

REQUEST FOR PROPOSAL
#2022-07
CITY OF AUBURN, GEORGIA



Design-Build – Courts Complex
To be located @ 1320 Mary Carter Rd, Auburn, GA 30011

May 26, 2022

MANDATORY PRE-SUBMISSION CONFERENCE:
MONDAY, JUNE 13, 2022, AT 1:30 P.M. LOCAL TIME
City of Auburn, Georgia – City Hall
located at 1369 4th Ave, Auburn, GA 30011

**SUBMISSIONS ARE DUE AT THE ADDRESS SHOWN BELOW NO LATER
THAN**

MONDAY, JUNE 27, 2022, AT 11:30 A.M. E.D.T

CITY OF AUBURN, GEORGIA
ATTN: PARKS & LEISURE SERVICES
City Hall
1369 4th Avenue
Auburn, Georgia 30011

**THE OFFEROR IS RESPONSIBLE FOR SUBMITTING A RESPONSE TO THIS REQUEST FOR PROPOSALS
(RFP) TO CITY OF AUBURN, GEORGIA ON OR BEFORE THE STATED DATE AND TIME.**

ISSUE DATE: MAY 26, 2022

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J. DESIGN BUILD CONTRACT <i>(required submittal – EXECUTED)</i>	

NOTE: Please examine the contents of the RFP package and if anything is missing contact Jeff Prine in writing via email at jprine@ascension-pm.com

**ADVERTISEMENT FOR REQUEST FOR PROPOSAL FOR
Design-Build – Courts Complex @ 1320 Mary Carter Rd, Auburn, GA 30011
CITY OF AUBURN, GEORGIA MAYOR & COUNCIL
RFP #2022-07**

TO: Design-Build (Teams)
FROM: Jeff Prine, CCM, LEED AP
Capital Project Manager
DATE: May 26, 2022

SUBJECT: City of Auburn, Georgia Request for Proposals – Design-Build services for Courts Complex

The City of Auburn, Georgia is embarking on a Capital Improvement Project to build a new Courts Complex. It is the desire of City of Auburn to engage the services of a Design-Build Firm or Team to design and build this Courts Complex. Specifically, it is planned to include; 4 each Lighted Tennis Courts, up to 8 each Lighted Pickleball Courts, Restroom/Concessions Building, & Parking / Infrastructure. It is the desire of City of Auburn to work with the selected Design-Build Firm or Team to develop a specific plan of action to achieve these improvements. Therefore, the City of Auburn is seeking Design-Build Firm (s) or Team (s) based on their qualifications and proposals.

The City of Auburn will be relying on the selected Design-Build Firm or Team to assess data provided and existing conditions to develop their specific services and costs. This RFP outlines how the selection process will be managed, City of Auburn's requirements, City of Auburn's evaluation of the submittal packages and their Contract requirements. After you have reviewed the RFP information, you are invited to submit your Firm or Team's submission as a DESIGN-BUILD FIRM OR TEAM to City of Auburn.

A Mandatory Pre-submission Conference to respond to all inquiries with regard to this Project will be held at 1:30 P.M. E.D.T on MONDAY, June 13, 2022, at the City of Auburn, Georgia City Hall located at 1369 4th Avenue, Auburn, Georgia 30011.

SUBMISSIONS ARE TO BE SEALED, MARKED WITH THE OFFEROR'S NAME AND ADDRESS AND LABELED: **RFP #2022-07 DESIGN-BUILD SERVICES FOR COURTS COMPLEX**

and delivered to:

City of Auburn, Georgia
City Hall
1369 4th Avenue,
Auburn, Georgia 30011

no later than **11:30 A.M. E.D.T, MONDAY, JUNE 27, 2022**. Submissions received after said date and time will not be considered. Having the wrapper or envelope postmarked by Monday, June 27, 2022, does not meet the requirements of this RFP. Delivering the document to a commercial delivery service is also not sufficient until the offer is actually received at the designated location.

The written requirements contained in this RFP shall not be changed or superseded except by written addendum from the City of Auburn, Georgia. The Owner reserves the right to reject any and all proposals deemed to be non-responsive. The City of Auburn, Georgia also reserves the right to reject any and all qualifications, to waive any technicalities, informalities, or irregularities and to ultimately award a contract to the firm that is deemed to have presented the best and most advantageous qualifications and proposal for the City of Auburn, Georgia, resulting from an evaluation process using criteria set forth in Section III of this qualifications document.

Any inquiries regarding this RFP must be submitted in writing via email no later than **Friday, June 17, 2022, 12:00 P.M. E.D.T - ATTN: Jeff Prine, CCM, LEED AP** via email: jprine@ascension-pm.com. Questions will be answered in writing by addendum. Questions received after June 17, 2022, will not receive a response. A list of names of firms providing submissions may be obtained from him via email request after the submittal due date and time stated herein.

SECTION I – REQUEST FOR PROPOSALS OVERVIEW AND PROCEDURES

A. PURPOSE

The City of Auburn, Georgia Mayor and Council is requesting competitive Sealed Proposals for Design Build services associated with the construction of a new Courts Complex to be located at 1320 Mary Carter Rd, Auburn, GA 30011. Instructions for preparation and submission of a proposal are contained in this packet. Proposals must be typed and printed in ink

The City of Auburn, Georgia provides equal opportunity for all businesses and does not discriminate against any person or business because of race, color, religion, sex, national origin, and handicap or veteran's status. This policy ensures all segments of the business community have access to supplying the goods and services needed by the City of Auburn, Georgia.

B. PROJECT DESCRIPTION

The City of Auburn, Georgia is embarking on a Capital Improvement Project to build a new Courts Complex. It is the desire of City of Auburn to engage the services of a Design-Build Firm or Team to design and build this Courts Complex. Specifically, it is planned to include;

- 4 each Lighted Tennis Courts,
- Up to 8 each Lighted Pickleball Courts,
- Restroom/Concessions Building, &
- Parking / Infrastructure.

SCOPE:

- **GENERAL SCOPE OF SERVICES.** Includes complete CM Pre-Construction services; cost management; schedule management; low voltage systems management, coordination with the City of Auburn's special inspections / material testing consulting teams; submissions and permitting to all Authorities Having Jurisdiction, including, but not limited to Development Services and Fire Marshall; full Construction Management, Design-Build and Post Construction services. (Refer to **Attachment A - General Scope of Work** for details)
- **Pre-Construction Phase: (Facility Assessment / Design Services).** Design Builder and their team of Architects and Engineers and/or Sub Contractors will complete an Assessment of existing site conditions to determine all necessary improvements to build the new Courts Complex. From this effort, the Design Builder will prepare Designs and Engineering and Guaranteed Maximum Prices that will be evaluated against budgets to determine specific scope to be achieved. (Refer to **Attachment B - Specific Scope of Work** for details)

It is the objective of the City of Auburn, Georgia to have their projects completed for as low a cost as practical without sacrificing the Owner's requirements, Design Standards, and/or Long-term Operating / Life Cycle costs.

Refer to **Attachment E – Project Schedule** for proposed delivery timeframes.

C. INFORMATION FOR OFFERORS

1. RFP TIMETABLE:

The anticipated schedule for the RFP and contract approval is as follows:

RFP available	Thursday, May 26, 2022,
Mandatory Pre-Proposal Conference	Monday, June 13, 2022, at 1:30 P.M. Local Time
Deadline for submission of questions	Friday, June 17, 2022, at 12:00 P.M. Local Time
Deadline for receipt of Submissions	Monday, June 27, 2022, 11:30 A.M. Local Time
Submission Evaluations	June 27 – 28, 2022
Contract Award	July 07, 2022, Mayor & Council Meeting

2. SUBMISSION INSTRUCTIONS:

Please follow these instructions to submit.

1. SUBMISSIONS ARE TO BE SEALED, MARKED WITH THE OFFEROR'S NAME AND ADDRESS AND LABELED: **RFP #2022-07 DESIGN-BUILD SERVICES FOR COURTS COMPLEX** and delivered to:

City of Auburn, Georgia
City Hall
1369 4th Avenue,
Auburn, Georgia 30011

no later than **11:30 A.M. E.D.T, MONDAY, JUNE 27, 2022**. Submissions received after said date and time will not be considered. Having the wrapper or envelope postmarked by Monday, June 27, 2022, does not meet the requirements of this RFP. Delivering the document to a commercial delivery service is also not sufficient until the offer is actually received at the designated location.

2. An officer or employee of the company must sign the Submissions, legally authorized to enter into a contractual relationship in the name of the Offeror.
3. **Technical Submission:** Provide One (1) Marked Original (*include your executed Construction Agreement – Attachment L with this one only*), and Four (4) Copies along with the entire submission on a Disc Drive.
4. **Pricing Submission:** Provide One (1) filled out Pricing Sheet (refer to Page 13 of RFP) in a separate envelope marked with your name.

3. RFP QUESTIONS:

Any inquiries regarding this RFP must be submitted in writing via email no later than **Noon-Local Time, Friday, June 17, 2022**. Attn: **Jeff Prine, CCM, LEED AP** via email: jprine@ascension-pm.com. Questions will be answered at the pre-submission conference and/or in writing by addendum. Questions received after this time will not receive a response.

4. ADDITIONAL INFORMATION/ADDENDA

Answers to questions submitted that materially change the conditions and specifications of this RFP will be distributed to all addressees as an addendum. Any discussions or

documents will be considered non-binding unless incorporated and distributed in an addendum.

Proposers should check with the Purchasing Department frequently during the bidding process to verify that they have received all issued addendums. While every attempt is made to make sure that registered proposers receive notice of addendums, proposers have the responsibility of making sure that they have received all issued addendums. Addenda are required to be signed and returned with the proposal submittal.

5. LATE QUALIFICATIONS, LATE MODIFICATIONS AND LATE WITHDRAWALS

Submissions received after the SUBMISSION DUE DATE and time will not be considered. Modifications received after the SUBMISSION DUE DATE will not be considered. The City of Auburn, Georgia shall bear no responsibility for the premature opening of a Submission Package not properly addressed and identified, and/or delivered to the proper designation.

A proposer may withdraw their proposal before the proposal due date, without prejudice to the proposer, by submitting a written request of withdrawal to the City of Auburn, Georgia – Capital Project Manager, Jeff Prine.

6. REJECTION OF SUBMISSIONS

The City of Auburn, Georgia may reject any and all proposals and must reject a proposal of any party who has been delinquent or unfaithful in any formal contract with the City of Auburn, Georgia. Also, the right is reserved to waive any irregularities or informalities in any proposal in the proposing procedure. The City of Auburn, Georgia shall be the sole judge as to which proposal is best, and in ascertaining this, will take into consideration the business integrity, financial resources, facilities for performing the work, and experience in similar operations of the various proposers.

7. NON-COLLUSION AFFIDAVIT

By submitting a proposal, the proposer represents and warrants that such proposal is genuine and not sham or collusive or made in the interest or in behalf of any person not therein named, that the proposer has not directly or indirectly induced or solicited any other proposer to put in a sham proposal, or any other person, firm or corporation to refrain from proposing and that the proposer has not in any manner sought by collusion to secure to that proposer any advantage over any other proposer.

By submitting Submissions, the Offeror represents and warrants no official, employee or agent of Owner or Authority has been offered, has accepted, or has been contracted to accept, either directly or indirectly, any part of the pay or profit arising out of the contract(s) that may result from this RFP.

8. COST INCURRED BY OFFERORS

All expenses involved with the preparation of Submissions, or any work performed in connection therewith are the responsibility of the Offeror(s).

9. PROJECT ORGANIZATION

The Mayor and Council of City of Auburn, Georgia is the governing body and has authorized the City Administrator and Capital Project Manager to oversee this project.

10. CONTACT WITH CITY OF AUBURN STAFF

Except for the submission of written questions directed to Jeff Prine, as previously set forth in this RFP, after May 26, 2022, any contact made by with the City of Auburn, Georgia Staff or contractors will result in immediate disqualification of said entity. Contact is only permitted after July 26, 2022.

11. DOCUMENTS DEEMED PART OF THE CONTRACT:

The notice, invitation to proposers, general conditions, and instructions for proposers, special conditions, specifications, proposal, and addenda, if any, will be deemed part of the contract.

12. RFP DOCUMENTS

The RFP documents consist of the following Attachments:

- A. GENERAL SCOPE OF WORK**
- B. SPECIFIC SCOPE OF WORK**
- C. Acknowledgement of Addendum Form *(required submittal)***
- D. Reference Survey Form *(required submittal)***
- E. PROJECT SCHEDULES**
- F. SUBCONTRACTORS QUALIFICATION AFFIDIVAT *(required submittal)***
- G. IMMIGRATION AND SECURITY FORM *(required submittal)***
- H. NON-COLLUSION AFFIDAVIT OF PRIME BIDDER/SUBCONTRACTOR *(required submittal)***
- I. BUSINESS LICENSE *(required submittal)***
- J. DESIGN BUILD CONTRACT *(required submittal – EXECUTED)***

SECTION II – PROPOSAL REQUIREMENTS

Submissions shall not exceed Fifty (50) typed pages. Tab's do not count toward this limit. Attachments F, G, H, M & N do not count toward this limit. 8-1/2" x 11" Sheets printed on both sides counts as one page. 11" x 17" Sheets counts as two pages. Font shall be no less than 10 point and you may utilize double siding. All Submissions shall include the information indicated below **and in the following order with individual Tabs for each section and sub section.**

All Submissions received will become a part of the official contract file and may be subject to disclosure.

The City of Auburn, Georgia is a governmental entity that is subject to the Georgia Open Records Act ("ORA"). After contract award, documents submitted to the City of Auburn, Georgia in the bidding process are presumed to be subject to the ORA; however, documents that an offeror contends contains specific trade secrets may be marked as trade secrets. An offeror is required to submit and attach to the specific trade secret record an affidavit affirmatively declaring the specific information in the records that constitutes a trade secret, as defined by Georgia law. If the offeror attaches such an affidavit and if inspection or copies are requested under the ORA, The City of Auburn, Georgia will contact offeror to advise offeror that said documents have been requested and will be produced if the City of Auburn, Georgia determines they do not constitute trade secrets. Offeror shall have the amount of time stated in the notice to seek legal remedy preventing the disclosure of the documents. If the City of Auburn, Georgia has not received a valid judicial order or decree preventing the disclosure of the documents, they will be disclosed in accordance with the time requirements contained in the ORA.

A. QUALIFICATIONS SECTION:

All Submissions should include the information outlined below in the following order and separated by tabs:

1. A. Cover Letter & Statement of Interest - Briefly, tell why your firm or team is interested in this City of Auburn, Georgia Project. This information shall include the following:

- For Design firm (s), explain experience in working with the Municipal & County Governments review and submittal process.
- Number of similar projects the Construction firm has undertaken in the last five (5) years with a construction value of at least \$1,200,000.00. (E.g. XYZ Construction firm has commenced and/or completed 10 projects in the last 5 years with a minimum construction value of \$1,200,000.00). *Prefer Municipal & County Parks & Recreation Facilities.*
- For Design Build teams that are two separate firms coming together for this sole project, the construction firm must be the contracting entity that will enter into a contract with Owner, with the design-build firm and their sub consultants as prime/sub-contractors or a joint venture and/or partnership entity in direct contractual relationship with the construction firm. Although the Construction firm will be the contracting party, both construction and design firms must be named in the contract. Therefore, provide at least Two (2) relevant projects in which you have successfully worked together in a similar contractual arrangement.

For Design Build teams that have not completed at least Two (2) relevant projects together, explain in detail the reasons you decided to partner for this program and how you will overcome your lack of experience collaborating with each other. *Prefer ground up new construction.*

For Construction firm, explain work experience in managing and / or implementing project examples of similar clients and references in which these services have been performed.

- For Team, explain experience working with the Municipal and Counties.
- For Team, explain experience delivering projects on time, within budget, and with high quality of standards.
- Provide design creativity, awards, or acknowledgements.
- Provide examples indicating your ability to be flexible and fluid when it comes to changes in your design or processes.

B. Acknowledgement of Addenda: Include completed Acknowledgement of Addenda form, from **Attachment C** of this RFP.

2. Firm Description and Information

- Basic company information
- Company name
- Address & Zip code
- E-mail address & Name of primary contact
- Telephone number
- Fax number
- Number of years in business
- DUNN and BRADSTREET Number
- Form of ownership, including state of residency or incorporation for each member of the DB Team, joint venture, or other structure? For joint venture teams that have not completed at least *Two (2)* relevant projects together, of similar nature, scope, schedule, and size as indicated in this RFP, each firm should describe its qualifications separately but hold the unified submittal to the set page limit. Each member of a joint venture, teams or other entity structure will be obligated to the payment and performance bond requirements applicable to the Projects.
- Succinctly describe the history and growth of each team member's firm(s).

3. Firm Financial Information

1) Letter from Financial Institution indicating financial strength of firm or firm(s).

2) Financial Statement prepared by your CPA or internal Accountant.

3) Bonding:

A. Identify the Construction Firm's surety or sureties:

The Construction Firm's surety or sureties must be licensed in Georgia, be currently rated "A-" or better by A.M. Best Company and, additionally, shall be currently listed on the U.S. Department of Treasury's Listing of Approved Sureties (Department Circular 570) as a surety authorized to write bonds for the U.S. Government with a total underwriting limitation of the CM Firm's surety or sureties equal to or greater than the Estimated Construction Value for the project stated on page one of this form.

B. State the Construction Firm's current per project bonding capacity with its surety or sureties:
Per Project: \$ _____

C. The Construction Firm's current bonding capacity per project must equal or exceed the Estimated Construction Value for the Project \$1,200,000.00

D. State the unused amount of the line of bonding credit (aggregate) currently available to the Construction Firm:

- E. State the name(s), address(s), and telephone number(s) of the Construction Firm's surety agent(s) or underwriting contact(s) for the past five (5) years:

Current _____

One Year ago, _____

Two Years ago, _____

Three Years ago, _____

Four Years ago, _____

- F. State whether performance or payment bond claims have been made to the Construction Firm's surety on any project within the past five (5) years:

If the answer to the preceding question is "yes," describe each claim, the name of the project, the owner, the name of the company or person making each claim, the date of each claim, the circumstances of each claim, and the resolution of each claim:

- G. State whether any surety has refused to bond the Construction Firm on any project in the past five years.

If the answer is "yes," state the name of the project and specify the reasons given for each refusal, the date of each refusal, and the name and address of the surety that refused to bond:

4. Firm Current Legal Status

- Regarding litigation with owners, project managers, sub-contractors/consultants, and vendors: List any active or pending litigation within the last Five (5) years with an owner, project managers, sub-contractors/consultants and vendors has against any member of the proposed Design Build team and explain. List any active or pending litigation within the last Five (5) years any member of the Design Build team has against any Owner, project manager, sub-contractors /consultants and vendors and explain.
- Other than that, just listed, has any member of the proposed Construction or Design Build firm or team been involved in any relevant litigation in the past five years? Explain.
- Has any member of the proposed Design Build firm or team ever failed to complete any work awarded to it or has it been removed from any project awarded to the firm? Explain.

5. Firm's Relevant Project Experience and Reference Projects

Relevant project experience includes similar building type and delivery method relevant to the type of project to be constructed. Of special interest will be firm's experience with ground up new construction of Municipal or County Parks & Recreation facilities.

Describe no fewer than Two (2) and no more than Five (5) projects in order of most relevant to least relevant that demonstrate the firm's capabilities to perform the Project(s) at hand. For each project, the following information should be provided:

- The name of the organization to which the services were provided.
- Project name
- Project location
- Dates during which services were performed
- Physical description (e.g., square footage, number of stories, site area, etc.)
- Brief description of project
- Services performed
- **Statement of performance versus owner expectations, including concept, cost, quality, and schedule**
- One (1) representative photo of the project

- Owner Budget_____ versus Delivered Cost_____
- Owner Schedule_____ versus Delivered Schedule_____

6. Firm References

For at least Two (2) of the maximum Five (5) projects listed in item #5 above, provide the following. Reference forms are to be completed by the client or person providing the reference.

