will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Program Manager of when and where tests and inspections are to be made so that the Program Manager may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense.

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Program Manager's services and expenses, shall be at the Contractor's expense.

§ 13.4.4 Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Program Manager.

§ 13.4.5 If the Program Manager is to observe tests, inspections, or approvals required by the Contract Documents, the Program Manager will do so promptly and, where practicable, at the normal place of testing.

§ 13.4.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

(Paragraphs deleted)

§ 13.5 Reserved.

§ 13.6 **Interest of federal, state or local officials.** No Federal, State or Local official shall be admitted to any share or part of this Agreement or to any benefit that may arise therefrom, but this provision shall not be construed to extend to this Agreement if made with a corporation for its general benefit.

§ 13.7 **Other prohibited interests.** No official of the Owner who is authorized in such capacity and on behalf of the Owner to negotiate, make, accept, or approve or to take part in negotiating, making, accepting, or approving any architectural, engineering, inspection, construction or material supply contract or any subcontract in connection with the construction of the Project, shall become directly or indirectly interested personally in this Agreement or in any part hereof. No officer, employee, architect, attorney, engineer, or inspector of or for the Owner who is authorized in such capacity and on behalf of the Owner to exercise any legislative, executive, supervisory or other similar functions in connection with the construction of the Project, shall become directly or indirectly interested personally in this Agreement or in any part thereof, any material supply subcontract, insurance contract, or any other contract pertaining to the Project.

§ 13.8 **Time for completion and liquidated damages.** It is hereby understood and mutually agreed, by and between the Contractor and the Owner, that the date of beginning and the time for completion as specified in the Contract Documents of the work to be done hereunder are ESSENTIAL CONDITIONS of this Contract; and it is further mutually understood and agreed that the work embraced in this Contract shall be commenced on a date to be specified

in the "NOTICE TO PROCEED." The Contractor agrees that said work shall be prosecuted regularly, diligently, and uninterruptedly at such rate of progress as will ensure full completion thereof within the time specified. It is expressly understood and agreed, by and between the Contractor and the Owner, that the time for the completion of the work described herein is a reasonable time for the completion of the same, taking into consideration the average climatic range and usual industrial conditions prevailing in this locality. If the Contractor shall neglect, fail or refuse to complete the work within the time herein specified, or any proper extension thereof granted by the Owner, then the Contractor does hereby agree, as a part consideration for the awarding of this Contract, to pay to the Owner the amount specified in the Contract, not as a penalty but as liquidated damages for such breach of Contract as hereinafter set forth, for each and every calendar day that the Contractor shall be in default after the time stipulated in the Contract for completing the work. The said amount is fixed and agreed upon by and between the Contractor and the Owner because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages the Owner would in such event sustain, and said amount is agreed to be the amount of damages which the Owner would sustain and said amount shall be retained from time to time by the Owner from current periodical estimates. It is further agreed that time is of the essence of each and every portion of this Contract and of the specifications wherein a definite and certain length of time is fixed for the performance of any act whatsoever; and where, under the Contract, an additional time is allowed for the completion of any work, the new time limit fixed by such extension shall be of the essence of this Contract. Provided, that the Contractor shall not be charged with liquidated damages or any excess cost when the Owner determines that the Contractor is without fault and the Contractor's reasons for the time extension are acceptable to the Owner; provided, further, that the Contractor shall not be charged with liquidated damages or any excess cost when the delay in completion of the work is due:

- (a) To any preference, priority or allocation order duly issued by the Government;
- (b) To unforeseeable cause beyond the control and without the fault or negligence of the Contractor, including but not restricted to, acts of God, or of the public enemy, acts of the Owner, acts of another Contractor in the performance of a Contract with the Owner, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and severe weather; and
- (c) To any delays of Subcontractors or suppliers occasioned by any of the causes specified in subsections (a) and (b) of this article.

Provided, further, that the Contractor shall, within ten (10) calendar days from the beginning of such delay, unless the Owner shall grant a further period of time prior to the date of final settlement of the Contract, notify the Owner, in writing, of the causes of the delay, who shall ascertain the facts and extent of the delay, and notify the Contractor within a reasonable time of its decision in this matter.

§13.9 Independent contractor status. The Parties intend that the Contractor be engaged as an independent Contractor of the Owner. Nothing contained in this Agreement will be construed to create the relationship of employer and employee, principal and agent, partnership or joint venture, or any other fiduciary relationship. The Contractor may not act as agent for, or on behalf of, the Owner, or to represent the Owner, or bind the Owner in any manner. The Contractor will not be entitled to worker's compensation, retirement, insurance or other benefits afforded to employees of the Owner.

§13.10 E-Verify compliance. The Contractor and any Subcontractors thereof, are required and hereby agree to use a federal immigration verification system to determine the work eligibility status of all employees performing services under this Agreement and shall execute Affidavits to that effect on the forms provided by Owner. A federal immigration system means the electronic verification of the work authorization program authorized by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. 1324a, known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of an employee.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped;
- .3 Because the Program Manager has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2.

§ 14.1.2 Reserved.

§ 14.1.3 If one of the reasons described in Section 14.1.1 exists, the Contractor may, upon seven days' notice to the Owner and Program Manager, terminate the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead and profit on Work executed at the time of such termination.

§ 14.1.4 Reserved.

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, and upon certification by the Program Manager that sufficient cause exists to justify such action, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment, if any, until the Work is finished.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Program Manager's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

§ 14.3 Suspension by the Owner for Convenience

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work, in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1, upon approval of a Change Order submitted by the Contractor. No adjustment shall be made to the extent

- .1 that performance is, was, or would have been, so suspended, delayed, or interrupted, by another cause for which the Contractor is responsible; or

- .2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 Termination by the Owner for Convenience

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Claims

§ 15.1.1 Definition

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

§ 15.1.2 Time Limits on Claims

The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.

§ 15.1.3 Notice of Claims

§ 15.1.3.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Program Manager, if the Program Manager is not serving as the Initial Decision Maker. Claims by either party under this Section 15.1.3.1 shall be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 15.1.3.2 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party. In such event, no decision by the Initial Decision Maker is required.

§ 15.1.4 Continuing Contract Performance

§ 15.1.4.1 Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

§ 15.1.4.2 The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The Program Manager will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.

§ 15.1.5 Claims for Additional Cost

If the Contractor wishes to make a Claim for an increase in the Contract Sum, notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.6 Claims for Additional Time

§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction.

§ 15.1.7 Waiver of Claims for Consequential Damages

The Contractor waives Claims against the Owner for consequential damages arising out of or relating to this Contract. This waiver includes

- .1 Reserved.
- .2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit, except anticipated profit arising directly from the Work.

This waiver is applicable, without limitation, to all consequential damages due to the Owner's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2 Initial Decision

§ 15.2.1 Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. The Program Manager will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of the request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished, or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Program Manager, if the Program Manager is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 15.2.6 Either party may file for mediation of an initial decision within 30 days of the date the Initial Decision is executed, subject to the terms of Section 15.2.6.1.

§ 15.2.6.1 If a party fails to file for mediation within 30 days after the execution of the Initial Decision, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 15.3 Mediation

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 15.3.3 Either party may, within 30 days from the date that mediation has been concluded without or without resolution of the dispute demand in writing for binding dispute resolution. If a party fails to file for binding dispute resolution within 30 days after the conclusion of mediation, then both parties waive their rights to binding dispute resolution proceedings with respect to the initial decision.

§ 15.3.4 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in Cobb County, Georgia, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 15.4 Arbitration

§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. The Arbitration shall be conducted in the place where the Project is located, unless another location is mutually agreed upon. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

§ 15.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made more than 30 days after the conclusion of mediation. For statute of

limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

§ 15.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 15.4.3 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement, shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

§ 15.4.4 Consolidation or Joinder

§ 15.4.4.1 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 15.4.4.2 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as those of the Owner and Contractor under this Agreement.

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PAGE 1

Depot Park – Phase 8
2822 Cherokee Street
Kennesaw, GA 30144

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City of Kennesaw, GA
2529 J.O. Stephenson Avenue
Kennesaw, GA 30144

THE ARCHITECT:PROGRAM MANAGER:

...

Croy Engineering, LLC
200 Cobb Parkway N
Building 400, Suite 413
Marietta, GA 30062

...

4 ARCHITECTPROGRAM MANAGER

PAGE 3

3.18.1, 9.6.8, 9.10.2, ~~10.3.3~~

PAGE 4

3.2.4, 6.1.1, 6.3, 7.3.9, 9.3.3, 9.10.4, ~~10.3.3, 11.3, 11.3.2, 11.3, 14.2.4, 15.1.7~~, 15.4

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3.2.4, 3.18, 8.3.3, 9.5.1, 9.6.7, 10.2.5, ~~10.3.3, 11.3, 11.3.2, 11.3, 14.2.4, 15.1.7~~

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3.4.1, 3.11, 3.15, 4.2.2, 4.2.9, 8.2, 9.4.2, 9.8, 9.9.1, 9.10, 12.2, ~~14.1.2, 15.1.2~~

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2.3.2, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 9.6.4, 10.2.2, 13.1, 13.3, 13.4.1, 13.4.2, ~~13.5, 14.1.1, 14.2.1.3, 15.2.8, 15.4.2, 15.4.3~~

PAGE 5

2.5, 3.2.4, 3.7.3, 3.8.2, 3.15.2, 5.4.2, 6.1.1, 6.2.3, 7.3.3.3, 7.3.4, 7.3.8, 7.3.9, 9.10.2, 10.3.2, ~~10.3.6,~~ 11.2, 12.1.2, 12.2.1, 12.2.4, 13.4, 14

...