- Provide minimum of Two (2) Reference Survey Forms (**See Attachment “D”**) for references from Owner’s for whom the team has provided design professional services of a nature and quality similar to those described herein.
- Provide minimum of Two (2) Reference Survey Forms (**See Attachment “D”**) for references from Owner’s for whom the team has provided Prime Construction Management services of a nature and quality similar to those described herein.
- **For item 6.b, provide the written statement from each Owner as to whether the project finished on time and on budget or if not why.**

7. Design Build Team / Personnel Capability

- Provide general information about the firm's or team’s personnel resources, including classifications and numbers of employees and the locations and staffing of offices.
- Provide an organizational chart of key personnel proposed for these projects in the areas of architecture, engineering, construction management, major sub-contractors, and any other areas necessary to complete the projects.
- Provide summary resumes / qualifications and description of experience of key personnel proposed for the projects.

B. PROPOSAL SECTION: All Submissions should include the information outlined below in the following order and separated by tabs:

1. **Understanding of the Projects** – Provide a statement of the Team’s understanding of the Project type. Submit a list of services to be provided by the firm or team that will address the completion of projects. At a minimum, the following should be included:
 - Specific Pre-Construction / Design Phase approach to the identified Project
 - Specific Schedule approach to completing these projects within time constraints outlined.
 - Specific Cost management approach to developing, verifying, modifying, and submitting costs in a phased manner to the Owner for consideration that will ensure the completed projects will be within cost constraints and meeting their Design Standards.
 - Specific approach to developing, verifying, and managing potential and / or required long-lead items necessary for the project.
 - Specific Quality management approach to verifying and assuring quality materials are selected, procured, and installed with acceptable construction industry standards.
2. **Additional Services Required** – Based upon the Team’s understanding of the projects, identify any additional services that might be required in order to complete the projects that have not been previously covered elsewhere in the respondent’s qualifications submittal package. Describe how and when you would determine if these services were required, how you would notify the owner and who would be responsible for the fees for these services.

3. Computer Capabilities

Describe your Team's in-house capabilities in the following areas:

- Internet based collaboration tools for design and construction (name, version of software used).
- Electronic transmittal of drawings, documents, and general construction communication. This should include software for contract and document management, document file transfer protocol and or repository, etc. (name, version of software used – e.g. Newforma).
- Regular Business Software such as Spreadsheet, Word Processing, Presentation, and communications.
- Project Construction Budgeting / Cost Estimating / Reporting in electronic format (name, version of software used).

4. Current Project Assignments

Identify the current project assignment(s) and the currently identified completion date(s) for projects currently being managed by the proposed Key Staff for these projects. Indicate the availability of personnel as a percentage of their available time per each person.

5. Statement of Why the Proposing Firm or Team Should Be Selected

This section provides each firm or team the opportunity to provide specific information that differentiates them from other offerors. **This differentiation MUST be something stated that has not been previously stated in the RFP elsewhere.** This statement is limited to one page.

C. PRICING SECTION:

It is the intent of the Owner to utilize a Construction Management / Design Build contract for the Cost of the Work plus a Fixed Fee with a Guaranteed Maximum Price (GMP).

- Pre-Construction Phase Compensation. Owner shall pay Construction Manager "Pre-Construction Compensation" consisting of the Reimbursable Expenses Construction Manager incurs in performance of Pre-Construction Phase Services, plus the Pre-Construction Phase Fee. The Pre-Construction Phase Compensation shall be deemed to include, without limitation, such items as overhead, profit and all expenses incurred in performance of the Pre-Construction Phase Services.
- Construction Phase Compensation. For Construction Manager's performance of the Work and all Construction Phase Services in strict conformance with the Contract Documents, and subject to the GMP, Owner shall pay Construction Manager "Construction Phase Compensation" consisting of: Subcontract Costs, plus Reimbursable Expenses incurred in performance of Construction Phase Services and the Work, plus the Construction Phase Fee. The Construction Phase Compensation shall be deemed to include, without limitation, such items as overhead, profit and all expenses incurred in performance of the Work and all Construction Phase Services.

1. Courts Complex

CM Pre-Construction Fee \$ _____

Design & Contract Administration Fees
(Architectural & Engineering) \$ _____

TOTAL FEES: \$ _____

CM Construction Fee _____ %

NAME of Submitter: _____

Date: _____

****Note:*** The Design-Builder is only requested to provide these Fees at the time of RFP Submission. A Final GMP Budget will be requested after the Assessment and Designs have been completed.

The City of Auburn, Georgia will execute said agreement with the Pre-Construction/Design Fees alone.

REQUIRED SUBMITTAL – Separate from Technical Submission

SECTION III – EVALUATION AND SELECTION PROCESS

1. Selection Committee

The selection of Design Builder firm or team will be by a Selection Committee comprised of representatives of the City of Auburn, Georgia and others, as appointed by the Mayor and Council.

2. Initial Written Submittal

The Selection Committee will receive and review submittals in an effort to determine compliance with the format set out on Section II of this RFP. Review of Submissions by Selection Committee members will be evaluated against a set of weighted criteria (See table below) to determine those firms or teams meeting minimal qualifications and those who's proposed approach best suits the needs of these Projects.

The Selection Committee will review the Qualifications & Proposal sections of the submittals. Once this review is completed, each Submission will be scored and ranked.

No more than the top three highest ranked firms will become short-listed and then asked to present to the Selection Committee in a technical presentation with a questions and answer period. This presentation will include Thirty (30) minutes for presenting and fifteen (15) minutes for questions and answers.

TABLE - Evaluation of Weighted Criteria

The Selection Committee will evaluate the Submissions of each firm or team based upon the criteria listed in the table below. The Owner has judged each major category of criteria to be worth the point value given, as a maximum, in establishing committee rankings of submittals.

No.	<u>QUALIFICATIONS</u> Major Category	Max Points	Criteria
1	Cover Letter & Statement of Interest (<i>point value = 25</i>)	25	Introduction of team, team background if not single firm; clarity in expressing interest, specific and compelling reasons why program is a good fit for the firm/team
2	Firm/Team Description and Information(<i>point value = 10</i>)	10	Basic company information; Form of ownership; history and growth of your firm(s).
3	Firm/Team Financial Information (<i>point value = 15</i>)	15	See Section II -Item Number 3 in this RFP
4	Firm/Team Current Legal Status (<i>point value=20</i>)	20	Firm's/Team's litigation record
5	Firm's/Team's Relevant Project Experience and Reference Projects (<i>point value = 40</i>)	40	Firm/Team's experience with projects using Design Build delivery method Firm/Team's experience with similar projects. Firm/Team's experience with preconstruction, construction, and post construction services
6	Firm/team References (<i>point value = 30</i>)	30	Quality of references from an Owner for the proposed team; Quality of references from a Contractor for the proposed team; Professional recognition of the firm/team through general acclaim, awards, publications, etc.; Record of designing projects on time and at budget

No.	<u>QUALIFICATIONS</u> Major Category	Max Points	Criteria
7	Firm's Team / Personnel Capability (<i>point value=30</i>)	35	Depth of resources with experience and ability, qualified and available for Lead Architect role; Depth of resources with experience and ability, qualified and available for Lead Engineer role; Depth of resources with experience and ability, qualified and available for Lead CM Project Manager, Superintendent (s), and other Key personnel roles Specific personnel experience with similar facilities; Qualifications and experience of proposed Key sub- contractors & consultants
1	<u>PROPOSALS</u> Understanding of the Project (<i>point value=30</i>)	30	Firm/Team's demonstrated ability to present design-construction phase info, deliverables, and resources needed to complete each project; Firm/Team's demonstrated ability to communicate potential issues that may have an impact on the technical, administrative, staff participation, and design-construction tasks; Firm/Team's demonstrated ability to present their capabilities, through previous experience, which shows how the firm can solve complex project issues creatively
2	Additional Services Required (<i>point value=5</i>)	05	Identify any additional services that might be required in order to complete the projects.
3	Computer Capabilities (<i>point value=10</i>)	10	<ul style="list-style-type: none"> • File Transfer Protocol (FTP), Submittal processes • Regular Business Software such as Spreadsheet, Word Processing, Presentation, and communications • Project Construction Budgeting / Cost Estimating / Reporting and Management
4	Current Project Assignments (<i>point value=15</i>)	15	Availability of the proposed Team for this Program and Firm/Team's office workload covering the expected period of work
5	Statement of Why Firm Should Be Selected (<i>point value=20</i>)	20	Provide specific information that differentiates firm/team from others in the competition
6	Responsiveness of Submittal (<i>point value=5</i>)	05	Extent to which the instructions in the RFP were followed
1	<u>FEE SCHEDULE</u> (<i>Point value = 40</i>)	40	Refer to Scope Documents to achieve required fees and budget estimates as requested in Section II – Sub Section C Pricing Forms
			TOTAL AVAILABLE POINTS: 300

SECTION IV – CONTRACT REQUIREMENTS

This section describes the City of Auburn, Georgia's expectations for the selected Design Build firm or team. The final terms and conditions of the contract supersede the information provided here. The information below is intended to provide base requirements for Offerors. It is not the intent of the City of Auburn, Georgia to limit opportunities to reduce cost or expedite the schedule. Alternatives that allow the Design Build to "fast-track" the project and incorporate value engineering and the advantages of such alternatives should be adequately explained in the Submission.

It is also the intent of the City of Auburn, Georgia to a single contract with a Design Build firm or team for both projects. While contracted together, each project will maintain a separate budget, schedule, and delivery process.

A. FORM OF AGREEMENT

- The Owner intends to enter into a Contract with the Selected Offeror. If the selected offeror is a single entity, the City of Auburn, Georgia will contract with that entity. If the selected Offeror is a team, the City of Auburn, Georgia will contract with the Construction firm, who shall be contractually obligated. The Construction firm and the design-build team may contract between themselves as prime/sub-contractors, joint ventures,' etc. Conditions of the Contract Agreement shall be communicated via RFP or via Addendum. The Contract Agreement is **NOT** subject to negotiation.
- It is the intent of the Owner to utilize a Design Build contract for the Cost of the Work plus a Fixed Fee with a Guaranteed Maximum Price (GMP). **(Refer to Attachment L)**
- It is the intent of the Owner to execute the contract allowing the Design Build firm or team to complete the Design phase in packages for expediency of construction. Along the way it will be the responsibility of the Design Build firm or team to collaborate with the Owner to ensure the total cost of work is not outside the total project.
- Once a Design Phase Package is completed and Construction Documents for permit have been submitted for approval, the Design Build firm or team will be requested to provide the owner with a Guaranteed Maximum Price (GMP) for that package AND each successive design and construction phase with the total, including all previous Design phases and Construction estimates, not to exceed the total Project Budget.

B. TERMS OF PAYMENT AND COST CONTROL

The project delivery method to be utilized for this project is Design Build that incorporates conditions of a cost-plus fixed fee with a Guaranteed Maximum Price contract. This total cannot exceed the project (s) budgets.

The Design Build firm or team will be required to provide a Part 1 detailed cost estimate for the Design. This Design Estimate shall be reviewed and evaluated by the Owner.

Furthermore, once Part 2, and any more successive Parts of the contract have been executed for construction, the Design Build firm or team shall obtain competitive bids for work that is not self-performing and prepare detailed cost estimates for work it intends to self-perform based on construction documents approved by the Owner and all appropriate permit-issuing agencies. The bids and detailed Construction Documents Estimate shall be reviewed and evaluated by the Owner. While there are no minimum requirements for number of bids or limitations on self-performed work, the Design Build firm or team is required to take all reasonable steps to minimize

costs while adhering to the City of Auburn, Georgia's Project Standards. **Offerors are required to describe their proposed cost control methods in this Submission.**

During the course of construction, detailed cost reports with associated back up will be submitted as part of the Application for Payment. At no time will payments exceed the GMP without prior written and approved Change Orders.

C. INSURANCE AND BONDS

1. The Design Build firm or team shall, at its own expense, provide and maintain during the entire performance of this contract, at least the kinds and minimum amounts of insurance specified in the Design Build Contract. The insurer shall be in good standing within the State of Georgia through the Insurance Commissioner's Office and must be rated A- or better with AM Best Company.
2. The Certificate of Insurance evidencing required insurance shall contain an endorsement to the effect that any cancellation or any material change adversely affecting the City of Auburn, Georgia's interest shall not be effective until 30 days after the insurer or the Contractor gives written notice to the Capital Project Manager.
3. The Certificate of Insurance shall reference the RFP identification number and description as evidencing this requirement.
4. The Contractor shall insert the substance of this requirement, including this paragraph, in subcontracts under the contract that require work on property and shall require subcontractors to provide and maintain a copy of all subcontractors' proofs of required insurance, and shall make copies available to the Purchasing Department upon request.

5. Comprehensive General Liability:

This shall be taken out in the name of the Construction Management firm with the Mayor and Council of the City of Auburn, Georgia, officers, and employees, to be included as an additional insured. It shall include Comprehensive Form, Premise Operations, Explosion and Collapse Hazard, Underground Hazard, Products and Completed Operations Hazard, Broad Form Property Damage, Independent Contractors, Contracts, Personal Injury, etc.

- Combined Single Limit shall not be less than \$1,000,000.00 for each occurrence and not less than \$2,000,000.00 for each accident

6. Automobile Liability Insurance:

Taken out in the name of the Construction Management firm

- Combined Single Limit shall not be less than \$1,000,000.00 for each occurrence and not less than \$1,000,000.00 for each accident

7. Worker's Compensation Insurance:

Both the Construction Management Firm and the Design-Build Firm shall obtain and maintain Worker's Compensation Insurance in accordance with statutory requirements and Employer's Liability Insurance covering all employees of the CM Firm, the Design-Build firm, and any uninsured sub-contractor(s). It shall be the responsibility of the Construction Management firm to ensure the Design-Build firm's compliance with this requirement.

- Combined Single Limit shall not be less than \$1,000,000.00 for each occurrence
- Before commencing any job, the Design Build firm or team shall provide the Capital Project Manager, with satisfactory evidence that the above-mentioned insurance is in force, to be evidenced by an affirmative approval of the insurance from the City of Auburn, Georgia.

8. Professional Liability Insurance:

This shall be taken out in the name of the Design-Build Team.

- Design Team shall provide \$2,000,000.00 Minimum for Errors and Omissions.

D. PERFORMANCE and PAYMENT BONDS

CM/DB team's Performance and Payment Bonds shall be issued by a Surety company that is:

- (1) listed in the most current US Treasury List (Circular 570) and who's underwriting capacity, as shown on that list, is ample for the Projects, and
- (2) rated by A. M. Best Co. with a minimum rating of A-.

The CM/DB team's Performance and Payment Bonds shall ensure two things:

- (1) The entire financial strength of a solid Surety (insurance company) will stand behind all of the obligations of the firm or team (joint venture), and
- (2) Each of the firms or teams will have their entire financial strength on the line as each team member will be required to give their individual indemnity agreements to the Surety for this Project.

Before commencing any work, the Design Build firm or team shall provide the Purchasing Department with certificates of insurance or other satisfactory evidence that the above-mentioned insurance and bonds are in force, to be evidenced by an affirmative approval of the insurance from the Capital Project Manager.

E. HOLD HARMLESS AND INDEMNIFICATION

The Offeror agrees, insofar as it legally may, to indemnify and hold harmless the Mayor and Council of the CITY OF AUBURN, GEORGIA and their officers, employees and agents from and against all loss, costs, expenses, including attorneys' fees, claims, suits and judgments, whatsoever in connection with injury to or death of any person or persons or loss of or damage to property resulting from any and all operations performed by Offeror, its officers, employees, and agents under any of the terms of the contract.

SECTION V - ATTACHMENTS

- A. GENERAL SCOPE OF WORK
- B. SPECIFIC SCOPE OF WORK
- C. Acknowledgement of Addendum Form *(required submittal)*
- D. Reference Survey Form *(required submittal)*
- E. PROJECT SCHEDULES
- F. SUBCONTRACTORS QUALIFICATION AFFIDIVAT *(required submittal)*
- G. IMMIGRATION AND SECURITY FORM *(required submittal)*
- H. NON-COLLUSION AFFIDAVIT OF PRIME BIDDER/SUBCONTRACTOR *(required submittal)*
- I. BUSINESS LICENSE *(required submittal)*
- J. DESIGN BUILD CONTRACT *(required submittal – EXECUTED)*

ATTACHMENT A & B
General & Specific Scope of Work
RFP #2022-07
Design-Build – Courts Complex

ATTACHMENT A - GENERAL SCOPE OF SERVICES – Design Build (General)

PART 1 –DESIGN-BUILDER’S CONSTRUCTION GENERAL RESPONSIBILITIES

1. Scope of Services include, but is not limited to:
 - Site analysis and Mobilization Plan
 - Management and execution of a Safety Plan
 - Prepare project schedule and monthly updates
 - Provide necessary Insurance including Errors & Omissions for Design
 - Provide 100% Performance and Payment Bonds prior to Construction
 - Suggest value engineering alternatives and incorporate same into documents once approved
 - Management and execution of Design Phase
 - Management and execution of all required permits
 - Management and execution of the Procurement Phase
 - Management and execution of all Construction Phase activities
 - Management and execution of the Post Construction Phase
 - Execute fully the requirements and intent of the RFP
2. The Design-Builder (DB) will be required to assume an active role in the control of time and cost of the project. The DB shall develop a Project critical path method (CPM) schedule reflecting all phases of the project including design, procurement, construction, and project closeout to the satisfaction of the City of Auburn, Georgia. The schedule shall reflect agreed upon milestones for evaluation of progress and show relationships between tasks, activities, shutdowns and inspection/approvals by responsibility, design discipline, construction trades and phase of the program. Preparation and adherence to the Project Schedule shall be a contractual responsibility of the Design/Builder. In addition to the DB’s work, the schedule should include the timing and coordination of owner supplied / owner installed items (if any). The DB shall remain fully responsible for designing and constructing the project within the established budget and time constraints.
3. The DB shall make monthly reports to the Owner’s Representative indicating the status of all activities and depicting their impact on the schedule, budget and function of the project and impact on current operations of the affected facility.
4. For the duration of the DB’s contract, the DB will provide an on-site office for their assigned CM Project Team.

ATTACHMENT A - GENERAL SCOPE OF SERVICES - Design Build (Design)

PART 2 - DESIGN-BUILDER'S - DESIGN RESPONSIBILITIES

1. The DB will be responsible for making all applications for building and other development permits if found to be necessary. This includes the preparation of applications, drawings, exhibits, surveys, design computation summaries, and other documents needed to file for and obtain all necessary permits and to satisfy the Owner and Jurisdiction that the intent of any RFP is being met. Responsibilities shall include, but not be limited to:
 - Conduct Site Assessment of the existing property.
 - Obtain necessary Site Survey and Geo Technical Analysis as necessary to complete the design.
 - Prepare construction documents in accordance with normal AIA Standards
 - Submit drawings for review and approval by the proper City of Auburn, Georgia, Barrow County, and/or State Agencies and make changes as required to obtain approval.
 - Coordinate all aspects of the design
 - Update the project's schedules at least monthly
 - Prepare and submit all documents necessary to obtain all required permits. All permit and other fees are the responsibility of the DB.
 - Conduct, record and distribute meeting minutes of design progress meetings with the Owner's Staff.
 - As necessary, prepare and submit a detailed Preliminary Design Estimate, (DD, SD), and Construction Documents Estimate of the construction cost for the Project based upon approved plans.
2. It shall be the DB's responsibility to produce a design in accordance with the Owner's requirements, applicable codes, rules, regulations, and sound design practice that is functional, buildable, and maintainable to the complete satisfaction of the Owner, for a total cost (including all phases) within the allocated project budget.

ATTACHMENT A - GENERAL SCOPE OF SERVICES - Design Build (Construction)

PART 3 - DESIGN-BUILDER'S - CONSTRUCTION RESPONSIBILITIES

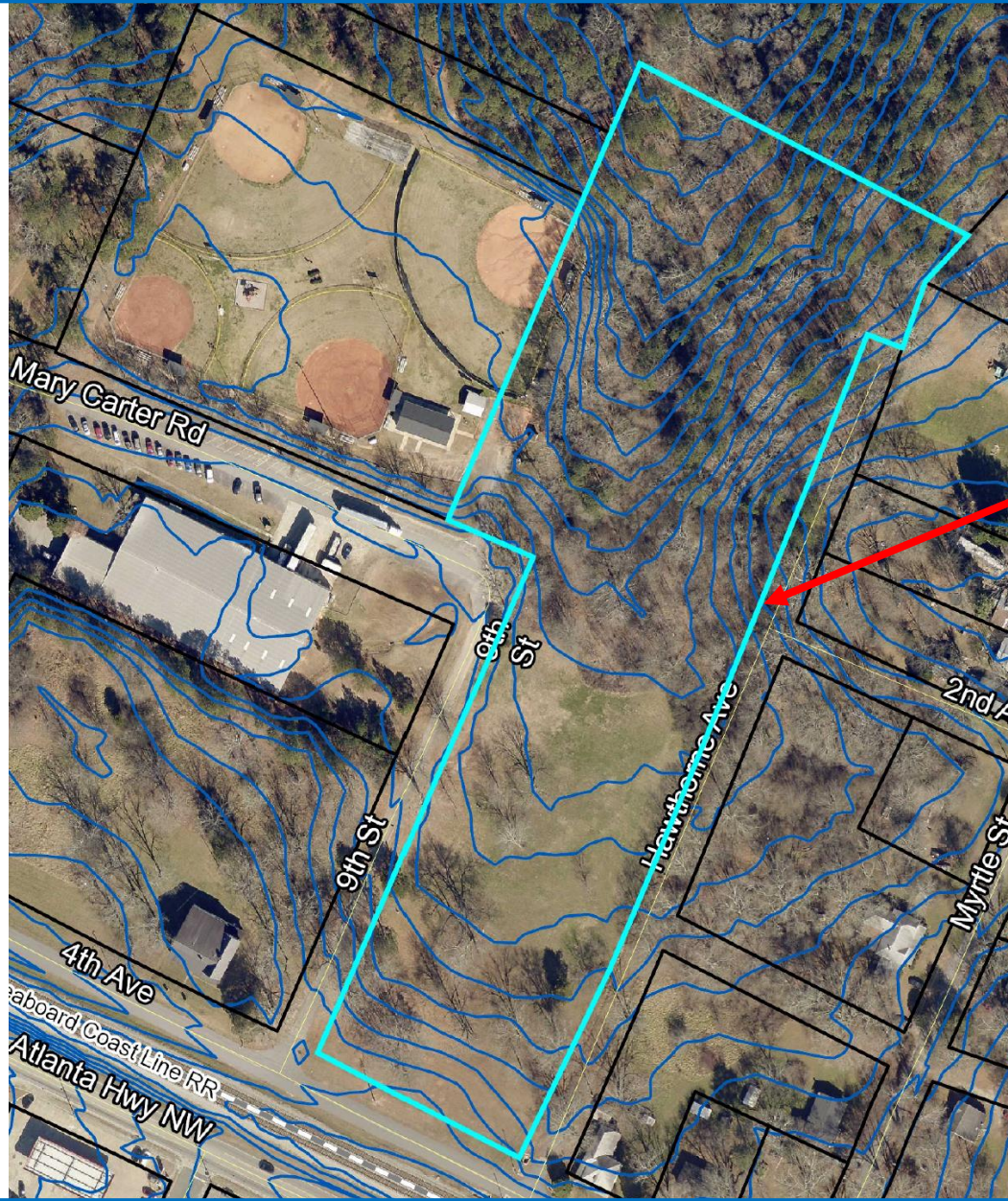
1. Construction for the projects will commence with the issuance of a Notice-to-Proceed in writing by the Owner's Representative and will terminate when the final payment is made by the Owner's Representative to the DB. Substantial Completion will occur when the project is ready for its intended use in accordance with the approved plans and specifications AND the local Authority Having Jurisdiction over the project authorizes and issues a Certificate of Occupancy.
2. Scope of Services during the Construction Phase includes, but is not limited to:
 - Construction of the Project.
 - Construction management and administration.
 - Coordinate and Schedule installation of any Owner Supplied DB Installed systems (if any).
 - Provide Quality Control Inspections by the DB with monthly reports issued to the Owner's Representative by the DB's design professionals during construction.
 - Provide Project/Field engineering.
 - Provide Construction supervision.
 - Host meetings with the Owner's Staff; record and distribute minutes. It is the desire of the Owner to have bi-monthly meetings.
 - DB will coordinate with the Owner's Representative to ensure required staff and others are scheduled.
 - Schedule updates at least monthly.
 - Coordinate/schedule Material Testing / Special Inspections as required by the specifications and direct provided by the Owner.
 - Obtain and pay for all required inspections and permits.
 - Minimize disruption to the Owner's existing Park operations.
 - Pay for all goods and services and provide releases to the Owner's Representative as required during execution of work.
 - Provide information to assist the Owner's Representative with Completion Reports

ATTACHMENT A - GENERAL SCOPE OF SERVICES - Design Build (Post-Construction)

PART 4 - DESIGN-BUILDER'S - POST CONSTRUCTION RESPONSIBILITIES

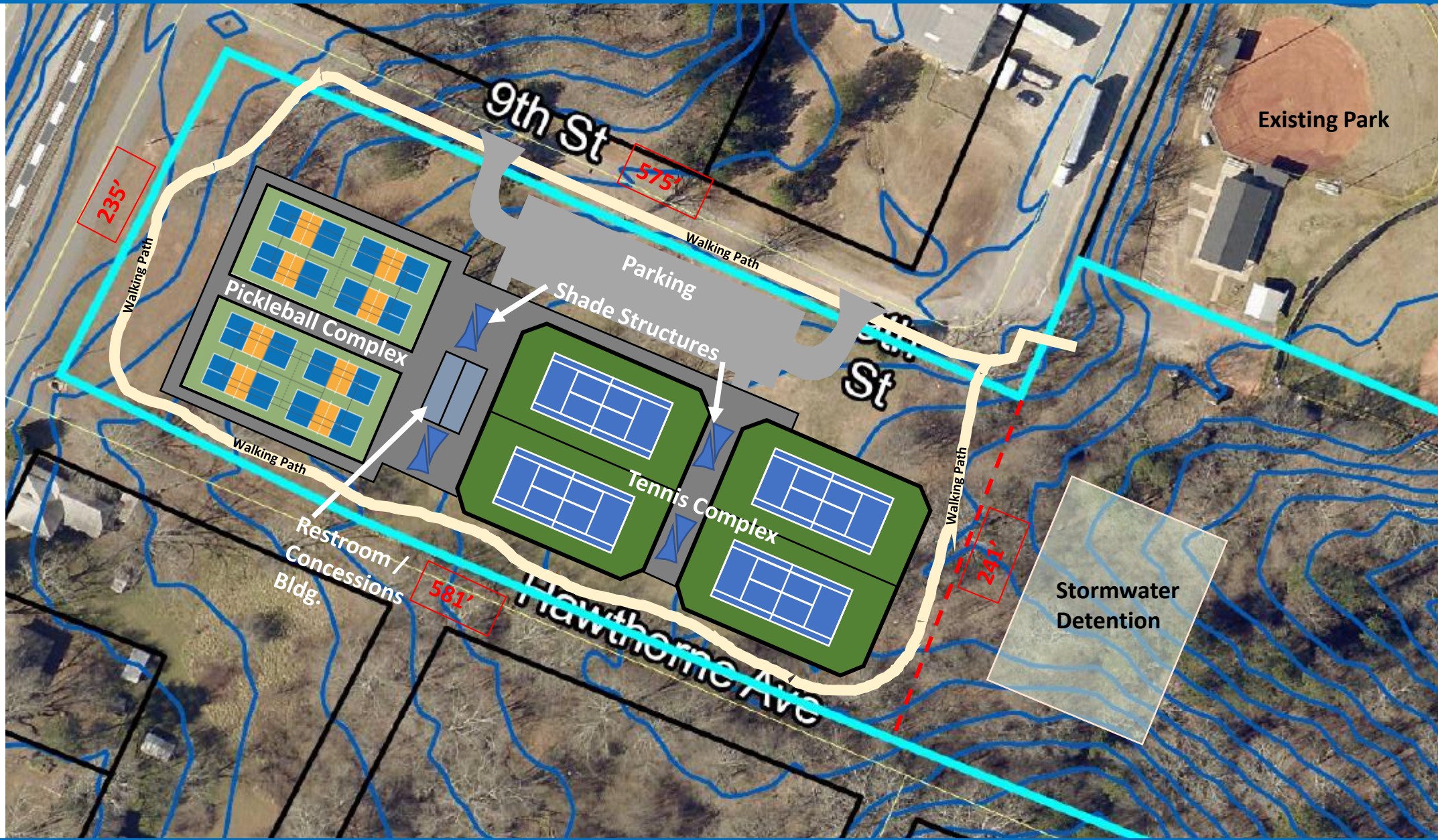
1. Items on the punch list must be completed and Final Completion must be achieved within thirty (30) days of Substantial Completion or as provided for on the approved Project Schedule. Also, within one (1) month of substantial completion, the DB shall provide five (5) copies of a final report. This report is to include:
 - Copies of all meeting minutes
 - Copies of all permits
 - Correspondence with regulatory agencies, if any
 - Warranties and guarantees
 - Electronic Operation and maintenance Manuals on contained on (2) each external hard drives
 - Statement certifying Project Completion
 - Final Summary of all costs
 - Complete all requirements of the RFP
 - Warranty Inspections
 - Conduct Warranty Review/Facility Inspection one month prior to the end of the general warranty period with the Owner and facility staff to identify and resolve outstanding warranty issues prior to the end of the warranty period.

EXISTING SITE AERIAL

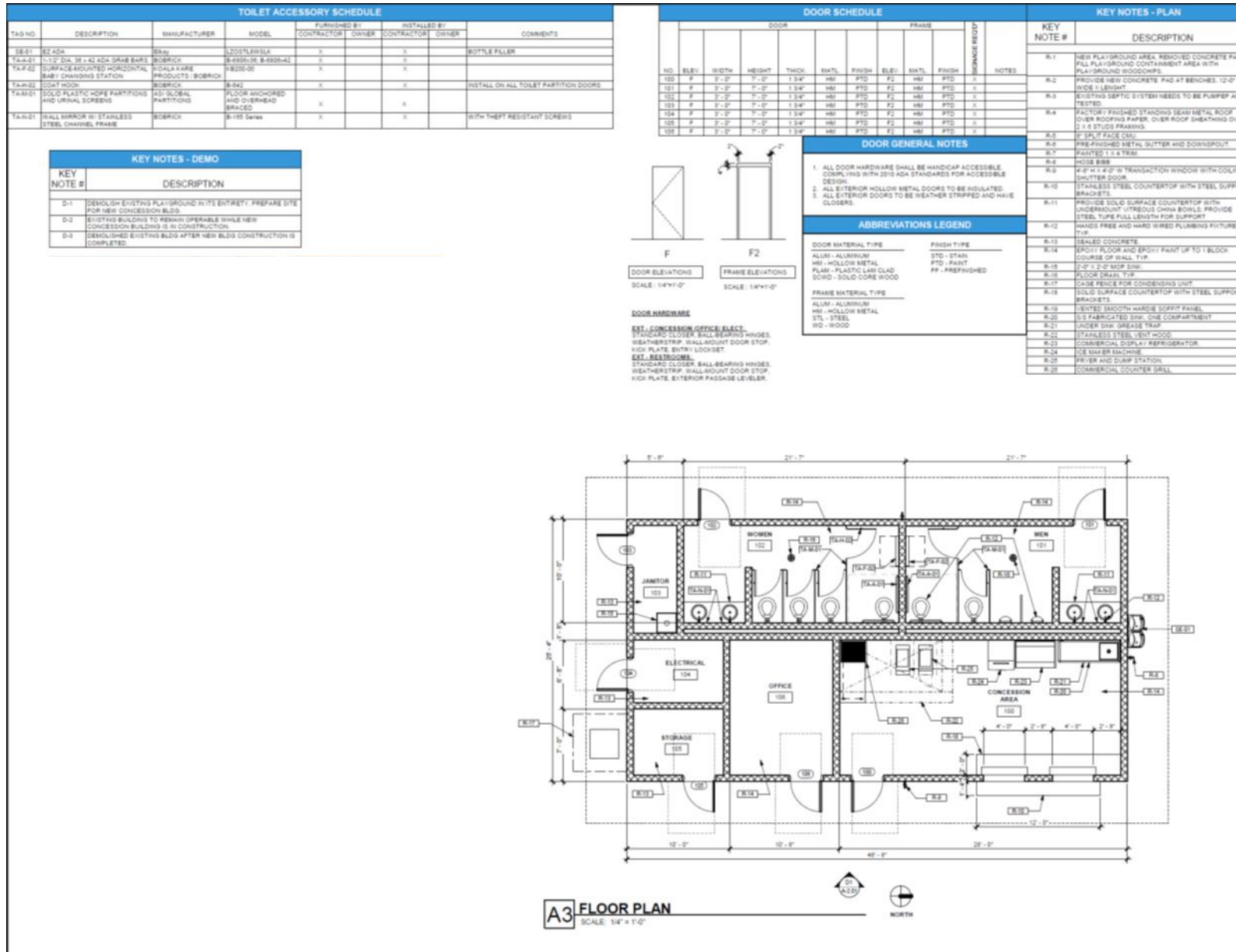


**Project
Area**

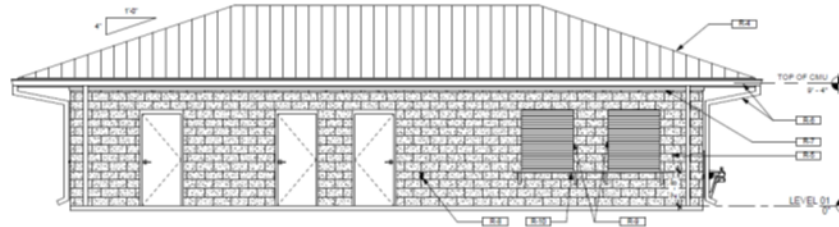
Courts Complex Site Plan Concept



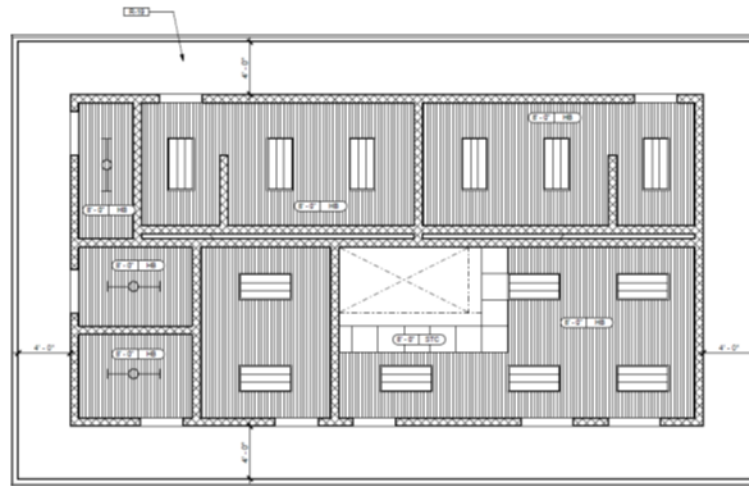
Concessions / Restroom Floor Plan Concept



Concessions / Restroom Elevation / RCP Concept



D1 SOUTH ELEVATION
SCALE: 1/4" = 1'-0"



NOTE: PROVIDE A/C HEATING AND COOLING.

A1 RCP
SCALE: 1/4" = 1'-0"

RCP LEGEND	
	2' x 2' LED TROFFER LIGHT
	2' x 4' LED TROFFER LIGHT
	UTILITY LED LIGHT
	CEILING TAB
	HARDIE BEAD BOARD CEILING
	2' x 2' STAINLESS STEEL CEILING TILES, CLEANABLE
RCT	2' x 2' STAINLESS STEEL CEILING TILES, CLEANABLE
MFR	ARMSTRONG BASIS OF DESIGN STYLE STAINLESS STEEL EDGE, SQUARE SIZE: 2' x 2' x 3/4\"
HB	HARDIE BOARD
	1/2\"
RCP GENERAL NOTES	
1. CONSTRUCTION PROFESSIONAL SHALL FIELD VERIFY ALL FUTURE LOCATIONS. ANY CONFLICT WITH FIELD CONDITIONS, DRAWINGS AND/OR OTHER TRADES SHALL BE REPORTED TO THE ARCHITECT IMMEDIATELY UPON DISCOVERY FOR CLARIFICATION PRIOR TO PROCEEDING WITH ASSOCIATED WORK.	
2. PROVIDE AND INSTALL CEILING TILE, MAIN TEES, CROSS TEES, WALL MOULDINGS AND OTHER ACCESSORIES NECESSARY TO COMPLETE THE SCOPE OF WORK.	
3. ALL ADJACENT LIGHT SWITCHES SHALL BE GANGED WITH A SINGLE FACE PLATE.	
4. UNLESS APPROVED BY THE ARCHITECT, ALL THERMOSTATS SHALL BE LOCATED DIRECTLY ADJACENT TO THE LIGHT SWITCH IN THE ROOM IN WHICH IT OCCURS.	
5. CENTER ALL LIGHT FIXTURES IN SPACE, U.N.O. ALL RECESSED LIGHT FIXTURES SHALL BE CENTERED IN CEILING TILES WHERE POSSIBLE, U.N.O.	
6. CONSTRUCTION PROFESSIONAL WILL ENSURE THAT LENSES IN LIGHTING FIXTURES ARE CLEAN AND FREE OF DUST, DIRT AND SHADOWS. PLASTIC AND LABELS SHALL BE REMOVED FROM ALL LIGHT FIXTURES AT PROJECT COMPLETION.	
7. NO SUBSTITUTES WILL BE ACCEPTED FOR ANY LIGHT FIXTURES UNLESS APPROVED BY ARCHITECT IN WRITING.	
KEY NOTES - PLAN	
KEY NOTE #	DESCRIPTION
R-1	NEW PLAYGROUND AREA, REMOVED CONCRETE PAD, FILL PLAYGROUND CONTAINMENT AREA WITH PLAYGROUND WOODCHIPS.
R-2	PROVIDE NEW CONCRETE PAD AT BENCHES, 12'-0\"
R-3	EXISTING SEPTIC SYSTEM NEEDS TO BE FLUMED AND TESTED.
R-4	FACTORY FINISHED STANDING SEAM METAL ROOF OVER ROOFING PAPER, OVER ROOF SHEATHING OVER 2 x 6 STUDS FRAMING.
R-5	1\"
R-6	PRE FINISHED METAL SHUTTER AND DOWNPOUT.
R-7	PAINTED 1 x 4 TRIM.
R-8	NOISE BARR.
R-9	4'-0\"
R-10	STAINLESS STEEL COUNTERTOP WITH STEEL SUPPORT BRACKETS.
R-11	PROVIDE SOLID SURFACE COUNTERTOP WITH UNDERMOUNT VITREOUS CHINA BOWLS. PROVIDE STEEL TUBE FULL LENGTH FOR SUPPORT.
R-12	HANDS FREE AND HAND WASH PLUMBING FIXTURES, TYP.
R-13	SEALED CONCRETE.
R-14	SPRINT FLOOR AND SPRAY PAINT UP TO 1 BLOCK COURSE OF WALL TOP.
R-15	2'-0\"
R-16	FLOOR DRAIN, TYP.
R-17	CASE FENCE FOR CONDENSING UNIT.
R-18	SOLID SURFACE COUNTERTOP WITH STEEL SUPPORT BRACKETS.
R-19	VENTED SMOOTH HARDIE GYPTIUM PANEL.
R-20	S/S FABRICATED SINK, ONE COMPARTMENT.
R-21	NOISE TYP. SILENCER TYP.
R-22	STAINLESS STEEL VENT HOOD.
R-23	COMMERCIAL DISPLAY REFRIGERATOR.
R-24	CASE WARMER MACHINES.
R-25	PURIFIER AND DUMP STATION.
R-26	COMMERCIAL COUNTER GRILL.

ATTACHMENT C
Acknowledgement of Addendum Form

RFP #2022-07

Design-Build – Courts Complex

REQUIRED SUBMITTAL

The Offeror has examined and carefully studied the Specifications and the following Addenda, receipt of all of which is hereby acknowledged:

Addendum	_____	date	_____	Acknowledgement	_____
					<i>Initial</i>
Addendum	_____	date	_____	Acknowledgement	_____
					<i>Initial</i>
Addendum	_____	date	_____	Acknowledgement	_____
					<i>Initial</i>
Addendum	_____	date	_____	Acknowledgement	_____
					<i>Initial</i>

Offerors must acknowledge any issued addenda. Submittals which fail to acknowledge the offeror's receipt of any addendum would result in the rejection of the submittal if the addendum contained information which substantively changes the Owner's requirements.

ATTACHMENT D
Reference Survey Form

RFP #2022-07

Design-Build – Courts Complex

REQUIRED SUBMITTAL

Offeror: _____

Project Name: _____

Project Completion Date: _____

Offeror's scope included: _____ Design
_____ Construction

Please rate the Offeror 's performance from 1-5 on the following issues by circling the appropriate number where 1 indicates that you least agree with the statement and 5 indicates that you most agree with the statement.