3.2.4, 3.18, 6.1.1, 8.3.3, 9.5.1, 9.6.7, ~~10.3.3, 11.3.2,~~ 11.3, 14.2.4, 15.1.7

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3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6, 10.2, ~~10.3.3,~~ 11.3, 14.1, 14.2.1.1

PAGE 6

9.5.1.3, **9.7**, 9.10.2, ~~13.5,~~ 14.1.1.3, 14.2.1.2

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3.17, **3.18**, 9.6.8, 9.10.2, ~~10.3.3,~~ 11.3

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2.1.2, **2.2**, 2.3, 3.2.2, 3.12.10.1, 6.1.3, 6.1.4, 6.2.5, 9.6.1, 9.9.2, 9.10.3, ~~10.3.3,~~ 11.2, 13.4.1, 13.4.2, 14.1.1.4, ~~14.1.4,~~ 15.1.4

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13.5

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1.5, 2.3.2, 3.2.3, 3.2.4, 3.6, 3.7, 3.12.10, 3.13, 9.6.4, 9.9.1, 10.2.2, 13.1, 13.3.1, 13.4.2, ~~13.5,~~ 14, 15.2.8, 15.4

...

3.2.2, 3.5, 3.12.10, 3.12.10.1, 3.17, 3.18.1, 4.2.6, 4.2.7, 6.2.2, 9.4.2, 9.6.4, 9.6.7, 9.6.8, 10.2.5, ~~10.3.3,~~ 11.3, 12.2.5, 13.3.1

PAGE 7

11.1.4, ~~11.2.3~~

...

2.1.2, **2.2**, 2.3, 3.2.2, 3.12.10, 6.1.3, 6.1.4, 6.2.5, 9.3.2, 9.6.1, 9.6.4, 9.9.2, 9.10.3, ~~10.3.3,~~ 11.2, 13.4.1, 13.4.2, 14.1.1.4, ~~14.1.4,~~ 15.1.4

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9.5.1.3, **9.7**, 9.10.2, ~~13.5,~~ 14.1.1.3, 14.2.1.2

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The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the ~~Architect~~ Program Manager. Unless specifically enumerated in the Agreement, the Contract Documents ~~do not~~ include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding or proposal requirements.

...

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the ~~Architect's~~ Program Manager's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the ~~Architect~~ Program Manager or the ~~Architect's~~ Program Manager's consultants, or (4) between any persons or entities other than the Owner and the Contractor. The ~~Architect~~ Program Manager shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the ~~Architect's~~ Program Manager's duties.

...

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the ~~Architect~~ Program Manager and the ~~Architect's~~ Program Manager's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.5.1 The ~~Architect~~ Program Manager and the ~~Architect's~~ Program Manager's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the ~~Architect's or Architect's~~ Program Manager's or Program Manager's consultants' reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner, ~~Architect~~ Program Manager, and the ~~Architect's~~ Program Manager's consultants.

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as

otherwise provided in Section 4.2.1, the Architect-Program Manager does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

...

§ 2.2.2 Following commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract only if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due; or (3) a change in the Work materially changes the Contract Sum. If the Owner fails to provide such evidence, as required, within fourteen days of the Contractor's request, the Contractor may immediately stop the Work and, in that event, shall notify the Owner that the Work has stopped. However, if the request is made because a change in the Work materially changes the Contract Sum under (3) above, the Contractor may immediately stop only that portion of the Work affected by the change until reasonable evidence is provided. If the Work is stopped under this Section 2.2.2, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided in the Contract Documents appropriately.

PAGE 13

§ 2.3.3 If the employment of the Architect-Program Manager terminates, the Owner shall employ a successor to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect-Program Manager.

§ 2.3.4 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall not be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 2.3.4.1 The Owner and/or operators of private or public utilities shall have access to such utility at all times, for the installation, maintenance, adjustment, repair and operation of said utility. No extra compensation will be allowed because of the delay or interference caused by such work.

§ 2.3.4.2 In preparing the plan drawings there has not been an all-inclusive search for identifying existing underground utilities. Therefore, any information pertaining to existing utilities is provided only for preliminary purposes and implies no guarantee as to accuracy or completeness. Prior to blasting or excavation, the Contractor is responsible for contacting all utility owners in the area. Specifically, the Contractor shall contact the "one-call notification center" SEVENTY-TWO (72) hours in advance of blasting or excavation as required by Georgia Law.

§ 2.3.4.3 Wherever existing utilities are encountered which conflict in actual position and location with the proposed work, the Contractor shall promptly notify the Program Manager for resolution of the conflict.

§ 2.3.4.4 Temporary supports, beams or bridging for utilities shall be left in place during backfill operations unless otherwise directed by the Program Manager.

§ 2.3.4.5 All costs in connection with supporting, protecting, relocating, removal, repair of damage, restoration, and other work on affected existing utilities and other existing underground structures whether or not they are shown on the plans, not borne by the Owner or owners of the utilities, shall be borne by the Contractor. No separate payment will be made for any work performed as herein above specified unless otherwise stated in the proposal as a separate payment item. All costs in connection therewith shall be included in the Contract price for the item to which the work pertains.

§ 2.3.4.6 The Contractor shall be solely and directly responsible to the Owner and/or other operator of such utility properties for any damage, injury, expense, loss, inconvenience or delay, or for any suits, actions, claims of any character brought on account of any injuries or damages which may result from the carrying out of the work.

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the ~~Architect~~ Program Manager and the ~~Architect~~ Program Manager may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the ~~Architect's~~ Program Manager's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the ~~Architect~~ Program Manager, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

...

§ 3.1.3 The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the ~~Architect~~ Program Manager in the ~~Architect's~~ Program Manager's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

...

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the ~~Architect~~ Program Manager any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the ~~Architect~~ Program Manager may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the ~~Architect~~ Program Manager any nonconformity discovered by or made known to the Contractor as a request for information in such form as the ~~Architect~~ Program Manager may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the ~~Architect~~ Program Manager issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or ~~Architect~~ Program Manager for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

PAGE 15

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner and ~~Architect~~ Program Manager.

and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect-Program Manager shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect-Program Manager objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

...

§ 3.4.2 Except in the case of minor changes in the Work approved by the Architect-Program Manager in accordance with Section 3.12.8 or ordered by the Architect-Program Manager in accordance with Section 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect-Program Manager and in accordance with a Change Order or Construction Change Directive.

...

§ 3.5.1 The Contractor warrants to the Owner and Architect-Program Manager that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect-Program Manager, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

PAGE 16

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect-Program Manager before conditions are disturbed and in no event later than 14 days after first observance of the conditions. The Architect-Program Manager will promptly investigate such conditions and, if the Architect-Program Manager determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect-Program Manager determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect-Program Manager shall promptly notify the Owner and Contractor, stating the reasons. If either party disputes the Architect's-Program Manager's determination or recommendation, that party may submit a Claim as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect-Program Manager. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

PAGE 17

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect-Program Manager of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Architect-Program Manager may notify the Contractor, stating whether the Owner or the Architect-Program Manager (1) has reasonable objection to the proposed superintendent or (2) requires additional time for review. Failure of the Architect-Program Manager to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or ~~Architect~~ Program Manager has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

...

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and ~~Architect's~~ Program Manager's information a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule ~~shall~~ may be revised at appropriate intervals as required by the conditions of the Work and ~~Project~~ Project by submission of a Change Order by the Contractor.

§ 3.10.2 The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule for the ~~Architect's~~ Program Manager's approval. The ~~Architect's~~ Program Manager's approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the ~~Architect~~ Program Manager reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, or fails to provide submittals in accordance with the approved submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and ~~Architect~~ Program Manager.

...

The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the ~~Architect~~ Program Manager and Owner, and delivered to the ~~Architect~~ Program Manager for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

...

§ 3.12.4 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the ~~Architect~~ Program Manager is subject to the limitations of Section 4.2.7. Informational submittals upon which the ~~Architect~~ Program Manager is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the ~~Architect~~ Program Manager without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve, and submit to the ~~Architect~~ Program Manager, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the submittal schedule approved by the ~~Architect~~ Program Manager or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of Separate Contractors.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and ~~Architect~~ Program Manager that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples, or similar submittals, until the respective submittal has been approved by the ~~Architect~~Program Manager.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the ~~Architect's~~Program Manager's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the ~~Architect~~Program Manager of such deviation at the time of submittal and (1) the ~~Architect~~Program Manager has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the ~~Architect's~~Program Manager's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the ~~Architect~~Program Manager on previous submittals. In the absence of such notice, the ~~Architect's~~Program Manager's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of ~~architecture~~Program Managerure or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures. The Contractor shall not be required to provide professional services in violation of applicable law.