	Disagree				Agree	
Completed work on time:	1	2	3	4	5	N/A
A/E and Construction						
Completed work within budget:	1	2	3	4	5	N/A
A/E and Construction						
Provided timely and accurate information:	1	2	3	4	5	N/A
A/E and Construction						
Collaborated well with Owner's staff:	1	2	3	4	5	N/A
A/E and Construction						
Exercised project safety:	1	2	3	4	5	N/A
Construction						
Provided quality materials and workmanship:	1	2	3	4	5	N/A
Construction						
Would use firm again:	1	2	3	4	5	N/A
A/E and Construction						

Completed by: Name: _____

Entity: _____

Address: _____

Telephone: _____

Fax: _____

Signature: _____ Date: _____

Thank you for your assistance.

ATTACHMENT E
PROJECT SCHEDULES
RFP #2022-07
Design-Build – Courts Complex

Proposed Project Delivery Process

Process:

- ☐ **Pre-Construction / Design Development Phase (July 08 – October 04, 2022)** Conduct **Design Workshops** and present design updates to Staff)
 - Design Builder conducts Facility Assessments.
 - Design Builder completes necessary Design Documents to achieve pricing and GMP.
 - Design Builder integrates his sub-contractors with their design team
 - Construction GMP Packaging and Sequencing is developed and presented to City of Auburn Mayor & Council no later than October 06, 2022.

- ☐ **Achieve Building Permit (no later than October 06, 2022)**
 - Submit to the City of Auburn/Barrow County AHJ for Building Permit & State of Georgia for Land Disturbance Permit

- ☐ **Construction / Final Construction Document Phase (October 07, 2022 – June 30, 2023)**
 - Complete remaining Construction Documents
 - Achieve Final Permits
 - Start and Complete Construction Packages
 - Substantial Completion date of; June 15, 2023
 - Final Completion date of; June 30, 2023

ATTACHMENT F
SUBCONTRACTORS QUALIFICATION AFFIDAVIT

RFP #2022-07

Design-Build – Courts Complex

REQUIRED SUBMITTAL

LISTED SUBCONTRACTOR _____

AFFIDAVIT

THIS IS TO CERTIFY that _____
(Subcontractor's company name), proposed subcontractor for
_____ (scope of work) for Design-Build – Courts Complex and meets
the qualifications cited in specification Section (s) _____,
Paragraph (s) _____.

THE CERTIFICATIONS of the affiant are not mere declarations, but are in consideration
of and in fulfillment of express contractual requirements established in the bidding
documents for this project.

THIS AFFIDAVIT applies to:

PROJECT: Design-Build – Courts Complex

This _____ day of _____, 2022.

General Contractor _____

By _____

Title (must be an officer of the company) _____

CERTIFICATION OF NOTARY PUBLIC

Sworn and subscribed to before me, an officer authorized to administer oaths.

This _____ day of _____, 2022.

NOTARY PUBLIC

My commission expires on _____

SEAL

END OF SECTION

ATTACHMENT G
IMMIGRATION AND SECURITY FORM

RFP #2022-07

Design-Build – Courts Complex

REQUIRED SUBMITTAL

O.C.G.A. § 13-10-91 requires contractors interested in public works contracts to file an affidavit that the contractor and its subcontractors have registered and participate in a federal work authorization program intended to ensure that only lawful citizens or lawful immigrants are employed by the contractor or subcontractor. In order to ensure 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., Contractor must warrant and affirm that Contractor has complied with the Immigration Reform and Control Act of 1986 (IRCA), D.L. 99-603 and the Georgia Security and Immigration Compliance Act by registering at <https://e-verify.uscis.gov/enroll/StartPage.aspx?JS=YES>; 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.

By executing this affidavit, the undersigned Contractor verifies its compliance with O.C.G.A. § 13-10-91, stating affirmatively that the individual, firm, or corporation which is contracting with the City of Auburn, Georgia 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, and Contractor warrants that it will continue to use the federal work authorization program throughout the contract period.

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 Auburn, Georgia, Contractor will secure from such subcontractor(s) similar verification of compliance with O.C.G.A. § 13-10-91 on the Subcontractor Affidavit provided in Georgia Department of Labor 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 Auburn, Georgia at the time the subcontractor(s) is retained to perform such service.

Signature

Title

Firm Name: _____

Street/Mailing Address: _____

City, State, Zip Code: _____

Telephone Number: _____

Email: _____

Company Identification Number: _____

Date of Authorization: _____

Subcontractor Affidavit under O.C.G.A. § 13-10-91(b)(3)

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 (name of contractor) on behalf of the CITY OF AUBURN MAYOR & COUNCIL has registered with, is authorized to use and uses the federal work authorization program commonly known as E-Verify, or any subsequent replacement program, in accordance with the applicable provisions and deadlines established in O.C.G.A. § 13-10-91. Furthermore, the undersigned subcontractor will continue to use the federal work authorization program throughout the contract period and the undersigned subcontractor will contract for the physical performance of services in satisfaction of such contract only with sub-subcontractors who present an affidavit to the subcontractor with the information required by O.C.G.A. § 13-10-91(b). Additionally, the undersigned subcontractor will forward notice of the receipt of an affidavit from a sub-subcontractor to the contractor within five business days of receipt. If the undersigned subcontractor receives notice that a sub-subcontractor has received an affidavit from any other contracted sub-subcontractor, the undersigned subcontractor must forward, within five business days of receipt, a copy of the notice to the contractor. Subcontractor hereby attests that its federal work authorization user identification number and date of authorization are as follows:

Federal Work Authorization User Identification Number

Date of Authorization

Name of Subcontractor

Name of Project

Name of Public Employer

I hereby declare under penalty of perjury that the foregoing is true and correct.

Executed on _____, ___, 2022 in _____(city), _____(state).

Signature of Authorized Officer or Agent

Printed Name and Title of Authorized Officer or Agent

SUBSCRIBED AND SWORN BEFORE ME
ON THIS THE _____ DAY OF _____, 2022.

NOTARY PUBLIC

My Commission Expires:

ATTACHMENT H
NON-COLLUSION AFFIDAVIT OF PRIME
BIDDER/SUBCONTRACTOR

RFP #2022-07

Design-Build – Courts Complex

REQUIRED SUBMITTAL

State of Georgia

City of Auburn, Georgia

_____, being the first duly sworn, deposes and says that:

1. He/she is _____ of _____
(Owner, partner, etc.) (Company)

the Bidder that has submitted the attached Bid.

2. He/she is fully informed respecting the preparation and contents of the attached Bid and of all pertinent circumstances respecting such Bid.

3. Such Bid is genuine and is not a collusive or sham Bid.

4. Neither the said Bidder nor any of its officers, partners, owners, subcontractors, agents, representatives, employees or parties in interest including this affiant, has in any way colluded, conspired, connived or agreed, directly or indirectly, with any other Bidder, firm or person to submit a sham Bid in connection with the Contract for which the attached Bid has been submitted or to refrain from bidding in connection with such Contract, or has in any manner, directly or indirectly sought by agreement or collusion or communication or conference with any other Bidder, firm or person to fix price or prices in the attached Bid or of any other Bidder, or to fix overhead, profit or cost element of the bid price or the bid price of any other bidder, or to secure through any collusion, conspiracy, connivance or unlawful agreement and advantage against the City of Auburn, Georgia or any person interested in the proposed contract;

5. The price or prices quoted in the attached Bid are fair and proper and are not tainted by any collusion, conspiracy, connivance, or unlawful agreement on the part of the Bidder or any of its agents, representatives, owners, employees, or parties in interest including this affiant.

Signature: _____

Date: _____

Name & Title: _____

Notary: _____

My Commission Expires _____

**ATTACHMENT I
BUSINESS LICENSE**

RFP #2022-07

Design-Build – Courts Complex

REQUIRED SUBMITTAL

ATTACHMENT J
DESIGN BUILD CONTRACT

RFP #2022-07

Design-Build – Courts Complex

REQUIRED SUBMITTAL – EXECUTED

All submitting Design Build Firms or Teams are required to execute the **Design Build Contract** therefore indicating their willingness to comply with all terms and to submit the executed Design Build Contract as a part of their proposal.

Upon award of the Project to the winning Design Build Firm or Team, the City of Auburn, Georgia will execute the Design Build Contract. Please be advised that the execution of the Design Build Contract prior to the award of the Project does not constitute the acceptance of an offer by the City or otherwise bind the City in any way until the City executes the Design Build Contract.

Refer to **Attachment L** for specific Contract

NOTE 1: (Please leave date and amount of Design Build Contract blank). Exhibits “A” thru “L” will be executed after the project is awarded)

ATTACHMENT J



**STANDARD FORM OF CONTRACT FOR
CONSTRUCTION MANAGEMENT / DESIGN
BUILD SERVICES INCLUDING
CONSTRUCTION FOR A GUARANTEED
MAXIMUM PRICE BETWEEN
City of AUBURN, GEORGIA
AND THE CONSTRUCTION MANAGER /
DESIGN-BUILDER**

(,insert contractor name)_____

**Construction
Manager/Design-Builder:**

Project Name: COURTS COMPLEX

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CONTRACT FOR
CONSTRUCTION MANAGEMENT/DESIGN BUILD SERVICES

This agreement (the "Agreement") is made and entered into by and between the City of Auburn, Georgia ("Owner"), a political subdivision of the State of Georgia, acting by and through its governing authority, the Mayor and Council , and _____, a _____[insert type of business entity and state of registration (e.g. "Georgia corporation")]] ("Construction Manager").

This Agreement shall become effective on the date it is executed by the last party to execute it (the "Effective Date").

For and in consideration of the mutual promises, covenants and agreements set forth herein, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, Owner and Construction Manager agree as follows:

ARTICLE 1

DEFINITIONS

1.1 "Applicable Laws" means all laws, statutes, ordinances, codes, building codes, regulations, rules, orders and resolutions of all national, administrative, state, local, municipal, and other governing bodies relating to the Project or to the performance of the Services or the Work.

1.2 "Architect" means the architect employed by Construction Manager, or alternatively, the architect employed by or contracting with the Design Build firm with which Construction Manager has subcontracted to perform design-build Work that Construction Manager is required to perform pursuant to this Agreement.

1.3 "Change Order" means a written order to Construction Manager executed by the Owner and Architect in accordance with the contract, authorizing and directing an addition to, deletion from, or adjustment or revision to the requirements of the Contract Documents, or an adjustment to the compensation payable to Construction Manager, or to the time for performance of the contract and completion of the Project, or any combination thereof.

1.4 "Construction Phase" means the phase of the Project commencing upon completion of the Design Phase, or upon award of the first Subcontract related to construction of the Project, whichever occurs first, and ending upon Architects and Owner's Representative's execution of the Certificate of Final Completion of the Project. The parties acknowledge that the Design Phase and the Construction Phase may overlap.

1.5 "Construction Phase Services" means Services rendered during the Construction Phase of the Project.

1.6 "Day", unless otherwise stated, means calendar day.

1.7 "Design for Construction" means the complete and final design and construction documents provided by Architect and shall include the plans and specifications prepared by or on behalf of Architect for use in constructing the Project, performing the Work, and rendering the Project fully operational. All changes and modifications to the Design for Construction issued in accordance with the requirements of this Agreement shall become and be a part of the Design for Construction.

1.8 "Design Phase" means the phase of the Project commencing upon the Effective Date of this Agreement and ending upon completion of the Design for Construction for the Project.

1.9 "Design Phase Services" means all Services required during the Design Phase of the Project.

1.10 "Final Completion" means the completion of all Work required by, and in strict compliance with, the Contract Documents, including start-up, testing, obtaining regulatory approvals from all applicable authorities, and all preparations necessary to operate and maintain the Project.

1.11 "GMP" means the Guaranteed Maximum Price for the Project, as defined and subsequently established in paragraph 14.2, below.

1.12 "Other Contractors" means any contractor, but not including Construction Manager or the Subcontractors, with whom Owner enters into a direct contract for the performance of any portion of work in connection with the Project.

1.13 "Owner's Representative" means the individual named by Owner, in writing and as such writing may be amended from time to time, to act on Owner's behalf in the administration of this contract. Owner's Representative does not have authority to waive or modify any condition or term of the Contract Documents.

1.14 "Preliminary Design" means all design documents constituting the preliminary design as required and defined in this Agreement.

1.15 "Project" means, and is inclusive of, the facility described in the Owner's program and all of the following as necessary to design and construct that facility: pre-construction services for all projects within the program; cost management; schedule management; design document development; permitting to all authorities having jurisdiction; full Construction Management, Design-Build and Post Construction services for all projects within the Program, including the development of as-built drawings.

1.16 "Reimbursable Expenses" means those items, and only those items, set forth in Exhibit "A" properly documented and reasonably, necessarily, and actually incurred by Construction Manager in the performance of the Services and the Work.

1.17 "Services" means those services, functions, roles, responsibilities, obligations and duties required of Construction Manager pursuant to the terms of the Contract Documents.

1.18 "Subcontracts" means the contracts between Construction Manager and any Subcontractor.

1.19 "Subcontract Costs" means those sums properly paid or due and payable by Construction Manager under the terms of the Subcontracts.

1.20 "Subcontractor" means any person or entity having a direct contract or purchase order with Construction Manager for the performance or supply of all or any portion of the Work required by the Contract Documents or the supply of any materials, services, equipment or installation services required by the Contract Documents.

1.21 "Substantial Completion" means that stage of completion of the Project, or a designated Phase thereof, including testing, approval by any applicable regulatory authority, and receipt of the final certificate of occupancy, such that the Work and the Project, or the designated Phase thereof, are functionally and legally usable by Owner for the purpose for which they are intended.

1.22 "Value Engineering" means the detailed analysis of systems, equipment, materials, services, facilities, and supplies required by the Contract Documents for the purpose of achieving the desired and essential functions of the Owner's program at the lowest Life Cycle Cost consistent with required and necessary performance, reliability, quality and safety. "Life Cycle Cost" means the sum of all costs of the Project over its useful life, and includes the cost of design, construction, acquisition, operation, maintenance, and salvage/resale value.

1.23 "Work" means any and all labor, supervision, work, supplies, fixtures, furnishings, vehicles, equipment, services, tools, materials, computers, utilities, items, documents and things required by the Contract Documents to be performed or supplied, including all construction, testing, and permitting required to render the Project, and every component thereof, operational and usable for its intended purpose.

1.24 "Work Site Rules" are those rules set forth in Exhibit J, which Construction Manager shall follow and enforce.

ARTICLE 2

THE CONTRACT DOCUMENTS

2.1 Contract Documents Defined. The contract between the parties shall consist of the "**Contract Documents.**" The Contract Documents shall include this Agreement, the Design for Construction (upon final approval of the submitted Design Documents), any supplemental or special conditions, and all documents expressly annexed hereto as part of this Agreement. Change Orders issued hereafter, and any written amendments to this Agreement executed by Owner and Construction Manager, shall become and be a part of the Contract Documents. Documents not expressly listed above are not Contract Documents and do not constitute part of the contract between the parties.

2.2 Priority of Documents. In the event of any conflict, discrepancy, or inconsistency among any of the Contract Documents, interpretation will be based on the following descending order of priority:

- (1) This Agreement.
- (2) Supplemental or Special Conditions (if any).
- (3) Specifications.
- (4) the Design for Construction, and among the plan documents therein, the following:
 - (i) As between figures given on plans and scaled measurements, the figures shall govern;
 - (ii) As between large scale plans and small-scale plans, the large-scale plans shall govern.

2.3 Substitutions. If Owner elects to accept any items proposed by Construction Manager as a substitution, Construction Manager shall assume full responsibility for the proper performance of such substituted items and shall assume the costs of any changes in the Work which may be due to such substitution.

2.4 Design Document List. The Owner has requested the Construction Manager to prepare a list of the plans, specifications and other documents constituting the Design for Construction (the "Design Document List"). The Design Document List shall be annexed hereto as part of this Agreement.

ARTICLE 3

REPRESENTATIONS AND WARRANTIES

3.1 Specific Representations and Warranties. By executing this Agreement, Construction Manager makes the following express representations and warranties to Owner:

3.1.1 Construction Manager is professionally qualified to act as the construction manager/design-builder for the Project and has, and shall maintain, any and all licenses, permits, and other authorizations necessary to act as the construction manager and design-builder for the Project and to perform the Services required hereunder, or has contracted with an entity that has and shall maintain any and all licenses, permits and other authorizations necessary to act as the construction manager and design-builder for the Project.

3.1.2 Construction Manager understands and agrees that this Agreement is a Construction Manager/Design-Build agreement and that Construction Manager is responsible for performing the entire scope of Work set forth in this Agreement. Once the GMP is established, the Construction Manager will be "at risk" for completing the Project within budget. The Construction Manager is the entity contracting with Owner and is responsible for the performance of the entire scope of Work hereunder. If Construction Manager does not employ the necessary design-build personnel directly, Construction Manager shall subcontract with a Design-Build firm that possesses and shall maintain at all times during the term of this Agreement including any extensions or renewals hereof, all licenses, permits and other authorizations necessary to act as a Design-Build firm. The Design-Build firm with which Construction Manager shall subcontract to perform design-build Work under this Agreement is _____.

3.1.3 Construction Manager has the capability and experience, including sufficient qualified and competent supervisory personnel, to efficiently and timely accomplish the Work and perform the Services, and Construction Manager will continuously furnish sufficient personnel to accomplish the Work and perform the Services in a timely and proper manner.

3.1.4 Construction Manager shall comply, and shall cause all Subcontractors to comply, with all Applicable Laws.

3.1.5 Construction Manager assumes full responsibility to Owner for the acts and omissions of Construction Manager's officers, employees, joint venture's, partners, subcontractors, consultants, and others employed or retained by Construction Manager or them in connection with the performance of the Services or the Work.

3.1.6 Construction Manager warrants to Owner that all labor furnished to perform the Work under the Contract Documents will be competent to perform the tasks undertaken, that the product of such labor will yield only first-class results, that materials and equipment furnished will be of good quality and new unless otherwise permitted by the Contract Documents, and that the Work will be of good quality, free from faults and defects, and in strict conformance with the Contract Documents. Any Work not strictly conforming to these requirements may be considered defective.

3.1.7 All obligations related to or arising from all representations and warranties made in the Contract Documents shall be obligations of, and shall be deemed incorporated in, the performance bond furnished by Construction Manager/Design-Builder.

3.1.8 The Construction Manager represents, warrants and affirms that only truthful, complete and correct information has been provided to the Owner in the Construction Manager's Proposal ("Proposal") and in any other communication from the Construction Manager regarding the Construction Manager's qualifications or responsibility to perform the obligations of the Construction Manager/Design-Builder under this Agreement (all such information being referred to herein as "Qualification Information"). The Construction Manager further represents, warrants and affirms that in the event that any Proposal information changed in any material way after it was communicated from Construction Manager and before this Agreement is signed by all parties, Construction Manager has immediately notified the Owner, in writing, of such change or changes and Construction Manager agrees that Owner may take such action thereon as Owner deems appropriate. The Construction Manager acknowledges and agrees that the Owner has relied, and will continue to rely, on the truthfulness, completeness and correctness of the Proposal information. The Construction Manager acknowledges and agrees that all Proposal information is material and important to the Owner's evaluation of the Construction Manager's qualifications and responsibility to undertake the Construction Manager's obligations under this Agreement. Construction Manager acknowledges and agrees that if the Construction Manager knowingly provided any false, incorrect, misleading or incomplete information to the Owner in any Proposal information, or failed to advise the Owner in writing of any material change in such information as set forth in this paragraph, this Agreement shall be deemed to be materially breached by Construction Manager and subject to immediate termination for cause or rescission for cause by the Owner, at the sole option of the Owner. The Owner also shall have and retain any and all other rights and remedies provided by law, in contract or otherwise.

3.2 Enumerated Representations and Warranties Not Exhaustive. The representations and warranties enumerated in this Article 3 operate in addition to, and shall in no way supersede, limit, or restrict any other duty, responsibility, representation, or warranty, express or implied, created or required by the Contract Documents or by law.

ARTICLE 4

CONSTRUCTION MANAGER'S SERVICES AND DUTIES: GENERAL PROVISIONS

4.1 Generally. Construction Manager shall perform and provide the Services and the Work required by, or reasonably implied by or inferable from, the Contract Documents, shall be responsible for the design and construction of the Project in strict conformance with the requirements of the Contract Documents, and shall pay for all labor, supervision, materials, supplies, furnishings, equipment and things required by the Contract Documents. In performing its duties hereunder, Construction Manager shall be a fiduciary to the Owner in whom the Owner may place its full trust and confidence.

4.2 Standard of Care. Construction Manager shall perform the Services at a level, and be judged by a standard of care, that is consistent with the standards and quality prevailing among first-rate, nationally recognized construction management, design/build and general contracting firms of superior knowledge, skill and experience engaged in projects of similar size and complexity. Construction Manager shall carry out and complete the Services in an efficient, economical and timely manner, as expeditiously as is consistent with the level of skill and care required hereby and the interests of Owner, and in strict accordance with the Contract Documents.

4.3 Permits, Notices, And Fees. Construction Manager shall cooperate with and assist Owner as necessary in timely preparing and submitting all necessary submissions, notices, and applications to all relevant governmental authorities and assist in filing or obtaining from all relevant government authorities all necessary design documents, site plans, approvals, environmental permits, notices of commencement, inspection certificates, certificates of occupancy, and similar documents necessary for the construction, occupancy, and use of the Project. The Owner shall pay all governmental fees associated with the foregoing. Construction Manager shall obtain or, as applicable, cause Subcontractors to obtain all building and other permits required for construction of the Project, the cost of which shall be part of the GMP.

4.4 Compliance with Applicable Laws. Construction Manager shall reasonably ensure that the Services and Work are performed, and the Project is constructed, in a manner which meets the requirements of all Applicable Laws relating to the design, construction, occupation, and operation of the Project, including, but not limited to, building codes, fire and safety regulations, the Americans with Disabilities Act, and environmental regulations. Such Applicable Laws shall be deemed minimum standards for the Project. Where the requirements of the specifications and the accompanying plans exceed those of the Applicable Laws, the plans and specifications shall be followed. Construction Manager shall immediately notify the Owner's Representative in writing of any known violation by its employees or Subcontractors (including the Architect, whether an employee or a Subcontractor) of any Applicable Law, or any such violation of which the Construction Manager reasonably should have known.

4.5 Communications in Writing. All communications relating to the Project between Construction Manager and Owner's Representative shall be in writing or, as applicable, shall be confirmed in writing.

4.6 Reporting Anticipated Delays. Should Construction Manager, at any time during the course of the Project, have reason to believe that Construction Manager or any Subcontractor will be unable to meet a completion date of any activity which is on the critical path of the Project or which may delay

Construction Manager, any Subcontractor, the Architect, or the progress of the Project, Construction Manager shall notify Owner's Representative in writing within forty-eight (48) hours, stating the reason for the delay, describing steps being taken to remedy the delay, and recommending steps for eliminating or reducing the extent and impact of such delays.

4.7 Duty to Correct. Construction Manager shall promptly correct any errors, omissions, deficiencies, or conflicts in its Services and the Work at its own cost and without additional compensation or reimbursement, and Construction Manager shall not be compensated or reimbursed for performing any Services necessitated by its failure to perform in strict accordance with the Contract Documents.

4.8 Storm Water Discharge Permits. Any provision of this Agreement to the contrary notwithstanding, and unless otherwise directed in writing by the Owner, the provisions of this paragraph 4.8 shall apply and the Construction Manager shall have and perform the duties, obligations and responsibilities of the Construction Manager set forth herein. The Construction Manager shall: (i) prepare the Erosion, Sedimentation and Pollution Control Plan in accordance with the State of Georgia Department of Natural Resources Environmental Protection Division storm water discharge permit (the "DNREPDSD Permit"); (ii) perform the initial inspection of the installation of the control measures set forth in the Erosion, Sedimentation and Pollution Control Plan in accordance with the DNREPDSD Permit; (iii) perform the weekly inspections and inspections after rain (or other precipitation) as are required by the DNREPDSD Permit; and (iv) perform the duties, obligations and responsibilities of the "design professional" under the DNREPDSD Permit. As used in the immediately preceding sentence, the term "design professional" shall have the meaning ascribed to it in the DNREPDSD Permit. The Construction Manager shall provide, satisfy or otherwise comply with all applicable requirements and conditions of the DNREPDSD Permit, including, without limitation, all notices, fees, plan implementation, monitoring, sampling, inspections, reports, record keeping, submittals and any other requirements and conditions of the DNREPDSD Permit.

ARTICLE 5

5.1 DESIGN SERVICES

(A) Generally: Construction Manager shall perform all Design Services described in, contemplated by, inferable from, or necessary or desirable to achieve the objectives stated in the Agreement, including all Design Services necessary for the Project to be permitted, properly constructed by Construction Manager and used, operated and maintained by Owner in accordance with all applicable guidelines, requirements and standards. "Design Services" means any and all architectural, engineering and design services required to be performed by Construction Manager pursuant to the Contract and all labor, materials, supervision, equipment, computers, documents, and all other things necessary for the performance of such services.

- (1) The Design Services required of Construction Manager under this Contract do not include, unless otherwise amended to the contrary:

- (a) Flood Plain Study and Delineation;
- (b) Wetlands Study and Delineation;
- (c) Offsite Utility System Design;
- (d) Domestic and Fire Water Wells, Towers or Pressure Booster Systems Design;
- (e) Studies, Drawings/Specifications required for off-site Road Developments/Improvements required for City of Auburn, Georgia Public Works or Georgia Department of Transportation.
- (f) Not Utilized
- (g) FFE Selection, Planning, and Design {A Furniture Concept Plan is included for purpose of electrical, data, and communications coordination only}
- (h) Presentation documentation including models, renderings, 3-D modeling, etc.
- (i) Traffic Engineering
- (j) Detailed energy conservation studies, energy modeling, and detailed life cycle cost studies of the building envelope and systems beyond what may be required by applicable codes.
- (k) Providing extra services to make presentations for Zoning Board hearings, variances and appeals, Building Code variances and off-site drainage.
- (l) Providing a complete set of structural calculations of building structural components beyond what may be required by applicable codes.

(2) The Design Services required of Construction Manager under this Contract do include, without limitation, building evacuation plans, site evacuation plans, demolition plans {if demolition is applicable), and any and all other services necessary to provide permittable drawings and specifications.

(B) Owner's Review of Design Services: Subject to Paragraph 13.6 of this Agreement, Construction Manager shall submit all documents produced as part of the Design Services to Owner's Representative for review and approval in accordance with the terms of the Contract.

However, any such review or approval by Owner or Owner's Representative shall not relieve Construction Manager of or otherwise diminish its obligations under the Agreement. Owner may direct Construction Manager to make changes to any such documents in order to conform such documents to Owner's objectives. Any such changes by Construction Manager ordered by Owner shall not relieve Construction manager of its obligations hereunder unless, and only to the extent that, Construction Manager notifies Owner in writing within seven (7) days of receipt of Owner's directive to make such changes of any adverse impact on schedules, budgets, operational costs, operational performance, satisfaction of regulatory requirements, or other adverse impact that may result from such changes. Failure of Construction Manager to submit its notice within said seven (7) day period shall constitute a waiver by Construction Manager of any claim for an adjustment to the Guaranteed Maximum Price, the Design Schedule, the Contract Time, or any combination thereof.

(C) Testing Consultant: The Owner, at its cost, may retain one or more testing consultants (the "Testing Consultant") to provide, subject to the Owner's Representative's approval of the scope of services to be provided, design phase subsurface investigations, construction phase materials testing, and

any special inspections required of Owner by Section 1704 Special Inspections of the Georgia State Minimum Standard Building Code (International Building Code 2000, as amended in Georgia). The services referred to in the immediately preceding sentence may be referred to herein as the "Testing Services." The Testing Consultant shall be chosen by the Owner in its sole and absolute discretion, subject only to applicable law. The Construction Manager hereby agrees with Owner that Construction Manager shall be and is responsible for, not later than the time set forth in the immediately succeeding sentence, submitting to the Owner's Representative specifications for the recommended scope of the Testing Services to be provided by the Testing Consultant. The Construction Manager shall submit to the Owner's Representative such proposed specifications for the recommended scope of Testing Services to be provided by the Testing Consultant sufficiently in advance of the Construction Manager's first need for any Testing Services, allowing ample time for the Owner's Representative to review and for revision if required by the Owner's Representative, and in any event, not later than six (6) weeks in advance of the Construction Manager's first need for any Testing Services. Subject to the provisions of Paragraph 13.6 of this Agreement, Owner's Representative shall review and approve, where appropriate, such recommended scope of Testing Services, or any portion thereof. The Construction Manager hereby agrees to coordinate and cooperate with the Testing Consultant in providing of such Testing Services as may be approved by the Owner's Representative. Without limiting the generality of the foregoing, the Construction Manager specifically agrees to coordinate with the Testing Consultant so as not to delay performance of the Design Services or the Work. Construction Manager's specifications for such Testing Services shall include, without limitation, all design phase subsurface investigations (sometimes commonly referred to as geotechnical services) and all construction phase materials testing required by any applicable law, rule, regulation, code, ordinance, standards, the Owner's contract with the Testing Consultant, this Agreement, or otherwise required by prudent design or construction practice in order to evaluate all pertinent subsurface, or geotechnical, considerations and all pertinent construction materials considerations relating to the design and construction of the Project, and shall include a separate statement of any special inspections required of Owner by Section 1704 Special Inspections of the Georgia State Minimum Standard Building Code (International Building Code 2000, as amended in Georgia). Such services may include, without limitation, subsurface investigations, soil and rock boring and other exploration procedures, sampling, destructive testing, field and laboratory testing or other inspection and testing services and preparing and submitting boring logs and reports or other logs and reports, during pre-construction and construction. The Construction Manager shall carefully review the Owner's contract with the Testing Consultant. Notwithstanding any approval by the Owner's Representative of the Construction Manager's recommended scope of Testing Services, or any part thereof, in the event that any required Testing Services are beyond the scope of the Owner's contract with the Testing Consultant, or would entail additional cost thereunder, Construction Manager shall consult with Owner's Representative and obtain written direction before the Testing Consultant proceeds to provide such Testing Services. In the event that Construction Manager learns of any errors, omissions, inconsistencies, or other defects in the Testing Services provided by the Testing Consultant, the Construction Manager shall notify the Testing Consultant and the Owner immediately upon learning of same. Construction Manager shall be responsible for designing and constructing the Project in accordance with the analyses and recommendations of the Testing Consultant. For the avoidance of doubt, nothing herein shall be deemed or construed to: (i) require the Owner to pay for any testing services other than Testing Services approved in advance in writing by the Owner's Representative; or (ii) relieve the Construction Manager of any obligation to provide and pay for any required testing services it must supply under this Agreement.

(D) Quality of Design Services: Construction Manager shall be responsible for the professional quality, completeness, accuracy, and coordination of Design Documents. Construction Manager shall provide Design Services that will result in an operationally cost-efficient and economical facility that meets all environmental and regulatory requirements as of the date hereof and uses the most appropriate available technology. The design criteria shall meet, at a minimum, all state and local energy codes. Construction Manager shall provide for all testing and inspections required by sound professional architectural and engineering practices and by governmental authorities having jurisdiction over the Project; provided, however, that Owner shall pay the cost of approved Testing Services as set forth at Paragraph 5.2(C) of this Agreement.

(E) RESERVED.

(F) Compliance with Laws and Regulatory Requirements: In providing Design Services and Work, Construction Manager shall comply with the requirements of all federal, state, and local authorities having lawful jurisdiction over the Project. Construction Manager shall design the Project to meet all applicable requirements of building control laws and regulations in relation to the design, construction, occupation, and operation of the Project, including, without limitation, environmental standards, fire and safety regulations, and requirements and compliance with all other applicable standards and codes. Without limiting the generality of the foregoing, the Construction Manager shall comply with O.C.G.A. § 50-5-63, any applicable records retention requirements, and Georgia's Open Records Act (O.C.G.A. § 50-18-70, et seq.).

(G) Duty to Correct Errors: Construction Manager shall, without additional compensation, immediately correct any errors, omissions or deficiencies in its Design Services, Design Documents, and Work.

(H) Schedule Of Design Services: No later than (Note: Date needs to be inserted) _____, Construction Manager shall submit for Owner's Representative's approval the Design Schedule for the performance of Construction Manager's Design Services which shall include allowance for reasonable time required for Owner's Representative's review of submissions and for approvals of authorities having jurisdiction over the Project. The Design Schedule shall be presented in Microsoft Project, with such detail, and backed up with whatever supporting information the Owner requests. At a minimum, the Design Schedule shall include the design milestones set forth in this Agreement and shall include itemized tasks, separated by project phase if applicable, substantially as set forth in Exhibit B attached hereto and incorporated herein by reference, and shall include for each task: duration, start date, finish date, percentage completion, and a bar chart calendar. Critical tasks and interrelation of tasks shall be shown. The Design Schedule, when approved by Owner's Representative, shall not, except for good cause, be exceeded by Construction Manager. Not less frequently than biweekly (unless the parties otherwise agree in writing) Construction Manager shall update the Design Schedule to show actual progress and provide a copy to the Owner. Should Construction Manager at any time during the course of performing the Contract, have any reason to believe that it will be unable to meet any completion date in accordance with the Design Schedule, it shall immediately notify Owner's Representative in writing. In such notice, Construction Manager shall state the reason for the delay including the party responsible, if any, and the steps being taken to remedy or minimize the impact of the delay. Failure of Construction manager to submit such notice shall constitute a waiver by Construction Manager of any claim for an adjustment to the fixed fee for Design Services, the Guaranteed Maximum Price, the Design Schedule, the Contract Time, or any combination thereof. All extensions of time shall be governed by paragraph 15.5 of this Agreement. Subject to the provisions of Paragraph 13.6 of this

Agreement, Owner's Representative shall review and approve, where appropriate, the Design Schedule, or any portion thereof. Strict compliance with the requirements of this Paragraph shall be a condition precedent to payment to the Construction Manager, and failure by the Construction Manager to strictly comply with said requirements shall constitute a material breach of this Agreement.

5.2 PRELIMINARY CONSULTATION, PROJECT ANALYSIS & SCHEMATIC DESIGN

- (A) Determining The Project Objectives: Prior to the preparation of the Schematic Design and the Preliminary Design as required by paragraph 5.3 below, Construction Manager shall first consult in detail with Owner, and shall carefully analyze any information furnished by Owner concerning requirements of the Project, which may include, but is not limited to, the Owner's policies, purposes, concepts, objectives, desires, and any design, construction, scheduling, budgetary or operational Project needs, restrictions, requirements, limitations, and objectives, as well as the Owner's Criteria. As used in this Agreement, the term "Owner's Criteria," means the following documents and things provided by the Owner:
- (1) Owner's Preliminary Program.
 - (2) the following additional documents and things (if any): Owner's Milestone Schedule, Owner's Budget, Building and Campus reference drawings including surveys, floor plans and as-built drawings, and any requirements contained in or reasonably inferable from any one or more of the foregoing documents and things.
- (B) Report on Project. Based on its study and analysis, and no later than the time specified in the approved Design Schedule, Construction Manager shall prepare and submit to Owner a Schematic Design written report setting forth Construction Manager's understanding and analysis of the Project requirements and identifying any design, construction, scheduling, budgetary, operational, or other problems or recommendations which may result from such requirements. The written report (i.e., Schematic Design Deliverables, written program, site plan, floor plans, elevations, roof plan, and outline specifications) of Construction Manager shall also include proposed solutions, including design alternative if appropriate, addressing each of the identified problems. Construction Manager shall review such report with Owner and shall implement such changes as Owner may require.

5.3 PRELIMINARY DESIGN

- (A) Time For Preliminary Design: After reviewing with Owner the Schematic Design written report required by Paragraph 5.2(B) above, agreeing upon any proposed solutions to identified problems resulting from the requirements of the Project, and in accordance with the time specified in the approved Design Schedule, the Construction Manager shall prepare and submit to Owner's Representative a Preliminary Design for the Project. The Construction Manager shall present to the Owner's Representative the Preliminary Design for the Project not later than the time specified in the approved Design Schedule.
- (B) Contents of Preliminary Design: The Preliminary Design shall address all requirements of the Project and shall include, without limitation, the following:
- (1) A written description of the materials and equipment to be incorporated into the Project and the location of same;

(2) Feasibility analysis of the preliminary project floor plan indicating that the Work can be accomplished within the schedule and time constraints within the Contract.

(C) To Be Reviewed with Owner: Construction Manager shall review with Owner both the Schematic Design and the Preliminary Design and shall incorporate any changes ordered by Owner with respect to said designs or with respect to the requirements of the Project. There may be one revision made to the Schematic Design and one revision to the Preliminary Design during the Owner review and approval process described in this paragraph. A total of three sets of documents will be provided to Owner at each phase of design for review and approval.

(D) Authorization To Proceed With Detailed Design: After satisfactory review, subject to the provisions of Paragraph 13.6 of this Agreement, of the Preliminary Design and incorporation of any changes or alterations authorized or directed by the Owner with respect to the Preliminary Design or with respect to Owner's Criteria, as and if modified, Owner's Representative shall authorize Construction Manager in writing to commence preparing the Detailed Design, or such part thereof as directed by Owner.

5.4 DETAILED DESIGN

(A) Time for Preparation: Not later than the time specified in the approved Design Schedule, Construction Manager shall prepare and submit to Owner's Representative the complete Detailed Design. Where appropriate, stages of design may be approached in phases, subject to approval of the Owner.

(B) The Detailed Design: The Detailed Design, which shall be the core of the Design for Construction, shall be provided in electronic form acceptable to the Owner, and shall include all Design Documents which shall describe with specificity all systems, elements, details, components, materials, equipment, and other information necessary for the complete construction of the Project and the rendering of the Project fully operational for its intended purposes, including satisfaction of all testing, permitting, qualifications, certifications, validations, and obtaining regulatory approvals by all applicable regulatory authorities required to render the Project and all its components operational and functionally and legally usable for their intended purpose. The Detailed Design shall be accurate, coordinated and in all respects adequate for construction and shall be in strict conformity, and strictly comply, with all applicable law, codes and regulations, and with all standards, criteria (including the Owner's requirements for the Project), and memoranda of policy furnished by the Owner. Products, equipment and materials specified for use shall be readily available unless written authorization to the contrary is given by the Owner. Subject to the provisions of Paragraph 13.6 of this Agreement, Owner's Representative shall review and approve, where appropriate, the Design Documents, or any portion thereof.

(C) Design Documents: "Design Documents" means all the design documents provided by or on behalf of Construction Manager and approved by Owner pursuant to the Contract including, without limitation, those for use in obtaining a permit for all of the work required to construct the Project, constructing the Project, performing the Work, and the rendering of the Project fully operational, and shall include, without limitation, detailed plans, drawings, specifications, manuals, and related materials prepared by or on behalf of Construction Manager. A total of three sets of design documents will be provided for the Owner's review and approval.

(D) Signature and Seal: All plans and specifications shall bear the signature and seal of an architect, duly licensed and registered in the State of Georgia. Such architect must: (i) be a Qualifying Officer of

the Construction Manager, or (ii) be a Qualifying Officer of the Design/Build firm with which the Construction Manager has contracted pursuant to this Agreement, or (iii) be a Subcontractor or a Qualifying Officer of a Subcontractor. As used in the immediately preceding sentence, the term "Qualifying Officer" means a director, in the case of a corporation, or a partner in the case of a partnership, or a member, in the case of a limited liability company, or an employee with an ownership interest who has been designated in writing as holding a position of authority within the entity which authorizes him or her to direct the architectural services offered by that entity. Civil, survey, structural, electrical, and mechanical plans and specifications shall bear the signature and seal of the respective engineer, duly licensed and registered in the State of Georgia. Three complete sets of all plans and specifications, properly signed and sealed, shall be furnished to the Owner.

(E) Calculation and Verification: The Construction Manager is responsible for the calculating in detail of all structural, mechanical and electrical work including, but not limited to, the furnishing to the Owner of life-cycle- costing and energy consumption analyses, in letter format from the engineer, for the purpose of ascertaining and verifying (i) adequacy and correctness of equipment specified or shown on the plans and (ii) that the plans and specifications do not violate sound and accepted engineering principles; and

(1) to confirm that there has been ample provision in the entire structural system for expansion and contraction, including but not limited to, building frames, the roof system, gravel stops, gutters, roof expansion joints, metal flashing and metal counter flashing, roof decks, and masonry walls; and

(2) to confirm that there has been ample provision in the mechanical work for expansion and contraction.