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the ~~Architect~~Program Manager will specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the ~~Architect~~Program Manager. The Owner and the ~~Architect~~Program Manager shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and ~~Architect~~Program Manager have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the ~~Architect~~Program Manager will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

§ 3.12.10.2 If the Contract Documents require the Contractor's design professional to certify that the Work has been performed in accordance with the design criteria, the Contractor shall furnish such certifications to the ~~Architect~~Program Manager at the time and in the form specified by the ~~Architect~~Program Manager.

PAGE 19

The Contractor shall provide the Owner and ~~Architect~~Program Manager with access to the Work in preparation and progress wherever located.

...

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and ~~Architect~~Program Manager harmless from loss on account thereof, including but not limited to attorney fees and costs of litigation, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications, or other documents prepared by the Owner or ~~Architect~~Program Manager. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the ~~Architect~~Program Manager.

...

§ 3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, ~~Architect, Architect's Program Manager, Program Manager's~~ consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, ~~fees and costs of litigation~~, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

PAGE 20

~~ARTICLE 4 — ARCHITECT~~

~~ARTICLE 4~~ PROGRAM MANAGER

§ 4.1.1 The ~~Architect-Program Manager~~ is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement.

§ 4.1.2 Duties, responsibilities, and limitations of authority of the ~~Architect-Program Manager~~ as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner, Contractor, and ~~Architect-Program Manager~~. Consent shall not be unreasonably withheld.

...

§ 4.2.1 The ~~Architect-Program Manager~~ will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the ~~Architect-Program Manager~~ issues the final Certificate for Payment. The ~~Architect-Program Manager~~ will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 The ~~Architect-Program Manager~~ will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the ~~Architect-Program Manager~~ will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The ~~Architect-Program Manager~~ will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

§ 4.2.3 On the basis of the site visits, the ~~Architect-Program Manager~~ will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The ~~Architect-Program Manager~~ will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The ~~Architect-Program Manager~~ will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

...

The Owner and Contractor shall include the ~~Architect-Program Manager~~ in all communications that relate to or affect the ~~Architect's-Program Manager's~~ services or professional responsibilities. The Owner shall promptly notify the ~~Architect-Program Manager~~ of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the ~~Architect's-Program Manager's~~ consultants shall be through the ~~Architect-Program Manager~~. Communications by and with Subcontractors and suppliers shall be

through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

§ 4.2.5 Based on the Architect's Program Manager's evaluations of the Contractor's Applications for Payment, the Architect Program Manager will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Architect Program Manager has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect Program Manager considers it necessary or advisable, the Architect Program Manager will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect Program Manager nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect Program Manager to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect Program Manager will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's Program Manager's action will be taken in accordance with the submittal schedule approved by the Architect Program Manager or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's Program Manager's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's Program Manager's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Architect's Program Manager's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The Architect's Program Manager's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Architect Program Manager will prepare Change Orders and Construction Change Directives, and may order minor changes in the Work as provided in Section 7.4. The Architect Program Manager will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect Program Manager will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Architect Program Manager agree, the Architect Program Manager will provide one or more Project representatives to assist in carrying out the Architect's Program Manager's responsibilities at the site. The Owner shall notify the Contractor of any change in the duties, responsibilities and limitations of authority of the Project representatives.

§ 4.2.11 The Architect Program Manager will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's Program Manager's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.12 Interpretations and decisions of the Architect Program Manager will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect Program Manager will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either, and will not be liable for results of interpretations or decisions rendered in good faith.

§ 4.2.13 The Architect's Program Manager's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

§ 4.2.14 The Architect-Program Manager will review and respond to requests for information about the Contract Documents. The Architect's Program Manager's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect-Program Manager will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

PAGE 22

§ 5.2.1 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect-Program Manager of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Architect-Program Manager may notify the Contractor whether the Owner or the Architect-Program Manager (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Architect-Program Manager to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect-Program Manager has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner or Architect-Program Manager has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect-Program Manager has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected if the Owner or Architect-Program Manager makes reasonable objection to such substitution.

...

By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Owner and Architect-Program Manager. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect-Program Manager under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

PAGE 23

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation ~~shall~~ may be equitably adjusted for increases in cost resulting from the ~~suspension-suspension by~~ submission of a Change Order by the Contractor.

§ 5.4.3 Upon assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the

Owner shall ~~nevertheless~~ not remain legally responsible for all of the successor contractor's obligations under the subcontract.

...

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the ~~Architect~~ Program Manager of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the ~~Architect~~ Program Manager of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not apparent.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a Separate Contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner ~~shall~~ may be responsible to the Contractor for costs the Contractor incurs because of a Separate Contractor's delays, improperly timed activities, damage to the Work or defective ~~construction~~ construction, if so determined after submission of a Change Order by the Contractor.

PAGE 24

If a dispute arises among the Contractor, Separate Contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the ~~Architect~~ Program Manager will allocate the cost among those responsible.

...

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor, and ~~Architect~~ Program Manager. A Construction Change Directive requires agreement by the Owner and ~~Architect~~ Program Manager and may or may not be agreed to by the Contractor. An order for a minor change in the Work may be issued by the ~~Architect~~ Program Manager alone.

...

§ 7.2.1 A Change Order is a written instrument prepared by the ~~Architect~~ Program Manager and signed by the Owner, Contractor, and ~~Architect~~ Program Manager stating their agreement upon all of the following:

...

§ 7.3.1 A Construction Change Directive is a written order prepared by the ~~Architect~~ Program Manager and signed by the Owner and ~~Architect~~ Program Manager, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

...

§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the ~~Architect~~ Program Manager shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the ~~Architect~~ Program Manager may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

- .1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Architect-Program Manager;

PAGE 25

§ 7.3.6 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect-Program Manager of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

...

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect-Program Manager. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect-Program Manager will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect-Program Manager determines, in the Architect's Program Manager's professional judgment, to be reasonably justified. The Architect's Program Manager's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect-Program Manager concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect-Program Manager will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

...

The Architect-Program Manager may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's Program Manager's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Architect-Program Manager and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's Program Manager's order for a minor change without prior notice to the Architect Program Manager that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

...

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect-Program Manager in accordance with Section 9.8.

PAGE 26

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, commence the Work prior to the effective date of insurance required to be furnished by the Contractor and Owner-Contractor.

...

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect-Program Manager, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that the

Contractor asserts, and the ~~Architect-Program Manager~~ determines, justify delay, then the Contract Time shall be extended for such reasonable time as the ~~Architect-Program Manager~~ may determine.

...

§ 9.1.2 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices ~~shall be equitably adjusted~~ may be equitably adjusted, if so determined after the submission of a Change Order by the Contractor.

...

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the ~~Architect-Program Manager~~ before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the ~~Architect-Program Manager~~. This schedule, unless objected to by the ~~Architect-Program Manager~~, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the ~~Architect-Program Manager~~ and supported by such data to substantiate its accuracy as the ~~Architect-Program Manager~~ may require, and unless objected to by the ~~Architect-Program Manager~~, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

...

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the ~~Architect-Program Manager~~ an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or ~~Architect-Program Manager~~ require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect retainage if provided for in the Contract Documents.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the ~~Architect-Program Manager~~, but not yet included in Change Orders.

PAGE 27

§ 9.4.1 The ~~Architect-Program Manager~~ will, within seven days after receipt of the Contractor's Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the ~~Architect-Program Manager~~ determines is properly due, and notify the Contractor and Owner of the ~~Architect's-Program Manager's~~ reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the ~~Architect's-Program Manager's~~ reason for withholding certification in whole as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the ~~Architect-Program Manager~~ to the Owner, based on the ~~Architect's-Program Manager's~~ evaluation of the Work and the data in the Application for Payment, that, to the best of the ~~Architect's-Program Manager's~~ knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the ~~Architect-Program Manager~~. However, the issuance of a Certificate for Payment will not be a representation that the ~~Architect-Program Manager~~ has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

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§ 9.5.1 The Architect-Program Manager may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's-Program Manager's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect-Program Manager is unable to certify payment in the amount of the Application, the Architect-Program Manager will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect-Program Manager cannot agree on a revised amount, the Architect-Program Manager will promptly issue a Certificate for Payment for the amount for which the Architect-Program Manager is able to make such representations to the Owner. The Architect-Program Manager may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's-Program Manager's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

PAGE 28

§ 9.5.2 When either party disputes the Architect's-Program Manager's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, that party may submit a Claim in accordance with Article 15.

...

§ 9.5.4 If the Architect-Program Manager withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect-Program Manager and the Contractor shall reflect such payment on its next Application for Payment.

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§ 9.6.1 After the Architect-Program Manager has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect-Program Manager.