The requirements of this paragraph shall be met in accordance with the standard professional practice of these disciplines and do not require additional documentation of verification.

(F) Free from Leaks: The Construction Manager shall design all buildings in such manner that, if such buildings are constructed in accordance with the Agreement, such buildings will be free from leaks.

(G) No Calculated Risks: The Construction Manager agrees that budgetary limitations are not a justification for breach of sound principles of architectural and engineering design. The Construction Manager shall take no calculated risks in the design of the Work. The Construction Manager agrees to design and construct the Project for the Guaranteed Maximum Price without disregarding sound principles of design.

(H) Guaranteed Maximum Price Proposal: No later than (Note: Date needs to be inserted) _____, the Construction Manager shall submit a proposed Guaranteed Maximum Price to the Owner which Guaranteed Maximum Price ("GMP") will be the maximum amount of compensation due to the Construction Manager under this Agreement (except as set forth in a Change Order). The GMP will include separately the fixed fee for Design Services submitted with the Construction Manager's proposal and a fixed fee for performing the Construction Manager's Construction Phase Services, and the Construction Manager's estimated cost of the Construction Phase Work (the estimated cost of all Construction Phase subcontracts, estimate of Construction Phase Reimbursable Expenses (as set forth in Exhibit A), and potentially a Construction Manager's construction contingency). The Construction Manager's submission shall be accompanied by a listing of the Design Documents on which it is based.

(I) No Cost to Be Incurred: Prior to the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal and issuance of a Notice to Proceed the Construction Manager shall not incur any cost to be reimbursed as part of the cost of the Work, except as the Owner may specifically authorize in writing, and the Owner shall have no liability to the Construction Manager, therefore.

(J) Guaranteed Maximum Price Amendment: Upon acceptance by the Owner of the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price and its basis shall be set forth in Amendment No. 1. The Guaranteed Maximum Price shall be subject to additions and deductions by a change in the Work as provided in the Contract Documents, and the Date of Substantial Completion shall be subject to adjustment as provided in the Contract Documents.

(K) Owner retains title to Design Documents: Owner shall retain title to all design documents, even if no agreement is reached on a Guaranteed Maximum Price and Design Builder does not build the Project. Owner shall have the right to rebid the construction of the project using the Design Documents prepared by the Design Builder.

ARTICLE 6

ESTIMATING AND MONITORING PROJECT COSTS

6.1 Construction Cost Estimate. Within twenty-eight (28) days after the Construction Manager's completion of the Preliminary Design, Construction Manager shall prepare an estimate (the "Construction Cost Estimate") of the cost of constructing the Project in accordance with the requirements of the Preliminary Design and shall provide same to Owner's Representative. The Construction Cost Estimate shall be broken down and itemized in such detail, and supported by such backup and supporting documentation, as Owner's Representative may require, and shall include a recommended contingency for each element of the Work. Construction Manager shall revise the Construction Cost Estimate monthly until the GMP is established and shall provide such revised estimates, together with such itemization and supporting documentation as Owner's Representative may require, to Owner's Representative as part of the Monthly Reports required by paragraph 12.3 of this Agreement and as provided in the immediately succeeding sentence. If the foregoing monthly revisions of the Construction Cost Estimate do not coincide with the Construction Manager's 65%, 95% and 100% completion of the Design for Construction, then Construction Manager shall also provide revised estimates to the Owner's Representative at such stages of the design. The Construction Manager shall advise the Owner of any adjustments to previous estimates indicated by changes in Project requirements or general market conditions. If at any time the Construction Manager's Construction Cost Estimate exceeds the Owner's budget, the Construction Manager shall make appropriate recommendations to the Owner to adjust the Project's size, quality or budget.

6.2 Reducing Project Costs After Bidding. If, prior to the establishment of the GMP, the lowest responsive bid for construction or supply of an element of the Work exceeds the sum indicated in the Construction Cost Estimate for that element of the Work, then Construction Manager, in cooperation with Owner as required, shall negotiate with the bidder to lower the bid to an amount acceptable to

Owner. If the negotiations with the bidder are unsuccessful in lowering the bid to an amount acceptable to Owner, Construction Manager shall perform further Value Engineering for that element of the Work. Owner may modify the Design for Construction in order to bring such bid within a range acceptable to Owner, and Construction Manager shall assist in implementing any measures decided upon by Owner to achieve such savings.

6.3 Monitoring Construction Costs and Comparison to Estimates. Throughout the duration of the Project, Construction Manager shall regularly review and study the actual and anticipated costs of constructing the Project and shall compare them to the Construction Cost Estimate and, once established, to the GMP. As part of the Monthly Reports required by paragraph 12.3 of this Agreement, Construction Manager shall furnish to Owner's Representative a written analysis of the cost of the Work, including a comparison of the Construction Cost Estimate and the GMP with the actual costs for Work in progress, Work performed to date, and estimates for uncompleted Work.

6.4 Cash Flow Forecasts. Construction Manager shall analyze the Design for Construction, schedules of values submitted by the Subcontractors, and the Construction Schedule and shall prepare a written forecast of projected monthly payments to Construction Manager through Substantial Completion of all Phases of the Project. As a part of each Monthly Report, Construction Manager shall provide Owner's Representative with an updated forecast of such projected monthly payments.

6.5 Unit Cost Records. For all Work for which Construction Manager is compensated on a unit cost basis, Construction Manager shall maintain up-to-date records of the number of units performed or supplied and shall notify Owner's Representative in writing as soon as it reasonably appears that any quantities estimated in the Contract Documents may be exceeded.

ARTICLE 7

COMPLETION DATE AND SCHEDULES

7.1 Completion Date. Construction Manager shall achieve Substantial Completion of the Work under this Agreement in phases. Construction Manager shall achieve Substantial Completion of the Work by _____ (Note: Date needs to be inserted) or, if the time for Substantial Completion cannot be established at the time this Agreement is executed, then by the date established for Substantial Completion in the Owner-approved Preliminary Schedule ("Substantial Completion Date"). The time for achieving Substantial Completion may sometimes be referred to in the Contract Documents as the "Contract Time." Construction Manager shall achieve Final Completion of the Project within thirty (30) days after the Substantial Completion Date. Neither the Substantial Completion Date nor the time for Final Completion shall be changed except by Change Order issued in accordance with the terms of this Agreement.

7.2 Preparation of Preliminary Schedule. Within ten (10) days after the later of (i) the Effective Date of this Agreement or (ii) the completion of Construction Manager's Preliminary Design, and taking into account Owner's desired Substantial Completion Date as well as Construction Manager's schedule for completion of the Design for Construction, Construction Manager shall provide to Owner's Representative, in a summary form, a proposed schedule for the completion of the Project including

milestone dates appropriate to the Project but at a minimum including dates for completion of the Design for Construction, applicable permitting requirements, long lead time items to be acquired by Owner or others, site work, work by major trades, fabrication and installation of all systems, Substantial Completion of the Project, testing, and start-up (the "Preliminary Schedule"). The Preliminary Schedule shall be subject to Owner's approval. Construction Manager shall update the Preliminary Schedule monthly throughout the remainder of the Design Phase, but the Substantial Completion Date shall not be changed except by Change Order.

7.3 Preparation of Construction Schedule. Prior to the commencement of the Construction Phase, Construction Manager shall provide to Owner's Representative a detailed schedule for performance of all of the Work (the "Construction Schedule"). The Construction Schedule shall be in such form as Owner may require, shall utilize the critical path method of scheduling, and shall conform to the established Substantial Completion Date. The Construction Schedule shall coordinate and sequence all activities and performance by all participants in the construction of the Project, including Owner, Construction Manager, Architect and Subcontractors. The Construction Schedule shall identify those activities and events which are on the critical path. The Construction Schedule shall be subject to Owner's approval. In addition to, and not in limitation of, any other requirements of this Agreement, the Construction Manager shall comply with the requirements of Exhibit "B," Minimum Requirements for Construction Manager's Construction Schedule, attached hereto and Incorporated herein by reference.

7.4 Updating of Schedules. Construction Manager shall update the Construction Schedule on a monthly basis throughout the construction of the Project to reflect accurately Services performed and Work accomplished and to be accomplished. Such updates of the Construction Schedule shall be furnished to Owner's Representative monthly along with the Monthly Report required by this Agreement. Such updates shall detail all elements of Project progress and shall identify any delays relating to any activity on the critical path of the Project, the cause and extent of same, the projected impact on Substantial Completion of the Project by the Substantial Completion Date, and steps being taken and recommendations for eliminating or reducing the extent of such delays.

7.5 Owner's Approval of Preliminary and Construction Schedules. Upon Owner's written approval of the Preliminary Schedule and the Construction Schedule, Construction Manager may proceed in accordance therewith; however, Owner's approval of any schedule shall only indicate Owner's acknowledgment of the dates contained therein and shall not constitute ratification or approval of the accuracy, adequacy or logic of such schedule or of the means, methods, manner or sequence of work contained in such schedules. Owner's approval of the Preliminary Schedule or any Construction Schedule shall in no way diminish Construction Manager's duties to schedule and coordinate the Work, which shall remain Construction Manager's sole responsibility, and shall not diminish or excuse Construction Manager's duties to perform its Services in a manner so as to achieve timely completion of the Project. In no event shall updates to the Preliminary Schedule or the Construction Schedule provided by Construction Manager, whether or not objected to or approved by Owner, constitute evidence of an adjustment in the Substantial Completion Date or Construction Manager's compensation hereunder.

7.6 Expediting to Maintain Schedule. Construction Manager, at its sole expense, shall take all reasonable steps to expedite performance of any activity, contract, delivery, or inspection where necessary to mitigate any delay caused by Construction Manager or its subcontractors or any other parties for whom Construction Manager may be responsible, to maintain the Preliminary or Construction Schedules, and to achieve Substantial Completion by the Substantial Completion Date.

7.7 Liquidated Damages. Construction Manager acknowledges and agrees that time is of the essence of this Agreement and that if completion and delivery of the Project to Owner is delayed, Owner will suffer damages which are difficult, if not impossible, to accurately quantify. Accordingly, if Construction Manager fails to achieve Substantial Completion or Final Completion, or both, as required by this Agreement, Construction Manager shall be liable to Owner for liquidated damages for unexcused delay as provided herein.

7.7.1 For Delay in Substantial Completion. Construction Manager shall pay Owner for each and every calendar day of unexcused delay in achieving Substantial Completion beyond the Substantial Completion Date the sum indicated at Exhibit "C" attached hereto and by reference made a part hereof. Any sums due and payable hereunder by Construction Manager shall be payable, not as a penalty, but as liquidated damages representing a reasonable pre-estimate of delay damages likely to be sustained by Owner, estimated at the time of executing this Agreement. When Owner reasonably believes that Substantial Completion will be inexcusably delayed, Owner shall be entitled, but not required, to withhold from any amounts otherwise due Construction Manager an amount then believed by Owner to be adequate to recover liquidated damages applicable to such delays. If and when Construction Manager overcomes the delay in achieving Substantial Completion, or any part thereof, for which Owner has withheld payment, Owner shall promptly release to Construction Manager those funds withheld, but no longer applicable, as liquidated damages.

7.7.2 For Delay in Final Completion. If Construction Manager fails to achieve Final Completion within thirty (30) days after Substantial Completion, Construction Manager shall pay Owner one-tenth (1/10) of the sum indicated at Exhibit "C" per day for each and every calendar day of unexcused delay in achieving Final Completion. Any sums due and payable hereunder by Construction Manager shall be payable, not as a penalty, but as liquidated damages representing a reasonable pre-estimate of delay damages likely to be sustained by Owner, estimated at the time of executing this Agreement. When Owner reasonably believes that Final Completion will be inexcusably delayed, Owner shall be entitled, but not required, to withhold from any amounts otherwise due Construction Manager an amount then believed by Owner to be adequate to recover liquidated damages applicable to such delays. If and when Construction Manager overcomes the delay in achieving Final Completion, for which Owner has withheld payment, Owner shall promptly release to Construction Manager those funds withheld, but no longer applicable, as liquidated damages.

ARTICLE 8

PROCUREMENT OF SUBCONTRACTS, MATERIALS, AND SERVICES

8.1 Bidding and Contract Award. Construction Manager shall provide all necessary Services related to the bidding of Subcontracts for the construction of the Project, including: (a) preparing lists of prospective bidders; (b) preparing appropriate bid documents, including proposed forms of contract and

purchase orders; (c) establishing bid schedules; (d) advertising for bids and developing bidder interest; (e) furnishing information concerning the Project to prospective bidders; (f) conducting pre-bid conferences; (g) receiving and analyzing bids and making recommendations to Owner regarding bid awards; (h) investigating the acceptability and responsibility of sub- subcontractors or suppliers proposed by any Subcontractor and advising Owner of such evaluations; (i) negotiating with Subcontractors concerning any matter related to the Project; and (j) such other services required by Owner with respect to the bidding process.

8.2 Approval of Subcontractors. Construction Manager shall not subcontract for any part of the Services or Work with any Subcontractor or consultant (including affiliates and subsidiaries of Construction Manager) who is not properly licensed or against whom Owner has a reasonable objection. Construction Manager shall provide Owner's Representative with such written information as Owner deems necessary in order to determine whether to object to the Construction Manager's hiring of any Subcontractor or consultant, including proof of license. If no objection is interposed by the Owner within ten (10) days of its receipt of such information, Owner shall be deemed to have no such objection and Construction Manager may execute such Subcontract and shall furnish Owner a copy of same.

8.3 Subcontract Requirements. All Subcontracts shall afford Construction Manager rights against its Subcontractors which correspond to the rights afforded to Owner against Construction Manager herein, including those rights of contract suspension, termination, replacement of unsatisfactory personnel at Owner's request, and documentation of Subcontractor charges as set forth herein. Except as otherwise approved by Owner in writing, or as otherwise required by applicable law, all Subcontracts shall provide for the retention of ten percent (10%) of amounts earned under the Subcontracts ("Subcontract Retainage"), and Owner shall not be responsible for releasing, paying, or compensating Construction Manager any amount on account of such Subcontract Retainage until such time as specified by this Agreement for release of retainage.

8.4 Coordination of The Subcontracts. Owner does not assume any responsibility for defining the limits on any Subcontracts on account of the arrangement of the specifications or plans. As part of the bidding and award of Subcontracts, Construction Manager shall ensure that the Subcontracts are coordinated so that all of the Work is properly and clearly allocated among, and assigned to, Construction Manager and Subcontractors without omission, conflict, or duplication. Construction Manager shall carefully review all Subcontracts to ensure: (a) that all subcontracted parts of the Work are assigned to appropriate Subcontractors; (b) that, unless provided for by Construction Manager, provisions are made for temporary facilities and utilities necessary for the performance of the Work and for Project site facilities necessary for Construction Manager and Owner to perform their duties in the management, inspection, and supervision of the Work; (c) that responsibility for Project safety programs is properly assigned; (d) that they are in compliance with Applicable Laws; and (e) that they are in compliance with Owner's Construction Managers' guidelines, if any.

8.5 RESERVED.

8.6 Construction Manager Responsible for Acts of Subcontractors. Construction Manager's subcontracting of the Services or the Work, and Owner's consent and approval of Construction Manager's subcontracting with any Subcontractor, shall not relieve Construction Manager from any

liability or obligation under the Contract Documents or under any Applicable Laws. Construction Manager shall be responsible to Owner for any and all acts, defaults, omissions or negligence of its Subcontractors and consultants. It is expressly agreed that no relationship of agency, employment, contract, obligation or otherwise shall be created between Owner and any Subcontractor or consultant of Construction Manager, and a provision to this effect shall be inserted into all Subcontracts and other agreements between Construction Manager and its Subcontractors and consultants. In no event shall Owner be liable to any of Construction Manager's Subcontractors for Work performed by such Subcontractor on behalf of the Construction Manager or for the Project. Owner will not be asked to resolve disputes between Construction Manager and any Subcontractor or disputes between Subcontractors.

8.7 Copies of Bids. Construction Manager shall provide copies of all bids to Owner's Representative.

8.8 Procurement of Special Services. Construction Manager shall schedule and coordinate services from surveyors, testing laboratories, and other special consultants required for the completion of the Work.

8.9 Orders of Materials and Equipment. Subject to Applicable Laws, Construction Manager shall, in accordance with Owner's procurement policies or, if approved in writing by Owner's Representative, Construction Manager's procurement policies, schedule, coordinate, expedite, and affect the purchase and delivery to the Project site of materials and equipment required to be provided by Construction Manager pursuant to the Contract Documents. Construction Manager shall perform expediting and inspection services after the placement of all such orders.

8.10 Procurement of Materials and Equipment on Owner's Behalf. Construction Manager shall be responsible for scheduling and coordinating, and if requested by Owner's Representative, for purchasing and for arranging appropriate delivery, storage and security for, all materials, furnishings, tools, fixtures, computers, and equipment to be furnished by Owner under the terms of the Contract Documents for use in performance and completion of the Work. The purchase price and transportation and storage costs associated with such items shall be borne by Owner and shall not be counted against the GMP.

ARTICLE 9

CONSTRUCTION ADMINISTRATION

9.1 Construction Manager to Enter into Subcontracts. Construction Manager shall enter into Subcontracts with Subcontractors for the performance of those portions of the Work not performed directly by the Construction Manager. Construction Manager shall protect Owner's interests during the performance of such Subcontracts and shall monitor and secure strict performance by the Subcontractors of all duties and obligations contained in the Subcontracts. Construction Manager shall promptly notify Owner's Representative in writing of any material breach by a Subcontractor and shall take all necessary steps to remedy such breach and to minimize the effect of such breach on the timely and proper completion of the Work, all at no additional cost to the Owner.

9.2 Scheduling and Coordinating Construction. Construction Manager shall be responsible for scheduling, coordinating, assigning work areas, and sequencing the Work to be performed and for coordinating same with design services and with Owner's activities and ongoing operations and any work that may be performed by Owner's own forces or Other Contractors, in a manner so as to substantially complete the Project by the Substantial Completion Date. Construction Manager shall perform all Services required under the Contract Documents in an expeditious fashion.

9.3 Preconstruction Conference. At an appropriate time after execution of Subcontracts, Construction Manager shall conduct a preconstruction conference and shall review with Architect and the Subcontractors any special requirements of Owner with respect to the Work, including Project access, safety requirements, Construction Manager guidelines, contract procedures, scheduling, requests for payment, Submittals, Change Orders, inspections, and any and all other matters relevant to the performance of Construction Manager, Architect, and the Subcontractors. Construction Manager shall prepare and furnish to Owner's Representative, Architect, and Subcontractors, within three (3) working days after the preconstruction conference, detailed minutes of such conference.

9.4 Confirmation of Insurance. Construction Manager shall timely procure and review all insurance certificates and policies required by the Contract Documents and the Subcontracts and provide copies of same to Owner's Representative. Construction Manager shall immediately cure and correct any failure of any Subcontractor or other person to comply and remain in compliance with the insurance requirements of the Contract Documents and the Subcontracts. Construction Manager shall not permit any Subcontractor to enter the Project site or perform any Work relating to the Project unless such Subcontractor is and remains insured in accordance with the insurance requirements set out in the Contract Documents and the Subcontracts.

9.5 Review and Approval of Subcontractor Schedules of Values. Construction Manager shall procure, and carefully review, all schedules of values from each Subcontractor, together with any supporting documentation or data which Owner or Construction Manager may require from the Subcontractors. The purpose of such review and examination shall be to protect Owner from front-end loading and an unbalanced schedule of values which allocates greater value to certain elements of the Work than is indicated by such supporting documentation or data or than is reasonable under the circumstances. If any Subcontractor schedule of values is found not to be appropriate, or if the supporting documentation or data is deemed to be inadequate, Construction Manager shall negotiate with the Subcontractor to establish a balanced schedule of values. After making its review and examination, if the Subcontractor schedules of values are found by Construction Manager to be appropriate as submitted, or if necessary, as revised, Construction Manager shall sign and deliver same to Owner's Representative thereby indicating Construction Manager's informed belief that such schedules of values constitute a reasonable, balanced basis for payment to the Subcontractors. Construction Manager shall not sign a Subcontractor schedule of values in the absence of such belief unless directed to do so, in writing, by Owner's Representative.

9.6 Commencement of Construction. Upon receipt from Owner of a written notice to proceed with construction, and not before, Construction Manager shall commence performance of the Construction Phase of the Project and shall prepare and issue written notices to proceed to Subcontractors, as appropriate.