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§ 9.6.3 The Architect-Program Manager will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect-Program Manager and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. Neither the Owner nor Architect-Program Manager shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.

PAGE 29

If the Architect-Program Manager does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents, the amount certified by the Architect-Program Manager or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' notice to the Owner and Architect-Program Manager, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

...

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect-Program Manager a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's list, the Architect-Program Manager will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's-Program Manager's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect-Program Manager. In such case, the Contractor shall then submit a request for another inspection by the Architect-Program Manager to determine Substantial Completion.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect-Program Manager will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of ~~the Work or designated portion thereof~~ all Work unless otherwise provided in the Certificate of Substantial Completion.

...

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect-Program Manager as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect-Program Manager.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor, and Architect-Program Manager shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

PAGE 30

§ 9.10.1 Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect-Program Manager will promptly make such inspection. When the Architect-Program Manager finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect-Program Manager will promptly issue a final Certificate for Payment stating that to the best of the Architect's-Program Manager's knowledge, information and belief, and on the basis of the Architect's-Program Manager's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's-Program Manager's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect-Program Manager (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6) if required by the Owner, other data

establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the ~~Architect~~ Program Manager so confirms, the Owner shall, upon application by the Contractor and certification by the ~~Architect~~ Program Manager, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the ~~Architect~~ Program Manager prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

§ 9.10.4 The making of final payment shall not constitute a waiver of Claims by the ~~Owner except those arising from~~
~~.1 — liens, Claims, security interests, or encumbrances arising out of the Contract and unsettled;~~
~~.2 — failure of the Work to comply with the requirements of the Contract Documents;~~
~~.3 — terms of special warranties required by the Contract Documents; or~~
~~.4 — audits performed by the Owner, if permitted by the Contract Documents, after final payment.~~ Owner.

PAGE 31

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or ~~Architect~~ Program Manager or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and ~~Architect~~ Program Manager.

...

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter. This provision shall not relieve the Contractor of other notice requirements provided by law.

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§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and ~~Architect~~ Program Manager of the condition.

§ 10.3.2 Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect-Program Manager the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect-Program Manager will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect-Program Manager has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect-Program Manager have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall ~~may~~ be extended appropriately and the Contract Sum shall ~~may~~ be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up-start-up, if approved after submission of a Change Order by the Contractor.

§ 10.3.3 ~~To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity.~~ Reserved.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site ~~unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.~~ site.

PAGE 32

§ 10.3.6 ~~If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall reimburse the Contractor for all cost and expense thereby incurred.~~ Reserved.

...

§ 11.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner, Architect, and Architect's Program Manager, and Program Manager's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.

...

§ 11.2.1 ~~The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located.~~ Reserved.

§ 11.2.2 ~~Failure to Purchase Required Property Insurance. If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform the Contractor in writing prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the~~

event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto. Reserved.

§ 11.2.3 Notice of Cancellation or Expiration of Owner's Required Property Insurance. Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance. Reserved.

§ 11.3 Waivers of Subrogation Reserved.

§ 11.3.1 The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Architect and Architect's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property. Reserved.

§ 11.3.2 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance. Reserved.

PAGE 33

The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, due to fire or other causes of loss. The Owner waives all rights of action against the Contractor and Architect for loss of use of the Owner's property, due to fire or other hazards however caused.

...

§ 11.5.1 A loss insured under the property insurance required by the Agreement shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.5.2. The Owner shall pay the Architect-Program Manager and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements the Architect-Program Manager and Contractor shall make payments to their consultants and Subcontractors in similar manner.

...

§ 12.1.1 If a portion of the Work is covered contrary to the ~~Architect's Program Manager's~~ request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the ~~Architect, Program Manager,~~ be uncovered for the ~~Architect's Program Manager's~~ examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the ~~Architect Program Manager~~ has not specifically requested to examine prior to its being covered, the ~~Architect Program Manager~~ may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

...

The Contractor shall promptly correct Work rejected by the ~~Architect Program Manager~~ or failing to conform to the requirements of the Contract Documents, ~~discovered before Substantial Completion~~ and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the ~~Architect's Program Manager's~~ services and expenses made necessary thereby, shall be at the Contractor's expense.

...

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor ~~a~~ an ~~express~~ written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or ~~Architect, Program Manager,~~ the Owner may correct it in accordance with Section 2.5.

§ 12.2.2.2 The one-year period for correction of Work shall ~~be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work~~ begin on the date the Owner issues the final payment to Contractor.

PAGE 34

The Contract shall be governed by the law of the ~~place where the Project is located, State of Georgia,~~ excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern ~~Section 15.4.~~ Section 15.4. For any claim not covered in Article 15 of this Agreement, jurisdiction and venue for any claim arising from the Agreement shall lie exclusively in the Superior Court of Cobb County, Georgia.

...

§ 13.2.1 ~~The Owner and Contractor respectively bind~~ Contractor binds themselves, their partners, successors, assigns, and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, ~~neither party to the Contract shall~~ The Contractor shall not assign the Contract as a whole or in part without written consent of the ~~other.~~ Owner. If Contractor attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

PAGE 35

§ 13.3.2 No action or failure to act by the Owner, ~~Architect, Program Manager,~~ or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed upon in writing.

...

§ 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Architect-Program Manager timely notice of when and where tests and inspections are to be made so that the Architect-Program Manager may be present for such procedures. ~~The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.~~

§ 13.4.2 If the Architect-Program Manager, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Architect-Program Manager will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect-Program Manager of when and where tests and inspections are to be made so that the Architect-Program Manager may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense.

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Architect's-Program Manager's services and expenses, shall be at the Contractor's expense.

§ 13.4.4 Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect-Program Manager.

§ 13.4.5 If the Architect-Program Manager is to observe tests, inspections, or approvals required by the Contract Documents, the Architect-Program Manager will do so promptly and, where practicable, at the normal place of testing.

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§ 13.5 Interest

~~Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate the parties agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.~~

§ 13.5 Reserved.

§ 13.6 Interest of federal, state or local officials. No Federal, State or Local official shall be admitted to any share or part of this Agreement or to any benefit that may arise therefrom, but this provision shall not be construed to extend to this Agreement if made with a corporation for its general benefit.

§ 13.7 Other prohibited interests. No official of the Owner who is authorized in such capacity and on behalf of the Owner to negotiate, make, accept, or approve or to take part in negotiating, making, accepting, or approving any architectural, engineering, inspection, construction or material supply contract or any subcontract in connection with the construction of the Project, shall become directly or indirectly interested personally in this Agreement or in any part hereof. No officer, employee, architect, attorney, engineer, or inspector of or for the Owner who is authorized in such capacity and on behalf of the Owner to exercise any legislative, executive, supervisory or other similar functions in connection with the construction of the Project, shall become directly or indirectly interested personally in this Agreement or in any part thereof, any material supply subcontract, insurance contract, or any other contract pertaining to the Project.

§ 13.8 Time for completion and liquidated damages. It is hereby understood and mutually agreed, by and between the Contractor and the Owner, that the date of beginning and the time for completion as specified in the Contract Documents of the work to be done hereunder are ESSENTIAL CONDITIONS of this Contract; and it is further mutually understood and agreed that the work embraced in this Contract shall be commenced on a date to be specified in the "NOTICE TO PROCEED." The Contractor agrees that said work shall be prosecuted regularly, diligently, and uninterruptedly at such rate of progress as will ensure full completion thereof within the time specified. It is expressly understood and agreed, by and between the Contractor and the Owner, that the time for the completion of the work described herein is a reasonable time for the completion of the same, taking into consideration the average climatic range and usual industrial conditions prevailing in this locality. If the Contractor shall neglect, fail or refuse to complete the work within the time herein specified, or any proper extension thereof granted by the Owner, then the Contractor does hereby agree, as a part consideration for the awarding of this Contract, to pay to the Owner the amount specified in the Contract, not as a penalty but as liquidated damages for such breach of Contract as hereinafter set forth, for each and every calendar day that the Contractor shall be in default after the time stipulated in the Contract for completing the work. The said amount is fixed and agreed upon by and between the Contractor and the Owner because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages the Owner would in such event sustain, and said amount is agreed to be the amount of damages which the Owner would sustain and said amount shall be retained from time to time by the Owner from current periodical estimates. It is further agreed that time is of the essence of each and every portion of this Contract and of the specifications wherein a definite and certain length of time is fixed for the performance of any act whatsoever; and where, under the Contract, an additional time is allowed for the completion of any work, the new time limit fixed by such extension shall be of the essence of this Contract. Provided, that the Contractor shall not be charged with liquidated damages or any excess cost when the Owner determines that the Contractor is without fault and the Contractor's reasons for the time extension are acceptable to the Owner; provided, further, that the Contractor shall not be charged with liquidated damages or any excess cost when the delay in completion of the work is due:

- _____ (a) To any preference, priority or allocation order duly issued by the Government;
- _____ (b) To unforeseeable cause beyond the control and without the fault or negligence of the Contractor, including but not restricted to, acts of God, or of the public enemy, acts of the Owner, acts of another Contractor in the performance of a Contract with the Owner, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and severe weather; and
- _____ (c) To any delays of Subcontractors or suppliers occasioned by any of the causes specified in subsections (a) and (b) of this article.