9.7 Supervision of Subcontractors. Construction Manager shall maintain a continuous presence on the Project site at all times during the Construction Phase of the Project through the provision of sufficient qualified supervisory and other personnel to perform the Services and obligations of this Agreement. Construction Manager shall continually supervise its own forces and its Subcontractors in a first-class manner. Construction Manager shall determine the adequacy of personnel, labor, materials, equipment, and direct supervision provided by Subcontractors and shall monitor their compliance with the Construction Schedule.

9.8 Job Progress Meetings. Construction Manager shall conduct meetings at least weekly, and at such additional times as the needs of the Project or good construction management practice may require, with the Subcontractors, and if necessary with Architect, for the purpose of discussing all matters relating to the quality, quantity, and progress of the Work. Construction Manager shall within three (3) working days after each meeting prepare and distribute minutes of such meeting to Owner's Representative, the participants, and others who should reasonably be informed of the meetings.

9.9 Requests for Information and Interpretation. In cooperation with Architect, Construction Manager shall promptly provide information and interpretations to Subcontractors as necessary for the execution of the Work and shall expedite same where necessary to maintain the Construction Schedule. Where appropriate, Construction Manager shall transmit to Architect, with a copy to Owner's Representative, requests for information or interpretation from itself or made by any Subcontractor regarding the intent and meaning of the Design for Construction. Construction Manager shall maintain a log of all requests for information and interpretation (the "Request Log"), recording (a) the date each request was made; (b) the date the request was transmitted to Architect and Owner's Representative; (c) the date of receipt of the response to the request; and, if applicable, (d) the date the response to the request was transmitted to the Subcontractor.

9.10 Submittals. Construction Manager shall procure, review, and indicate its approval(or require re-submission If necessary) prior to forwarding to Architect and Owner each submittal required by the Contract Documents, including shop drawings, product data, samples, catalogues, and other submittals (collectively, "Submittals"). Approval by Construction Manager of Submittals shall constitute Construction Manager's representation to Owner that such Submittals are in conformance with the requirements of the Contract Documents. The review and approval required by this paragraph shall be completed with reasonable promptness, and expedited where necessary, so as to cause no delay to the Subcontractors, or the Project. Construction Manager shall also maintain a detailed log (the "Submittal Log"), reflecting: (a) the date, where applicable, the Subcontractors submit to Construction Manager, and that Construction Manager submits to Architect, each Submittal; (b) the date of approval or rejection of each Submittal by Construction Manager or Architect; (c) the reason for the rejection of any Submittal; and (d) the date of each subsequent action by Construction Manager, Architect, Owner, or Subcontractors with respect to any Submittal. Construction Manager shall immediately report to Owner's Representative in writing any substantial delays in the Submittal process and the cause thereof and shall take appropriate steps to coordinate and expedite the Submittal process. The Architect's review of submittals shall not relieve the Construction Manager from its obligation for performance of the Work in strict compliance with the Contract Documents.

9.11 Liens and Subcontractor Payments. Construction Manager shall promptly pay when due all indebtedness for labor, materials, services, tools and equipment, and for any other items used in the

performance of the Work. Construction Manager shall not permit any notice of lien or charge to attach to the Work or the premises upon which the Work is being performed. If any lien does so attach, Construction Manager shall promptly procure its discharge and hold Owner harmless from any losses, costs, damages or expenses (including attorneys' fees) incidental thereto.

9.12 Labor Relations. Construction Manager shall develop and implement a coordinated plan for labor relations to avoid labor disputes and to provide for the uninterrupted and efficient construction of the Project in accordance with applicable schedules and Owner's budgetary requirements. Construction Manager shall comply, and shall require all Subcontractors to comply, with Applicable Laws relating to the terms and conditions of employment of any employee or other laborer who is employed in connection with the Project.

9.13 Protection of Persons and The Work. Construction Manager shall at all times take, or require to be taken, all necessary steps required to safeguard Owner's property and employees and students from injury or loss in connection with the performance of the Work and the Services. Construction Manager shall take, or require to be taken, all necessary steps to protect Owner's equipment, adjacent facilities, apparatus, and other property and all adjacent Work and property, including, but not limited to, the use of shoring, boarding, and other safeguards. Where the Work endangers the safety of pedestrians and drivers, barricades for traffic and pedestrians shall be used. Construction Manager shall keep Owner's property and the Work reasonably free from dampness, dirt, dust, and other damage and shall provide all reasonable security measures necessary to protect the Project from the elements, vandalism, theft, and other risks of property loss. All temporary protections shall be removed by Construction Manager upon completion of the Work.

9.14 Demolition. Removal of Materials and Burning. The use of explosives will not be permitted. The procedure proposed for the accomplishment of any required demolition work shall be submitted to Owner's Representative for approval. The procedure shall provide for safe conduct of the work, careful removal and disposition of materials, protection of property which is to remain undisturbed and coordination with other Work in progress. The procedures shall include a detailed description of the methods and equipment to be used for each operation, and the sequence of operations. All materials indicated to be removed shall be disposed of in a lawful manner off the Owner's property. The use of burning at the Project site to dispose of refuse and debris is not permitted. Construction Manager shall control the amount of dust resulting from the operations to prevent the spread of dust from creating a nuisance in the surrounding area.

9.15 Site Limitation. Construction Manager shall obtain Owner's Representative's written authorization before establishing staging or "lay-down" areas.

9.16 Corrective Work. Construction Manager shall correct and complete all defective or incomplete Work. Such corrective Work shall be coordinated with, and performed in a manner to minimize disruption to, Owner's personnel, facilities, students and operations.

9.17 Review and Analysis of Claims. Construction Manager shall review, and study all claims for additional compensation or requests for extensions of time submitted by the Subcontractors. Construction Manager shall assemble and provide timely to Owner's Representative the pertinent documentation relating to any such claims, consult with Owner's Representative regarding the claims, and

take such action thereon as Owner's Representative may direct.

ARTICLE 10

UNCOVERING AND CORRECTING WORK

10.1 Uncovering Work Covered Contrary to Directions. If any of the Work is covered contrary to the request of Owner's Representative or the Architect, or contrary to any provision of the Contract Documents, said Work shall, if required by Owner's Representative, be uncovered for inspection and shall be properly replaced at Construction Manager's expense without change in the Substantial Completion Date or the GMP.

10.2 Option to Order Work Uncovered. If the Contract Documents permit the Work to be covered and neither Owner's Representative nor the Architect has requested that the Work not be covered, the Owner's Representative may nevertheless require that such Work be uncovered for inspection. If such Work conforms strictly with the Contract Documents, the cost of uncovering and proper replacement shall by Change Order be charged to Owner with an appropriate adjustment to the GMP and the Substantial Completion Date. If such Work does not strictly conform with the Contract Documents, Construction Manager shall pay the cost of uncovering and proper replacement without adjustment to the GMP or the Substantial Completion Date.

10.3 Correction of Defective Work. Construction Manager shall immediately proceed to correct Work rejected by Owner's Representative as defective or failing to conform to the Contract Documents, unless such Work is accepted in accordance with paragraph 10.6 below. Construction Manager shall bear all costs and expenses associated with correcting such rejected Work, including any additional testing and inspections and any fees and expenses of the Architect made necessary thereby, without adjustment to the GMP or the Substantial Completion Date.

10.4 Correction For One Year Following Completion. If within one (1) year after Final Completion any of the Work is found to be defective or not in strict accordance with the Contract Documents, Construction Manager shall correct such Work promptly upon receipt of written notice from Owner. This obligation shall survive Final Payment by Owner and termination of this Agreement.

10.5 No Period of Limitation Established. Nothing contained in paragraph 10.4 shall establish any period of limitation with respect to Construction Manager's other obligations and warranties under the contract, including, without limitation, Article 3. Establishment of the one-year time period in paragraph 10.4 above relates only to Construction Manager's specific duty to correct or complete the Work.

10.6 Owner's Option to Accept Defective Work. Owner may, at its sole discretion, choose to accept defective or nonconforming Work. Such acceptance shall not be effective unless specifically and expressly stated in writing by Owner's Representative. In such event, the GMP shall be reduced by the reasonable costs of removing and correcting the defective or nonconforming Work, regardless of whether Final Payment has been made or the defective Work replaced or corrected the intent being that Owner may use such funds to remedy such defects at a time and in a manner convenient to Owner. If the unpaid portion of the GMP, if any, is insufficient to compensate Owner for the acceptance of defective or nonconforming Work, Construction Manager shall, upon written demand from Owner, pay Owner any shortfall of compensation for accepting defective or nonconforming Work.

ARTICLE 11

INSPECTIONS AND CERTIFICATIONS OF COMPLETION

11.1 Inspection of Work. Construction Manager shall, on a continuous basis as a part of its day-to-day supervision of the Project, inspect the Work to ensure that the quality, quantity and progress of the Work meets the requirements of the Contract Documents. In making such inspections, Construction Manager shall reject Work that is defective or deficient, take steps to avoid unexcused delays in the performance of the Work, and protect Owner from overpayment.

11.2 Standard of Construction and Identification of Defective Work. Construction Manager shall cause the Project to be constructed in strict compliance with the requirements of the Contract Documents and Applicable Laws. Construction Manager acknowledges that strict compliance is a more exacting standard than substantial compliance and Construction Manager agrees that its fee takes into consideration the more exacting standard. Owner will not accept Work which fails to comply with such standards, unless the departure from such standards is specifically identified to, and thereafter authorized in writing by, Owner's Representative. Unless so authorized by Owner's Representative, Construction Manager shall correct all Work that does not meet the requirements of the Contract Documents and Applicable Laws.

11.3 Equipment and Other Items. When instructed by Owner's Representative, Construction Manager shall schedule and perform factory testing and shop inspections of equipment, fixtures, furnishings, and other items. Such testing and inspections shall be performed at times appropriate to the stage of fabrication, construction, installation, and testing of such items. Construction Manager shall notify Owner's Representative prior to each such testing or inspection, and Architect and Owner's Representative or his designee shall be entitled to accompany Construction Manager for such testing and inspections.

11.4 Inspection Upon Arrival. During Installation. And After Installation. Upon arrival of any materials, supplies, systems, equipment, fixtures, furnishings, and other items at the Project site, whether procured by Construction Manager or Owner, Construction Manager shall inspect such items for damage, for compliance with the Contract Documents and for compliance with all shipping documents and shall arrange for the proper storage and security of such items. Construction Manager shall also provide for and monitor the proper and timely installation of all such items on the Project. After such items are installed or made ready for use, Construction Manager shall again inspect all such items for damage and shall arrange for and monitor testing of all such items for compliance with the Contract Documents and readiness for use on the Project. If damage is discovered, Construction Manager shall immediately notify, in writing, the supplier, shipper, and Owner's Representative of such damage and shall lodge and pursue all appropriate claims associated with such damages.

11.5 Punch Lists and Correction of Defective Work. Construction Manager shall, with the assistance of Owner, prepare and enforce punch lists and other itemizations of defective, deficient, or incomplete Work. Construction Manager shall report to Owner's Representative in its Monthly Reports its progress in correcting and completing such defective, deficient, or incomplete Work.

11.6 Construction Manager's Observation of Testing and Start-up. Construction Manager shall schedule (and notify Owner's Representative of such schedule), coordinate, and observe the testing and start-up of all utilities, systems, fixtures, and other equipment and shall report the results of same to Owner's Representative in writing.

11.7 Transfer of The Work and The Project to Owner. Construction Manager shall aid Owner in the transfer of the completed Project, and all portions thereof, to Owner. Such assistance shall include procuring certificates of ownership, titles and warranties, procuring keys to the Project, operations and maintenance manuals and instructions, procuring supplies, start-up of Project systems, transferring Project security, arranging for training Owner in the operation and maintenance of all systems and components of the Project, and such other matters as may relate to Owner's initial occupation, possession, and use of the Project or any part thereof.

11.8 Substantial Completion of The Project. When Construction Manager believes that Substantial Completion of the entire Project, or a designated part thereof, has been achieved, it shall notify Owner's Representative in writing and request an inspection for certification of Substantial Completion. Construction Manager shall thereafter meet on site with Owner's Representative to determine whether Substantial Completion of the Project, or the designated part thereof, has in fact been achieved. Construction Manager's written request for such inspection shall constitute a representation by Construction Manager to the Owner that Construction Manager has made all inspections of the Work required by the Contract Documents and that, to the best of Construction Manager's information and knowledge, the Work has been performed in strict compliance with, and the quality of the Work meets or exceeds the requirements of, the Contract Documents. If Owner's Representative agrees that Substantial Completion of the Project, or the designated part thereof, has been achieved, they shall execute a Certificate of Substantial Completion. If Owner's Representative, upon inspection, concludes that Substantial Completion has not been achieved and that re-inspection will be necessary, Construction Manager shall bear all costs of same.

11.9 Final Completion of The Project. When Construction Manager believes that Final Completion of the entire Project has been achieved, it shall notify Owner's Representative in writing and request an inspection for certification of Final Completion of the Project. Construction Manager shall thereafter meet on site with Owner's Representative to determine whether Final Completion of the Project has in fact been achieved. Construction Manager's request for such inspection shall constitute a representation by Construction Manager to Owner that Construction Manager has made all inspections of the Work as provided in the contract and that, to the best of Construction Manager's knowledge and belief, all the Work has been completed in strict compliance with the Contract Documents and that the quality of the Work meets or exceeds the requirements of the Contract Documents. If Owner's Representative agrees that Final Completion of the Project has been achieved, they shall execute a Certificate of Final Completion of the Project. If Owner's Representative, upon inspection, conclude that Final Completion has not been achieved and that re-inspection will be necessary, Construction Manager shall bear all costs of same.

ARTICLE 12

PROJECT DOCUMENTATION

12.1 Basic Project Documentation. Construction Manager shall maintain the following documents on behalf of and for the use of Owner: (a) a complete set of current Subcontracts and Contract Documents, including a current set of drawings, specifications, Change Orders and modifications reflecting product and materials selections and as-built conditions on the Project; (b) all shop drawings, samples, product data, and other Submittals; (c) a clean set of the principal building layout lines, elevations of the bottom of footings, floor levels, and key site elevations certified by a qualified surveyor or engineer; (d) all required insurance certificates from Subcontractors; and (e) all other documents required by this Agreement.

12.2 Daily Log. Construction Manager shall maintain a log of daily reports ("Daily Log") which shall identify daily weather conditions and any impact on the Work caused thereby, Construction Manager's personnel on site, all Subcontractors working each day and the number of employees of each on the Project, the Work accomplished each day, any equipment failures or breakdowns, any procurement or delivery problems, any job site accidents or injuries, any safety or environmental violations, warnings or citations, and any other events, circumstances, or occurrences impacting the progress or cost of the Project.

12.3 Monthly Reports. Each month Construction Manager shall prepare and submit to Owner's Representative a written report detailing the progress of the Project (the "Monthly Report"). The Monthly Report shall contain Construction Manager's estimate of percentage of completion of the Project and each element thereof, identify any and all delays to the Project and the cause and extent thereof and describe the remedial measures being taken to overcome such delays, identify any defective or deficient Work installed during the preceding month and describe the remedial measures being taken to correct the defective or deficient Work, identify any outstanding requests for information or clarification, requests for Interpretation, change order requests, questions, or other matters requiring the response of either Owner, Construction Manager, Architect, or a Subcontractor and shall include any and all other information required to fully inform Owner of the status of the Project and the performance of Construction Manager, Architect, and Subcontractors. The Monthly Report shall include the Construction Schedule updates, updated cash flow forecasts, and updated comparisons of actual and estimated construction costs to the GMP and the Construction Cost Estimates as required by the terms of this Agreement.

12.4 Review and Assignment of Warranties. Construction Manager shall obtain and shall transmit to Owner's Representative all special product, system, equipment or material warranties required by the Contract Documents and the Subcontracts. Construction Manager shall review all such warranties to confirm that the warranties are in compliance with the requirements of the Contract Documents and Subcontracts. By execution of this Agreement, Construction Manager hereby assigns to Owner all of Construction Manager's rights, title and interest in and to any and all warranties, including Uniform Commercial Code warranties that Construction Manager receives or is entitled to receive from any Subcontractor or supplier in connection with the Project.

12.5 Operations and Maintenance Documentation. Construction Manager shall obtain and transmit to Owner's Representative all documentation required by the Contract Documents regarding the

operation and recommended maintenance programs relating to the various elements of the Project. Such documentation shall be furnished to Owner's Representative in uniform three- ring binders labeled with the Project name and number.

12.6 Review and Approval of As-Built Drawings. Construction Manager shall provide as-built drawings and shall confirm to Owner that such drawings are adequate and complete and in compliance with the requirements of the Contract Documents.

12.7 Availability of Project-Related Records to Owner. All records relating directly or indirectly to the Project which are in the possession or control of Construction Manager shall be made available to Owner, its designee, and any governmental authority for audit, inspection, and copying upon request of Owner's Representative. Such records include, without limitation: all drawings, specifications, Submittals, subcontractor bids, the Daily Log, correspondence, the Request Log, the Submittal Log, minutes, memoranda, tape or videotape recordings, or other writings or things which document the Project, its design, and its construction.

12.8 Maintenance of Project-Related Records. Construction Manager shall maintain and protect all Project-related records, other than those required to be returned to Owner, for no less than ten (10) years after Final Completion of the Project and for any longer period of time as may be required by law or good construction management practice.

12.9 Project Videotapes and Photographs. At any time requested by Owner's Representative, Construction Manager shall record periodic narrated videotapes or take photographs depicting progress of the Work. Any specific safety or environmental incidents are to be videotaped at the time of the incident without waiting for Owner authorization. All videotapes and photographs shall be submitted to Owner's Representative on a weekly basis.

ARTICLE 13

OWNER'S DUTIES, OBLIGATIONS, AND RESPONSIBILITIES

13.1 Provide Project Information. Owner shall provide Construction Manager with adequate information regarding Owner's requirements for the Project including any desired or required design or construction schedule, any budgetary requirements, and an adequate number of complete sets of the Owner's program.

13.2 Review of Documents. Owner shall review any documents submitted by Construction Manager requiring Owner's decision and shall render any required decisions pertaining thereto.

13.3 Access to The Site and The Work. Owner shall provide Construction Manager access to the site and to the Work as necessary for Construction Manager to perform the requirements of the Contract Documents.

13.4 Assist Construction Manager to Secure Permits. Licenses. Approvals. And Authorizations. If necessary, Owner shall provide reasonable assistance to Construction Manager to enable Construction Manager to secure all necessary licenses, permits (other than building and other permits required for construction of the Project), approvals or other necessary authorizations of

governmental authorities for the construction and operation of the Project. Construction Manager shall obtain and maintain all licenses, permits and other authorizations necessary to act as the construction manager/design-builder for the Project.

13.5 Timely Performance. Owner shall perform those duties set forth in this Article in a timely fashion so as to permit the orderly progress of Construction Manager's Services and the Work.

13.6 Owner's Reviews. Inspections. Approvals. And Payments. Owner's review, inspection, or approval of any design document, Work, or any documents prepared or submitted by Construction Manager shall be solely for the purpose of determining whether such Work and such documents are generally consistent with Owner's construction program and requirements, and Construction Manager understands that Owner is relying on Construction Manager to assure strict compliance with the Contract Documents. No review, inspection, or approval by Owner of such Work or documents shall relieve Construction Manager of its responsibility for the strict performance of its obligations under the Contract Documents or for the accuracy, adequacy, fitness, suitability, or coordination of its Services and work product. Approval by any governmental or other regulatory agency or other governing body of any Work, design document, or Subcontract shall not relieve Construction Manager of responsibility for the strict performance of its obligations under the Contract Documents. Payment by Owner shall not constitute a waiver of any of Owner's rights under the Contract Documents or at law, and Construction Manager expressly accepts the risk that defects in the Services or in the Work, if any, may not be discovered until after payment, including Final Payment, is made by Owner.

13.7 Non-Waiver. Owner's failure to exercise any right or remedy hereunder or to require strict compliance with any obligation of Construction Manager under the Contract Documents shall not constitute a waiver or an estoppel of the right to exercise such right or remedy or to insist on such compliance at any other time or on any other occasion.

13.8 Hazardous Materials. The Construction Manager is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. If the Construction Manager encounters a hazardous material or substance that is not the responsibility of the Construction Manager as part of its Work 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 lead, asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Construction Manager, the Construction Manager shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner in writing.