Provided, further, that the Contractor shall, within ten (10) calendar days from the beginning of such delay, unless the Owner shall grant a further period of time prior to the date of final settlement of the Contract, notify the Owner, in writing, of the causes of the delay, who shall ascertain the facts and extent of the delay, and notify the Contractor within a reasonable time of its decision in this matter.

§13.9 Independent contractor status. The Parties intend that the Contractor be engaged as an independent Contractor of the Owner. Nothing contained in this Agreement will be construed to create the relationship of employer and employee, principal and agent, partnership or joint venture, or any other fiduciary relationship. The Contractor may not act as agent for, or on behalf of, the Owner, or to represent the Owner, or bind the Owner in any manner. The Contractor will not be entitled to worker's compensation, retirement, insurance or other benefits afforded to employees of the Owner.

§13.10 E-Verify compliance. The Contractor and any Subcontractors thereof, are required and hereby agree to use a federal immigration verification system to determine the work eligibility status of all employees performing services under this Agreement and shall execute Affidavits to that effect on the forms provided by Owner. A federal immigration system means the electronic verification of the work authorization program authorized by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. 1324a, known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of an employee.

PAGE 37

- .3 Because the ~~Architect-Program Manager~~ has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or

...

§ 14.1.2 ~~The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.~~Reserved.

§ 14.1.3 If one of the reasons described in Section 14.1.1 ~~or 14.1.2~~ exists, the Contractor may, upon seven days' notice to the Owner and ~~Architect-Program Manager~~, terminate the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead and profit on Work ~~not executed, and costs incurred by reason executed at the time of such termination.~~

§ 14.1.4 ~~If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.~~Reserved.

...

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, and upon certification by the ~~Architect-Program Manager~~ that sufficient cause exists to justify such action, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

...

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further ~~payment-payment, if any,~~ until the Work is finished.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the ~~Architect's-Program Manager's~~ services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

...

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under ~~Section 14.3.1. Adjustment of the Contract Sum shall include profit.~~ Section 14.3.1, upon approval of a Change Order submitted by the Contractor. No adjustment shall be made to the extent

PAGE 38

§ 14.4.3 In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and ~~the termination fee, if any, set forth in the Agreement.~~Subcontracts.

...

§ 15.1.3.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, Program Manager, if the Architect Program Manager is not serving as the Initial Decision Maker. Claims by either party under this Section 15.1.3.1 shall be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

...

§ 15.1.4.2 The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The Architect Program Manager will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.

PAGE 39

The Contractor and Owner ~~waive Claims against each other~~ waives Claims against the Owner for consequential damages arising out of or relating to this Contract. This ~~mutual~~ waiver includes

- .1 ~~damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and~~ Reserved.

...

This ~~mutual~~ waiver is applicable, without limitation, to all consequential damages due to ~~either party's~~ the Owner's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

...

§ 15.2.1 Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. The Architect Program Manager will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

PAGE 40

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, Program Manager, if the Architect Program Manager is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 15.2.6 Either party may file for mediation of an initial decision ~~at any time,~~ within 30 days of the date the Initial Decision is executed, subject to the terms of Section 15.2.6.1.

§ 15.2.6.1 ~~Either party may, within 30 days from the date of receipt of an initial decision, demand in writing that the other party file for mediation. If such a demand is made and the party receiving the demand fails to file for mediation within 30 days after receipt thereof, the execution of the Initial Decision, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.~~

...

§ 15.3.3 Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, ~~dispute~~ demand in writing that the other party file for binding dispute resolution. If such a demand is made and the party receiving the demand fails to file for binding dispute resolution within ~~60 days after receipt thereof~~, 30 days after the conclusion of mediation, then both parties waive their rights to binding dispute resolution proceedings with respect to the initial decision.

§ 15.3.4 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in ~~the place where the Project is located~~, Cobb County, Georgia, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

...

§ 15.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made ~~after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations~~, more than 30 days after the conclusion of mediation. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, City of Kennesaw Georgia, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 10:03:49 ET on 05/25/2022 under Order No. 2114291118 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A201™ – 2017, General Conditions of the Contract for Construction, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)

Depot Park - Phase 8**Construction Manager at Risk (CMAR) for Pre-Construction and Construction Services Contract****Selection Committee Scoring Results**

Construction Managers	Firm Qualifications 35 Points Max.	References 20 Points Max.	Experience 35 Points Max.	Litigation Record 10 Points Max.	SUB TOTAL	Interview 20 Points Max.	GRAND TOTAL
Astra Group	26.83	18.50	26.67	8.17	80.17	Not Interviewed	80.17
Gay Const.	32.50	19.83	32.50	10.00	94.83	19.67	114.50
Hogan Const.	28.50	18.67	28.33	9.83	85.33	18.00	103.33

8020 Service/Construction Bids

etta Street, Powder Springs, Georgia 30127, prior to 12:00 noon EST, April 11, 2022. No proposals will be accepted after the 12:00 noon deadline. All communications related to submission of a proposal, including submission of questions, must be coordinated through Kelly Axt, City Clerk, at kaxt@cityofpowdersprings.org. The deadline for questions is 12:00 noon EST on Monday, April 4, 2022.

No bid or proposal may be withdrawn for a period of sixty (60) days after date of bid opening, unless otherwise specified in the bid documents. Powder Springs reserves the right to reject any and all bids, to waive informalities and technicalities, to reject portions of the bids, and to award contracts in a manner consistent with the City and laws governing the State of Georgia.

This solicitation and any addenda are available for download in PDF format on the City of Powder Springs website. www.cityofpowdersprings.org. 3:11,18,25-2022

MDJ-3149
GPN-05

PROPOSAL INVITATION

The City of Marietta/Board of Lights and Water will receive proposals from qualified firms at 205 Lawrence Street, Marietta, Georgia in accordance with Bidding documents for:

Property Lease - 156 Church Street Marietta, GA

Proposal Number RFP-22-47605. Proposals will be received by the Purchasing Division, 1st floor, City Hall, 205 Lawrence Street, Marietta, Georgia 30060 until 10:00 a.m. on Wednesday, April 6, 2022 at which time proposals will be publicly opened and read aloud. Late proposals will not be accepted.

Proposal documents may be reviewed and obtained at the Purchasing Division at 205 Lawrence Street, Marietta, Georgia 30060 or by email to dkil@marietta.gov with a reference to RFB-22-47605, Property Lease - 156 Church Street Marietta, GA.

Contract, if and when awarded, will be on the basis of information contained in the Proposal documents and other information as requested. Proposals must be valid for a period of ninety (90) days after bid opening. City of Marietta reserves the right to award the proposal on whatever basis is in the best interest of the City and to accept or reject any and all proposals and to waive technicalities and informalities in the proposals.

Purchasing Division
770-794-5696
City of Marietta/Board of
Lights and Water

8020 Service/Construction Bids

MDJ-3189
GPN-5
REQUEST FOR QUALIFICATIONS (RFQ)
DEPOT PARK - PHASE 8 CONSTRUCTION MANAGER AT RISK (CMAR) FOR PRE-CONSTRUCTION AND CONSTRUCTION SERVICES CONTRACT

The City of Kennesaw, Georgia (Owner) is seeking qualifications from Construction Managers at Risk (CMAR) for preconstruction and construction services for Phase 8 of Depot Park. The project site is located at 2822 Cherokee Street, Kennesaw, GA 30144. The principal items of this project include construction of an amphitheater (stage and site improvements), restroom building, and renovation of historic structures. The total project budget is \$5.7 million, inclusive of preconstruction, construction, FF&E, contingency, and other owner associated costs. The construction manager at risk will be evaluated and selected through a qualification-based selection process.

A full RFQ Package stating the full Response requirements can be obtained from the Kennesaw City Clerk's Office, upon request to James Friedrich, Deputy City Clerk, via email at jfriedrich@kennesaw-ga.gov. Technical questions should be addressed to Zach Buffington at zbuffington@croveng.com. Only a Response submitted by a firm on record with the City Clerk's Office as having received the RFQ Package from the Issuing Office will be opened.

Responses must be submitted in a sealed envelope bearing on the outside the name of the firm, the firm's address, and the name of the project for which the Response is submitted. If forwarded by mail, the sealed envelope containing the Response must be enclosed in another envelope addressed as specified above.

Responses will be received by the City of Kennesaw, Georgia at the office of the City Clerk located in Kennesaw City Hall at 2529 J.O. Stephenson Avenue, Kennesaw, Georgia, 30144 until: Friday, April 15, 2022, 3:00 pm Local Time. Responses will be opened at that time, and the names of the responding firms will be read aloud. The Owner reserves the right to reject any or all responses, to waive formalities, re-advertise and to reduce or add to the contract from time to time.

City of Kennesaw, Georgia
2529 J.O. Stephenson Avenue
Kennesaw, Georgia, 30144
3:18; 4:1-2022

MDJ-3201
GPN-5

8020 Service/Construction Bids

and to waive technicalities and informalities in the proposals.
City of Marietta /
Board of Lights and Water
Purchasing Division
sdrewry@marietta-ga.gov
3:18,25-2022

8025 Debtors and Creditors

MDJ3136
gpn07

NOTICE TO DEBTORS AND CREDITORS
STATE OF GEORGIA
COUNTY OF COBB

All creditors of the estate of Catherine Bates Coulmas, late of Cobb County, deceased, are hereby notified to render in their demands to the undersigned according to law, and all persons indebted to said estate are required to make immediate payment.

This 10th day of March, 2022
Margaret St. Philip
P.O. Box 878
Cartersville, GA 30120
3:18,25;4:1-8

MDJ2490
gpn07

NOTICE TO DEBTORS AND CREDITORS
STATE OF GEORGIA
COUNTY OF COBB

All creditors of the estate of Carol Ann Castro, late of Cobb County, deceased, are hereby notified to render in their demands to the undersigned according to law, and all persons indebted to said estate are required to make immediate payment.

This 14th day of January, 2022.
Executors Thomas D Bratfin
4417 Waterbury Lane
Marietta, GA 30062
2:25;3:4,11,18-2022

MDJ2769
gpn07

Notice to Debtors and Creditors

All creditors of the estate of Bunzie Joann Simpson late of Cobb County, deceased, are hereby notified to render in their demands to the undersigned according to law, and all persons indebted to said estate are required to make immediate payment.

This 23rd day of February, 2022
Name: Kenneth Mickel
Title: Administrator with Will Annexed
Address: 249 Villa Creek Parkway
Canton GA 30114
3:4,11,18,25

MDJ2770
gpn07

NOTICE TO DEBTORS AND CREDITORS

All creditors of the Estate of Cheryl

8025 Debtors and Creditors

MDJ-2637
GPN-7

Notice to Debtors and Creditors
All creditors of the estate of Lorraine Susan Scarbrough late of Cobb County, deceased, are hereby notified to render in their demands to the undersigned according to law, and all persons indebted to said estate are required to make immediate payment.

This 25th day of February, 2022
Name: Michael Ellis Scarbrough
Title: Executor
Address: c/o Mark D. Brandenburg,
4609 Wieuca Rd. NE, Atlanta, GA 30342
2:25; 3:4,11,18-2022

MDJ-2683
GPN-07

NOTICE TO DEBTORS AND CREDITORS

All creditors of the estate of Tena Hobby Smith late of Cobb County, deceased, are hereby notified to render in their demands to the undersigned according to law, and all persons indebted to said estate are required to make immediate payment.

This 21st day of February, 2022
Anthony Rouse Smith
Executor
1020 Lower Union Hill Road,
Canton, GA 30115
2:5;3:4,11,18-2022

MDJ-2715
GPN-07

NOTICE TO DEBTORS AND CREDITORS
STATE OF GEORGIA
COUNTY OF COBB

All creditors of the estate of KAREN DIANE BEMISS, deceased, late of Cobb County, are hereby notified to render in their demands to the undersigned according to law, and all persons indebted to said estate are required to make immediate payment.

This 25th day of February, 2022.
Donna Penn
Executor
3108 Ridge Hollow Drive
Plano, TX 75023
2:25;3:4,11,18-2022

MDJ-2716
GPN-07

NOTICE TO DEBTORS AND CREDITORS
STATE OF GEORGIA
COUNTY OF COBB

All creditors of the estate of Pravin Damodar Patel, late of Cobb County, deceased, are hereby notified to render in their demands to the undersigned according to law, and all persons indebted to said estate are required to make immediate payment.

This 8th day of February, 2022.
Gaurav Pravin Patel
Executor

8025 Debtors and Creditors

make immediate payment.
This 22nd day of February, 2022
Name: DAVID A. BROWN
Title: EXECUTOR
Address: 4375 BRIDGEHAVEN
DRIVE SE, SMYRNA, GA 30080
3:4,11,18,25-2022

MDJ-2765
GPN-7

All creditors of the estate of Walter P. Bodine, Jr. (A/K/A Walter Parker Bodine, Jr.), late of Cobb County, deceased, are hereby notified to render in their demands to the undersigned according to law, and all persons indebted to said estate are required to make immediate payment.

This 22nd day of February, 2022.
A. Diane Baker, Esq.,
Baker Law Group, LLC,
555 Sun Valley Drive, Suite N-4,
Roswell, GA 30076,
Attorney for Bryan Kent Bodine,
Executor of the Estate of
Walter P. Bodine, Jr. (A/K/A Walter Parker Bodine, Jr.).
3:4,11,18,25-2022

MDJ2768
gpn07

Notice to Debtors and Creditors
All creditors of the estate of Irmaord Overstreet late of Cobb County, deceased, are hereby notified to render in their demands to the undersigned according to law, and all persons indebted to said estate are required to make immediate payment.

This 4th day of March, 2022
Name: Gail P. Overstreet
Title: Executor
Address: 4592 Woodlawn Gates Lane,
Marietta, GA 30068
3:4,11,18,25

MDJ-2781
GPN-07

NOTICE TO DEBTORS AND CREDITORS
STATE OF GEORGIA
COUNTY OF COBB

All creditors of the estate of Julio Alcega Rodriguez, late of Cobb County, deceased, are hereby notified to render in their demands to the undersigned according to law, and all persons indebted to said estate are required to make immediate payment.

This 22nd day of February, 2022.
Kary L. Alicea Cancel
Executor
1300 Ridenour Blvd.,
Suite 100
Kennesaw, GA 30152
3:4,11,18,25-2022

MDJ-2790
GPN-7

NOTICE TO DEBTORS AND CREDITORS
STATE OF GEORGIA

8025 Debtors and Creditors

deceased, are hereby notified to render in their demands to the undersigned according to law, and all persons indebted to said estate are required to make immediate payment.
William Allen Prewett
Executor
2910 Mars Hill Church Road
Acworth, GA 30101
3:4,11,18,25-2022

MDJ-2843
GPN-07

NOTICE TO DEBTORS AND CREDITORS
COUNTY OF COBB

RE: Estate of Robert Edward Smith, Sr.
All creditors of the estate of Robert Edward Smith, Sr., late of Cobb County, deceased, are hereby notified to render in their demands to the undersigned according to law, and all persons indebted to said estate are required to make immediate payment.

Velma Sue Smith
Executor
5025 Maryland Drive, NW
Acworth, GA 30101
3:4,11,18,25-2022

MDJ-2845
GPN-07

NOTICE TO DEBTORS AND CREDITORS
COUNTY OF COBB

All creditors of the estate of HAROLD COLLUM, late of Cobb County, deceased, are hereby notified to render in their demands to the undersigned according to law, and all persons indebted to said estate are required to make immediate payment.

This 2nd day of February, 2022.
Jerry A. Landers, Jr.
Administrator of the Estate
of Harold Collum
166 Anderson Street
Ste 200
Marietta, GA 30060
3:4,11,18,25-2022

MDJ-2846
GPN-07

NOTICE TO DEBTORS AND CREDITORS
COUNTY OF COBB

All creditors of the estate of Charles E. Miller, late of Cobb County, deceased, are hereby notified to render in their demands to the undersigned according to law, and all persons indebted to said estate are required to make immediate payment.

This 21st day of February, 2022.
Louise Miller
Executor of the Estate of
Charles E. Miller
c/o Melissa P. Walker, Esq.
1418 Dresden Drive,
Suite 240

**STATE OF GEORGIA
IN THE INTEREST OF
MICHELL JOHANA FUNEZ,
MICHAEL JOEL FUNEZ, and
JEHOVANA NICOLE FUNEZ,
minor children.
ADOPTION FILE: 21 AD 0065-TB
NOTICE PURSUANT TO
O.C.G.A. 19-8-12(c)**

This notice is provided to Ermenes Perez, alleged biological father of Michell Funez and Michael Funez. You have been named as the alleged biological father of the above-referenced children.

Please note that an adoption has been filed in the Superior Court of Cherokee County over the minor children referenced above.

Please be advised that you will lose all rights to the children and will neither receive further notice nor be entitled to object to the adoption of the children unless, within thirty (30) days of receipt of this notice, you file:

(1) A Petition to Legitimate the children pursuant to Official Code of Georgia Section 19-7-22 as a separate civil action;

(2) Notice of the Filing of the Petition to Legitimate with the Superior Court of Cherokee County in the pending adoption; and

(3) Notice of the Filing of the Petition to Legitimate to Curtis Kleem, P.O. Box 6522, Dalton, Georgia 30722-6522. Please note that this Notice applies if you are the biological but not the legal father of the children. Please consult with an attorney about your legal rights in this regard.

Please note that if you take no action at this time, you run the risk of losing all rights to the minor children referenced above and the adoption will likely be granted. You should immediately consult an attorney who practices in the area of domestic relations and adoption law.

THIS 10TH DAY OF MARCH, 2022.

Kleem Law, LLC
By: /s/ Curtis Kleem
Curtis Kleem
Attorney for Petitioners
Post Office Box 6522
Dalton, Georgia 30722-6522
(706) 277-0606
Go. Bar No. 425030
3:18;25; 4:1-2022

MDJ-3132
GPN-1

**IN THE SUPERIOR COURT OF
CHEROKEE COUNTY
STATE OF GEORGIA
IN THE INTEREST OF
MICHELL JOHANA FUNEZ,
MICHAEL JOEL FUNEZ, and
JEHOVANA NICOLE FUNEZ,
minor children.**

**ADOPTION FILE: 21 AD 0065-TB
NOTICE PURSUANT TO
O.C.G.A. 19-8-10(c)**

This notice is provided to Felicitia Yohana Funez, biological and legal mother of the minor children above.

**IN THE SUPERIOR COURT
OF COBB COUNTY
STATE OF GEORGIA
DOUGLASVILLE - DOUGLAS COUNTY
WATER AND SEWER AUTHORITY,
a public body corporation of the
State of Georgia,
Petitioner,
v.
ALL THOSE TRACTS or parcels of
land lying and being in Land Lots 533
and 614 of the 18th District and 2nd
Section of Cobb County, Georgia,
which are necessary for certain sanitary
sewer easements, including
(1) a permanent easement consisting
of 0.47545 acres, and (2) two temporary
construction easements consisting
of 0.04077 acres, as more particularly
shown on the plat of survey prepared
by Terra Mark Professional Land Surveying,
said plat being attached
hereto, and
REAL TICORP THORNTON, LLC,
a South Carolina Limited Liability
Company, registered to do business in
the State of Georgia,
and,
CARLA JACKSON, Tax Commissioner
of Cobb County, Georgia,
and,
**ANY AND ALL PERSONS HAVING
OR CLAIMING ANY RIGHT OR INTEREST
IN AND TO SAID PARCELS
OF LAND.****

**CIVIL ACTION FILE NO. 22-1-1107-52
CONDEMNATION BY
DECLARATION OF TAKING
NOTICE OF PUBLICATION
BY ORDER OF THE COURT FOR
SERVICE BY PUBLICATION DATED
FEBRUARY 21, 2022 YOU ARE
HEREBY NOTIFIED THAT ON
FEBRUARY 18, 2022, PETITIONER
FILED SUIT AGAINST YOU FOR
CONDEMNATION OF LAND BY DECLARATION
OF TAKING.**

The said named persons and any and all other persons known and unknown claiming any right, title, power, interest, ownership, equity, claim or demand in and to the lands hereinafter described, and all occupants, tenants, lessees, licensees and all holders, owners and users of ways and easements in, across, over and under said land are hereby notified, under the provisions of the Official Code of Georgia Annotated §§ 32-3-4 through 32-3-19, providing for the exercise of the power of eminent domain by the State of Georgia, or any of its subdivisions, or by any county of such State, as follows:

That the above stated case, being a condemnation in rem against the property hereinafter described, was filed in said Court on the 18th day of February, 2022. That, in accordance with provisions of the aforesaid Official Code, a Declaration of Taking, duly authorized and properly executed as provided by the Official Code, has been made and filed in said case, declaring the necessity

**OF COBB COUNTY
STATE OF GEORGIA
CIVIL ACTION NO. 21-101493
CAMBRIDGE PRESERVE
HOMEOWNERS ASSOCIATION, INC.,
PLAINTIFF
VS.
JOHN R. HAGAN, DEFENDANT
TO: JOHN R. HAGAN,
2101 SOCEAN DRIVE
APT. 2001
HOLLYWOOD, FLORIDA 33019-2512
(LAST KNOWN ADDRESS)
NOTICE OF PUBLICATION**

BY Order for service by publication dated the 19th day of January, 2022. You are hereby notified that on the 25th day of February 2021, Cambridge Preserve Homeowners Association, Inc. filed suit against you for judicial foreclosure of the property located at 2356 Darlington Way, Marietta, Georgia 30064.

You are required to file with the Clerk of the Superior Court, and to serve upon Plaintiff's Attorney, Darrelyn S. Hughes Lueder, Larkin, & Hunter, LLC 5900 Windward Parkway, Suite 390, Alpharetta, GA 30005 an answer in writing within sixty (60) days of the date of publication.

Witness the Honorable Judge of said Court.
The 8th day of March, 2022.
CONNIE TAYLOR
Clerk of Superior Court
3:11,18,25;4:1-2022

MDJ-3253
GPN-14

**IN THE SUPERIOR COURT OF
COBB COUNTY
STATE OF GEORGIA**

**SSC Austell Operating Company LLC
d/b/a Anderson Mill Health and
Rehabilitation Center
Plaintiff,
v.
Terrell Bennett
Defendant.**

**Civil Action No. 21-1-7965-49
NOTICE OF SUMMONS
SERVICE BY PUBLICATION**

TO: Terrell Bennett, Defendant
Named Above:

You are hereby notified that the above-styled action seeking a monetary judgment was filed against you in said court on October 26, 2021, and that by reason of an order for service of summons by publication entered by the court on January 21, 2022, you are hereby commanded and required to file with the clerk of said court and serve upon SSC Austell OP, Co., plaintiff, whose address is c/o LTC Matters 971 Irls St., Manchester, NH 03102 an answer to the complaint within sixty (60) days of the date of the order for service by publication. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

Witness the Honorable Judge of said Court.
This the 14th day of March, 2022.
CONNIE TAYLOR

**IN THE SUPERIOR COURT OF
COBB COUNTY
STATE OF GEORGIA
CIVIL ACTION NO. 21-105414
LAKESIDE PRESERVE
HOMEOWNERS ASSOCIATION INC.,
PLAINTIFF
v.
JABARI KARIM SMITH,
DEFENDANT,
TO: JABARI KARIM SMITH,
4700 W. VANCE BOSSING SE
UNIT 5315, SUITE 300, GEORGIA 30080
(LAST KNOWN ADDRESS)
NOTICE OF PUBLICATION**

By order for service by publication dated the 17th day of March, 2021, you are hereby notified that on the 17th day of July, 2021, Lakeside Preserve Homeowners Association, Inc. filed suit against you for damages. You are required to file with the Clerk of Superior Court, and to serve upon the plaintiffs Attorney, Darrelyn S. Hughes, Lueder Larkin & Hunter LLC 5900 Windward Parkway, Suite 390, Alpharetta, GA 30005, an answer in writing within sixty (60) days of the date of the order of publication. Witness the Honorable Robert D. Leonard II, Judge of the Superior Court.

This 18th day of March, 2022.
CONNIE TAYLOR,
CLERK OF SUPERIOR COURT
4:1,8,15,22-2022

8020 Service/Construction Bids

MDJ-2999
GPN-05

Advertisement for Bids
Cobb County will receive sealed bids before 12:00 noon, April 14, 2022 at the Cobb County Purchasing Department 122 Waddell Street NE Marietta, Georgia 30060
No bids will be accepted after the 12:00 noon deadline
Sealed Bid SW1942
Request for Bids
Laura Lake Dam Rehab - Construction Access Road (Construction of approx. 2,600 linear feet of access road for Laura Lake Dam.)
Cobb County Water System

To access the full text for this solicitation, visit the Cobb County Purchasing Department Web Portal for Sealed Bids at www.bidnetdirect.com/georgia/cobb-county. The Cobb County Purchasing Department uses an e-procurement system for electronic solicitation through BidNets Georgia Purchasing Group. The solicitation, Instructions to Bidders, form of Bid, form of Contract, Drawings, Specifications, forms of the Bid Bond, Performance Bond, Payment Bond, other Contract Documents and addenda are available on BidNets Georgia Purchasing Group website. Users must register to access the documents. There is a no charge option available.

3:18; 4:1-2022

**MDJ-3189
GPN-5
REQUEST FOR QUALIFICATIONS
(RFQ)
DEPOT PARK - PHASE 8
CONSTRUCTION MANAGER AT
RISK (CMAR)
FOR PRE-CONSTRUCTION AND
CONSTRUCTION SERVICES
CONTRACT**

The City of Kennesaw, Georgia (Owner) is seeking qualifications from Construction Managers at Risk (CMAR) for preconstruction and construction services for Phase 8 of Depot Park. The project site is located at 2822 Cherokee Street, Kennesaw, GA 30144. The principal items of this project include construction of an amphitheater (stage and site improvements), restroom building, and renovation of historic structures. The total project budget is \$5.7 million, inclusive of pre-construction, construction, FF&E, contingency, and other owner associated costs. The construction manager at risk will be evaluated and selected through a qualification-based selection process.

A full RFQ Package stating the full Response requirements can be obtained from the Kennesaw City Clerk's Office, upon request to James Friedrich, Deputy City Clerk, via email at jfriedrich@kennesaw-ga.gov. Technical questions should be addressed to Zach Buffington at zbuffington@croveng.com. Only a Response submitted by a Firm on record with the City Clerk's Office as having received the RFQ Package from the Issuing Office will be opened. Responses must be submitted in a sealed envelope bearing on the outside the name of the Firm, the Firm's address, and the name of the Project for which the Response is submitted. If forwarded by mail, the sealed envelope containing the Response must be enclosed in another envelope addressed as specified above.

Responses will be received by the City of Kennesaw, Georgia at the office of the City Clerk located in Kennesaw City Hall at 2529 J.O. Stephenson Avenue, Kennesaw, Georgia, 30144 until: Friday, April 15, 2022, 3:00 pm Local Time. Responses will be opened at that time, and the names of the responding firms will be read aloud. The Owner reserves the right to reject any or all responses, to waive formalities, re-advertise and to reduce or add to the contract from time to time.

City of Kennesaw, Georgia
2529 J.O. Stephenson Avenue
Kennesaw, Georgia, 30144
3:18; 4:1-2022

MDJ-3201

**GPN-3
REQUEST FOR PROPOSALS
TRANSPORTATION
IMPROVEMENTS PROGRAM**

mitted bid may be withdrawn after the scheduled closing time or receipt of bids for a period of thirty (30) days. The Project consists of the following major elements:

Replace whole house flooring (foyers, and some bathrooms excluded) in 3 homes. ADA compliant bathroom partial renovation, and partial kitchen renovation in 1 home. Roof installation in one home, exterior painting in 2 homes, installation of a drain and culvert system in 1 home, replacement of deadwood & super structure in one home, water heater and complete HVAC replacement in 1 home.

Bid packages (plans and specifications) will be available for distribution on or after March 25th, 2022. To obtain a bid package, please contact Special Needs Cobb's Housing Manager Alexis Hall at alexis@specialneedscoobb.org. Only bidders on record as receiving an original bid package may submit bids. The project is being funded by Community Development Block Grant (CDBG) funds.

Professional Service firms, contractors and subcontractors, should be familiar with the requirements regarding conditions of employment, correct job classifications and minimum wage rates for all workers on this project. Professional Service firms, contractors and subcontractors must comply with all Federal, State, and local requirements. Minority and female firms are encouraged to participate in this Federal funded project. Procurement shall be in compliance with the Common Rule, 24 CFR 84.40-48. Potential contractors and subcontractors should be familiar with the requirements of Title VI of the Civil Rights Act of 1964 and 24 CFR 570.602 and Executive Order 11246 Equal Employment Opportunity and Affirmative Action. The work performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 USC 1701 u [Section 3]. The purpose of Section 3 is to ensure employment and other economic opportunities generated by HUD assistance or HUD assisted projects covered by Section 3 shall to the greatest extent feasible, be directed to low and very-low income persons, particularly persons who are recipients of HUD assistance for housing. For more information on Section 3, contact the HUD Office of Fair Housing and Equal Opportunity at (404) 331-5140. For more information regarding conditions of employment, HUD certifications, and job and wage rate classifications, contact the Cobb County CDBG Program Office at (770) 528-1462. Neither the United States nor any of its departments, agencies or employees is or will be a party of any contract awarded pursuant to this invitation to bid.

Bidders are advised to carefully and thoroughly review the bid documents for the specific federal provisions that



**Regular Meeting Agenda
6/6/2022 6:30 PM
Council Chambers**

Title of Item:	Approval of RESOLUTION Supporting the Establishment of Georgia Main Street Program
Agenda Comments:	<p>The Georgia Main Street Program began in 1980 as one of the original pilot state coordinating programs of the National Main Street Initiative launched by the National Trust for Historic Preservation. The program launched with five local communities and has grown to serve 100+ communities statewide. Georgia Main Streets represent some of the strongest central business districts in the state and in the Southeast. Since it started, the designated community programs have been instrumental in leading the state in historic preservation, small business development, expansion of the state's employment base, leveraging private investment, increasing tourism and providing a positive road map for public-private partnerships. Housed in the Office of Downtown Development at the Georgia Department of Community Affairs (DCA), Main Street is a signature program for community development and revitalization in Georgia's historic downtowns. This resolution outlines support for Kennesaw's application to start-up program for the 2022-2023 program year. The Economic Development Director recommends approval.</p>
Funding Line(s)	

ATTACHMENTS:

Description
Resolution

Upload Date Type
5/27/2022 Resolution

**CITY OF KENNESAW
GEORGIA**

RESOLUTION NO. 2022-__, 2022

RESOLUTION SUPPORTING THE ESTABLISHMENT OF MAINSTREET PROGRAM

BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF KENNESAW, COBB COUNTY, GEORGIA, AS FOLLOWS:

WHEREAS, the City of Kennesaw supports the revitalization and economic re-development of its historic commercial core; and

WHEREAS, the City of Kennesaw desires to maintain an economically vital and vibrant town center for its residents, visitors and tourists; and

WHEREAS, the City of Kennesaw sees an economically healthy downtown as one of its critical assets; and

WHEREAS, the City of Kennesaw realizes that a sustainable town center economy contributes to the community's economic health; and

WHEREAS, the City of Kennesaw recognizes its traditional commercial core as representing the unique history and culture of our community; and

WHEREAS, the City of Kennesaw wishes to maintain a livable, walkable town center with opportunities to shop, work, live and discover recreational, cultural and heritage opportunities; and

WHEREAS, the City of Kennesaw wishes to pursue to investing in enhancing the quality of life for the community's citizens via the implementation of asset-based economic development strategies under the Main Street Approach®; and

WHEREAS, the City of Kennesaw, may leverage technical assistance and other resources through the Georgia Department of Community Affairs Office of Downtown Development to support the economic re-development and revitalization of the Kennesaw Main Street district.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR & COUNCIL, THE GOVERNING BODY OF THE CITY OF KENNESAW:

1. The City of Kennesaw agrees to work with the Georgia Department of Community Affairs Office of Downtown Development dedicating resources and financial support as available to create a successful downtown economic development program including strategies established by the National Main Street Center's Economic Transformation Strategies and the Main Street Approach®.

2. City of Kennesaw commits to work collaboratively the Georgia Department of Community Affairs, Office of Downtown Development to meet the standards and principles of revitalizing and re-developing the core commercial district of the community as set forth in the annual Memorandum of Understanding (MOU).
3. The term of this resolution shall be deemed effective for the life of an active MOU on file with the Office of Downtown Development, renewed annually, if standards outline in the MOU are met, commencing January 1, 2023.

PASSED AND ADOPTED by the Kennesaw City Council on this ____ day of June, 2022.

ATTEST:

CITY OF KENNESAW

Lea Alvarez, City Clerk

Derek Easterling, Mayor



**Regular Meeting Agenda
6/6/2022 6:30 PM
Council Chambers**

Title of Item:	Authorize the Start of Right of Way Abandonment Process for unnamed right of way between 2020 Smith Drive and 2022 Smith Drive.
Agenda Comments:	The City is in receipt of a request for right of way abandonment of an unnamed right of way that lies between 2020 Smith Drive and 2022 Smith Drive. In accordance with Georgia law O.C.G.A Title 32, Chapter 7, multiple steps must be followed to abandon public rights of way. The first step is approval from the governing body to start the abandonment process. The Public Works Director has notified the requestor that they would be responsible for obtaining all necessary surveys and appraisals required for the abandonment if approved by Council. With Council's approval, the Public Works Department will proceed with the abandonment process. The Public Works Director recommends approval to begin the abandonment process.
Funding Line(s)	

ATTACHMENTS:

Description	Upload Date	Type
Request to Abandon	5/18/2022	Exhibit
Map	5/18/2022	Exhibit

From: [ellen.giles](#)
To: [Ricky Stewart](#)
Subject: abandon property
Date: Tuesday, April 19, 2022 4:38:09 PM

CAUTION: This email originated from outside the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

To: Ricky Stewart
Director of Public Work

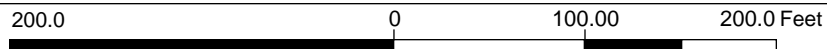
From: Ellen Giles
2020 Smith Drive
Kennesaw, GA 30144

I would like to purchase the piece of property between 2020 Smith Drive and 2022 Smith Drive. This was originally set up to be a right of way. Please vote this as abandoned so I can start the process.

Thank you for your prompt attention

Ellen Giles

Sent from my iPad



WGS_1984_Web_Mercator_Auxiliary_Sphere
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This map is a user generated static output from an Internet mapping site and is for reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable.

THIS MAP IS NOT TO BE USED FOR NAVIGATION

1: 1,200



Map Notes:



**Regular Meeting Agenda
6/6/2022 6:30 PM
Council Chambers**

Title of Item:	City Manager reports, discussions and updates.
Agenda Comments:	
Funding Line(s)	



**Regular Meeting Agenda
6/6/2022 6:30 PM
Council Chambers**

Title of Item:	Mayor and Council (re)appointments to Boards and Commissions. This item is for (re)appointments made by the Mayor to any Board, Committees, Authority or Commission requiring an appointment to fill any vacancies, resignations, and to create or dissolve committees, as deemed necessary.
Agenda Comments:	
Funding Line(s)	