13.8.1 Upon receipt of the Construction Manager's written 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 Construction Manager 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 Construction Manager the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Construction 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 the Construction Manager has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Construction Manager has 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 Construction Manager. By Change Order, the Contract Time shall be extended appropriately and the GMP shall be increased in the amount of the Construction Manager's reasonable additional costs of shut-down, delay and start-up.

13.8.2 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Construction Manager, 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 hazardous material or substance presents the risk of bodily injury or death 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.

13.8.3 The Owner shall not be responsible for materials or substances the Construction Manager brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for materials or substances required by the Contract Documents, except to the extent of the Construction Manager's fault or negligence in the use and handling of such materials or substances.

13.8.4 The Construction Manager shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Construction Manager brings to the site and negligently handles, or (2) where the Construction Manager fails to perform its obligations, except to the extent that the cost and expense are due to the Owner's fault or negligence.

ARTICLE 14

PAYMENT TO CONSTRUCTION MANAGER

14.1 Basis of Compensation. Owner shall pay, and Construction Manager shall accept, as full and complete compensation for Construction Manager's assumption and performance of all duties, obligations, Services and Work required by the Contract Documents, the combined sum of Design Phase Compensation plus Construction Phase Compensation, as defined herein; provided, however, that such combined sum shall not exceed the Guaranteed Maximum Price set forth in paragraph 14.2.

14.1.1 Design Phase Compensation. Owner shall pay Construction Manager "Design Phase Compensation" consisting of the fixed sum of (amount should be entered) _____. This will be the total compensation due for all Work in the Design Phase. The Design Phase Compensation shall be deemed to include, without limitation, such items as overhead, profit and all expenses incurred in performance of the Design Phase Services; Construction Manager shall not be separately compensated any Reimbursable Expenses for the Design Phase, as such costs incurred as part of the Design Phase are intended to be fully compensated by the fixed sum stated above. The Design Phase Compensation shall be invoiced and paid in accordance with paragraphs 14.4 and 14.7; provided, however, that at no time shall the cumulative percentage of the Design Phase Compensation invoiced or paid exceed the cumulative percentage of completion of the Design Phase Services, such percentage of completion to be determined by the Architect.

14.1.2 RESERVED.

14.1.3 Construction Phase Compensation. For Construction Manager's performance of the Work and Services during the Construction Phase in strict conformance with the Contract Documents, and subject to the GMP, Owner shall pay Construction Manager "Construction Phase Compensation" consisting of: Subcontract Costs, plus Reimbursable Expenses incurred in performance of Construction Phase Services and the Work, plus the Construction Phase Fee, plus any expended Construction Manager's contingency (if any such contingency is indicated in the calculation of the GMP). The Construction Phase Compensation shall be deemed to include, without limitation, such items as overhead, profit and all expenses incurred in performance of the Work and Services during the Construction Phase.

14.1.4 Construction Phase Fee. The "Construction Phase Fee" shall be _____ (Note: Percentages need to be inserted) percent (____%) of the sum of: (a) Subcontract Costs and (b) Construction Manager's Reimbursable Expenses incurred in performance of Construction Phase Services and the Work. The Construction Phase Fee shall be invoiced and paid in accordance with paragraphs 14.4 and 14.7; provided, however, that at no time shall the cumulative percentage of the Construction Phase Fee invoiced or paid exceed the cumulative percentage of the Work actually complete, as measured against the Construction Manager's schedule of values and as certified by Architect.

14.2 Guaranteed Maximum Price. No later than the time specified in Section 5.4(H), Construction Manager shall submit to the Owner a proposed GMP. If and when accepted by Owner, and subject to the Construction Manager providing payment and performance bonds in accordance with Article 17, the proposed GMP shall become the GMP for the Project and shall be entered in subparagraph 14.2.1 herein and the Owner and the Construction Manager shall initial subparagraph 14.2.1. The GMP shall be the maximum amount that Construction Manager shall receive for achieving Final Completion in strict accordance with the Contract Documents and performance of all the Work and the Services required by the Contract Documents, including any and all amounts for any sub-phased Work as contemplated by Owner and Construction Manager in paragraph 7.1, and subject to additions and deductions by written Change Order. All Subcontract Costs, Reimbursable Expenses, or other costs of any kind incurred by Construction Manager in connection with the Project in excess of the GMP shall be paid by Construction Manager without reimbursement by Owner unless otherwise compensable by written Change Order pursuant to the Contract Documents. Should the combined sum of final Design Phase Compensation and Construction Phase Compensation be less than the GMP, the resulting savings shall be allocated 100% to the Owner.

14.2.1 Amount of the GMP. The amount of the GMP shall be _____ (to be inserted upon agreement to a change order establishing GMP) _____ (\$_____). Any and all allowances, unit prices, clarifications or limitations upon which the GMP is based are listed and identified on Exhibit "I" hereto.

14.2.2 Lack of Agreement On GMP. In the event Construction Manager and Owner do not agree, in writing, on a GMP pursuant to paragraph 14.2 above, not later than 30 days after the submission of such proposed GMP by the Construction Manager, Construction Manager's performance under this Agreement shall, without any action required by either party, automatically terminate unless otherwise directed in writing by the Owner in its sole discretion. In the event of such termination, Owner's liability

to Construction Manager shall be limited to that portion of the Design Phase Fee actually earned up to the date of termination pursuant to this subparagraph 14.2.2; provided, however, that in no event shall the amount payable hereunder exceed the amount entered in subparagraph 14.1.1. Owner shall maintain full ownership of all design documents prepared by or on behalf of Construction Manager and shall have the right to bid out construction work based on such documents.

14.3 Schedule of Values. Construction Manager shall prepare and present to Owner's Representative within ten (10) days after commencement of the Construction Phase, a proposed schedule of values allocating all of the costs (which shall include all Subcontract Costs and Reimbursable Expenses to be incurred during the Construction Phase) among the different elements of the Work. The Construction Phase Fee and any contingencies shall be shown as separate items. Construction Manager's schedule of values shall be prepared in such form, with such detail, and supported by such data as the Architect or the owner's Representative may require substantiating its accuracy. Construction Manager shall not front-end load its schedule of values by balancing it or by increasing any element thereof in excess of the actual cost, and such acts shall constitute a material breach of this Agreement. Construction Manager's proposed schedule of values shall be used in determining the amounts payable to Construction Manager hereunder, but only after it has been acknowledged in writing by the Architect and the Owner's Representative. The schedule of values may be amended when so acknowledged in writing by Architect and Owner's Representative, as and when Subcontracts are awarded and reasonable schedules of values in connection with such Subcontracts are received and agreed upon by Construction Manager as provided by paragraph 9.5.

14.4 Form of Pay Requests and Backup Documentation. Retainage from each payment shall be at the rate of 10% as set forth herein. As soon as practicable after the last business day of each month, Construction Manager shall submit a notarized invoice to Owner's Representative requesting payment ("Pay Request") for ninety percent (90%) of the Reimbursable Expenses and Subcontract Costs actually and reasonably incurred by Construction Manager and that portion of the Design Phase Fee, the Construction Phase Fee, or, if applicable, both, earned by Construction Manager, in the performance of Services and the Work during the preceding month. Any payment on account of stored materials or equipment will be subject to the Construction Manager providing written proof that the Owner has title to such materials or equipment and that they are suitably stored at the Project site and fully insured against loss or damages. Moreover, any sums approved for stored materials shall be at actual costs and shall not include markup by Subcontractors or subcontractors or Construction Manager's Fees. As used in the immediately preceding sentence, actual costs means costs charged by the manufacturer or the distributor for the manufacturer and the Pay Request shall include copies of invoices from the manufacturer or the distributor. Upon payment of fifty percent (50%) of the GMP, as it may be adjusted, and satisfactory, timely completion of fifty percent (50%) of the Work, as certified by Architect, Owner shall not retain additional retainage and Construction Manager's Pay Requests may thereafter request payment for one hundred percent (100%) of Reimbursable Expenses and Subcontract Costs incurred, and Fees earned, during the pay period; provided, however, that if, after discontinuing such retainage, Owner's Representative determines that the Work is unsatisfactory or has fallen behind schedule, Owner may resume withholding retainage at the previous level. At no time shall the cumulative sum invoiced or paid exceed an amount equal to the sum of: (i) the product of that portion of the GMP attributable solely to Design Phase Compensation multiplied by the cumulative percentage of completion of the Design for Construction, such percentage of completion to be determined by the Owner's Representative; plus; (ii) the product of that portion of the GMP attributable solely to Construction Phase Compensation multiplied by the cumulative percentage of the Work actually and satisfactorily complete, such

percentage of completion to be measured against the Construction Manager's schedule of values and as certified by the Construction Manager. Each Pay Request shall separately show the amounts of Construction Manager's Design Phase Fee and Construction Phase Fee being claimed in connection with such Pay Request and any amounts claimed in connection with a Change Order. Pay Requests shall also indicate Construction Manager's estimate of the percentage of completion of the Project and each element thereof according to the line items established in the schedule of values. Unless otherwise directed by Owner's Representative, Pay Requests shall be submitted in triplicate, bearing the appropriate job numbers designated by Owner's Representative, to Owner's Representative for approval. Pay Requests shall be in such form and accompanied by such documentation, including documentation in support of Subcontract Costs and Reimbursable Expenses, if any, and any lien waivers, as Architect or Owner's Representative may require. Pay Requests and supporting documentation shall describe with reasonable particularity each Service rendered, the date thereof, the time expended in performing such Service, and the persons rendering such Service. Upon Architect or Owner's Representative's request, Construction Manager shall submit certified time sheets relating to such persons who have performed Services on the Project. All documents and records in the possession of Construction Manager and its Subcontractors relating to Reimbursable Expenses and Subcontract Costs shall be made available to Owner or its designee for audit, inspection and copying immediately upon request by Owner's Representative. Strict compliance with the requirements of this paragraph 14.4 shall be a condition precedent to any payment, including Final Payment, under this Agreement. In no case shall the total amount paid by the Owner hereunder be greater than GMP.

14.5 Claim Releases and Verified List of Subcontractors. If requested by Owner, in Owner's sole discretion, each Pay Request shall be accompanied by Construction Manager's and Subcontractors' partial waivers of claim in the form attached hereto as Exhibit "D" for the full amount of the payments made through the date of the Pay Request and to be made under the current Pay Request and the Work covered thereby. Provision of such waivers of claim, when requested by Owner, shall be a condition precedent to Owner's duty to make payments to Construction Manager. Construction Manager's application for Final Payment shall be accompanied by final waivers of claim from Construction Manager and all Subcontractors in the form attached hereto as Exhibit "E" together with a verified list of all Subcontractors, including suppliers of materials and systems incorporated into the Work. Provision of such final waivers of claim and verified list shall be a condition precedent to Final Payment to Construction Manager.

14.6 Certification Relating to Pay Requests. Each Pay Request shall bear the signature of Construction Manager's project manager, which signature shall constitute Construction Manager's representation to Owner that the Services and the Work indicated in the Pay Request have progressed to the level represented, have been properly and timely performed as required herein, that no Work has been covered contrary to the request of the Owner's Representative or contrary to any provision of the Contract Documents, that the Reimbursable Expenses and Subcontract Costs claimed in the Pay Request have been actually, necessarily, and reasonably incurred, that all obligations of Construction Manager covered by prior Pay Requests have been paid in full, and that, to the best of Construction Manager's knowledge, information and informed belief, the amount requested is currently due and owing, there being no reason known to Construction Manager that payment of any portion thereof should be withheld, other than retainage as provided for herein. Submission of Construction Manager's Pay Request for Final Payment shall further constitute Construction Manager's representation to Owner that, upon receipt from Owner of the amount requested, all obligations of Construction Manager to others incurred in connection

with the Project will be paid in full within seven (7) days of such receipt. In the event that Owner becomes informed that any of the foregoing representations by Construction Manager are wholly or partially inaccurate, Owner may withhold payment of sums then or in the future otherwise due to Construction Manager until the inaccuracy, and the cause thereof, is corrected to Owner's reasonable satisfaction.

14.7 Payment of Pay Requests. Subject to the limits imposed by the GMP and other terms and conditions of the Contract Documents, and within 30 days of approval of Construction Manager's Pay Request by Owner and in no event later than 45 days after receipt of the Pay Request, Owner shall make payment to Construction Manager of all sums properly requested under the provisions of this Article and payable under the terms of this Agreement, provided that the Pay Request is in proper order and is supported by all required documentation. If the Pay Request is not in proper order or is not supported by all required documentation, then Owner's Representative, or the Architect, shall notify Construction Manager of such deficiency and the time for payment of such Pay Request, or any applicable part thereof, shall be extended by the amount of time required to cure such deficiencies.

14.7.1 When payment is received from Owner, the Construction Manager shall immediately pay or cause to be paid all Subcontractors, sub-subcontractors, materialmen, laborers and suppliers the amounts they are due for the Work covered by such payment. In the event the Owner becomes informed that the Construction Manager has not paid, or caused to be paid, a Subcontractor, subcontractor, materialman, laborer, or supplier as provided herein, the Owner shall have the right, but not the duty, to issue future checks and payment to the Construction Manager of amounts otherwise due hereunder naming the Construction Manager and any such Subcontractor, subcontractor, materialman, laborer, or supplier as joint payees. Such joint check procedure, if employed by the Owner, shall create no rights in favor of any person or entity beyond the right of the named payees to payment of the check and shall not be deemed to commit the Owner to repeat the procedure in the future.

14.8 Payment at Substantial Completion. Subject to the limitations of the GMP, and provided that all conditions precedent have been satisfied, within thirty (30) days after execution of the Certificate of Substantial Completion of the Project, Owner shall pay Construction Manager all sums due Construction Manager, including retainage, less any amounts attributable to liquidated damages, and less two hundred percent (200%) of the reasonable cost for completing all incomplete Work, correcting and bringing into conformance all defective and nonconforming Work, and handling all unsettled claims. As a condition precedent to such payment, however, Construction Manager shall deliver to Owner's Representative the final complete set of as-built drawings in the form of marked-up blue-line drawings, all required releases of claim and final lien waivers, all certificates of occupancy or similar documents required for the occupation and use of the Project for its intended purposes, all required warranties, all Project Documentation as described in Article 12 herein, and consent(s) of surety to release retainage in form and manner acceptable to Owner together with an original current power of attorney with current certificate attached thereto.

14.9 Payment at Final Completion. Subject to the limitations of the GMP, and provided that all conditions precedent have been satisfied, within thirty (30) days after execution of the Certificate of Final Completion of the Project, Owner shall pay Construction Manager all unpaid sums due Construction Manager under this Agreement, less any amount properly withheld pursuant to this Agreement ("Final Payment"). Construction Manager's acceptance of Final Payment shall constitute an unconditional waiver

and release of all claims by Construction Manager for additional compensation beyond that provided in the Final Payment. Final Payment by Owner shall not, however, constitute a waiver by Owner of its rights or claims arising from Construction Manager's failure to perform in strict accordance with the requirements of the Contract Documents. As a condition precedent to Final Payment, Construction Manager shall deliver to Owner's Representative consent(s) of surety to final payment in form and manner acceptable to Owner together with an original current power of attorney with current certificate attached thereto.

14.9.1 Shared Savings Incentive.

(a) General. The incentive is a shared portion of the difference between the cost of the work as referenced in the final GMP and the actual final cost of the work where the actual final cost of the work is less than the cost of the work as referenced in the final GMP. Cost reductions may be realized by the Construction Manager as a result of innovations and efficiency's during the construction phase, such as increased labor productivity or strong material subcontract negotiations. The Owner recognizes that the Construction Manager should be incentivized to seek out these innovations and efficiencies.

(b) Therefore, the Owner agrees to a Shared Savings Incentive with a specific Share Ratio.

(c) Share Ratio. The share ratio for the Construction Manager shall be 50 percent.

14.10 Withholding of Payment. Any provision of the Contract Documents notwithstanding, Owner shall not be obligated to make a payment or payments to Construction Manager which is otherwise due, if, and for so long as, any one or more of the conditions set forth in this paragraph 14.10 exists.

14.10.1 Construction Manager's Pay Request is not in the form or supported by the documentation required by this Agreement.

14.10.2 Construction Manager is in default of any of its obligations under the Contract Documents.

14.10.3 Any part of such payment is attributable to Services or Work which are defective or not strictly conforming with the requirements of the Contract Documents; provided, however, that payment shall be made as to the part thereof attributable to Services or Work which are rendered or performed in strict accordance with the Contract Documents and are not defective, subject to other provisions hereof.

14.10.4 Construction Manager has failed to make payments promptly to its Subcontractors, consultants, employees, or others performing Services in connection with the Project or any person has filed a claim that Construction Manager has failed to make payments due to such person or a lien based upon such failure.

14.10.5 Any person has asserted a claim against Owner in whole or in part on account of alleged acts or omissions of Construction Manager.

14.10.6 Evidence that the balance of the Work cannot be completed in accordance with the Contract Documents for the unpaid balance of the GMP.

14.10.7 Failure or refusal by Construction Manager to perform the Work in accordance with the Contract Documents.

14.10.8 Damage caused by the Construction Manager or caused by a person or entity for which the Construction Manager is legally or contractually responsible, to Owner or to a third-party to whom Owner is, or may be, liable.

14.10.9 Any situation or condition exists which, as set forth elsewhere herein or in the Contract Documents, justifies the withholding of payments. In the event that any of the foregoing conditions exist, Owner shall be entitled to withhold from any sum then due or thereafter to become due, including from retained sums, an amount sufficient in the sole judgment of Owner's Representative to satisfy, discharge, and defend against such claims and to make good any losses, prospective losses, costs, attorneys' fees, and other expenses which may result from the existence of such conditions.

14.11 Disputed Pay Requests. In the event Owner's Representative or the Architect disagrees with or questions all or any portion of any Pay Request, the amount due to Construction Manager, or the sufficiency of the information and documentation submitted by Construction Manager, Owner's Representative shall notify Construction Manager in writing and Owner shall pay the undisputed parts of such Pay Request. If Owner's Representative and Construction Manager are able to agree on the amount due under the disputed part of any Pay Request, payment will be made to Construction Manager within the time provided by paragraph 14.7 of this Agreement or ten (10) days after receipt of a new Pay Request representing the agreed amount, whichever is later.

14.12 Conditions Precedent to Payment. In addition to all other conditions contained herein, it shall be a condition precedent to any payment otherwise due hereunder that: (a) Construction Manager not be in material breach of this Agreement or in breach of any warranty made therein; (b) Construction Manager has submitted all monthly updated Construction Schedules, Monthly Reports, and Project cost summaries required by this Agreement; and (c) Construction Manager has submitted its Pay Requests and backup documentation in the time, form, and manner required by this Agreement.

14.13 Non-Waiver of Claims for Defective Work. Neither entrance, inspection nor use of the Project by Owner, Architect, or their representatives nor any payment (whether final or otherwise) made by Owner shall be construed as an acceptance of defective or nonconforming Work nor shall such entrance, inspection, use, or payment release Construction Manager from any of its obligations under the Contract Documents.

ARTICLE 15

CHANGE ORDERS

15.1 Authority to Order Changes. Owner may by written Change Order and without affecting the validity or enforceability of this Agreement, direct changes in the Work and the Services within the general scope of the Contract Documents, including changes, additions, deletions, modifications, and

revisions thereto, or changes to the time for the Construction Manager's performance, or any combination thereof. Construction Manager shall promptly proceed, and cause all Subcontractors to proceed, with the performance of the Services and the Work in accordance with Owner's direction, and failure to agree on the terms of a Change Order shall not excuse Construction Manager from continued performance of the Services or the Work in an expeditious fashion or from proceeding with any directed change.

15.2 Adjustments to Construction Manager's Compensation. GMP And Contract Time Only by Change Order. Changes in the Work, Construction Manager's compensation, adjustments to the GMP, and extensions of time for the performance of this Agreement may only be made by a Change Order issued in accordance with the terms of this Article and signed by Owner. Owner shall not be responsible for any change in the Work involving extra cost unless approval in writing is furnished by Owner before such Work is begun. Owner's Representative does not have authority to order changes in the Work that involve changes in cost or time.

15.3 Adjustments to Construction Manager's Compensation And GMP. If there is a change in the scope of the Work or the scope of Services required of Construction Manager under the Contract Documents, which change increases Construction Manager's cost of performance, or if Construction Manager submits a claim for additional compensation or adjustment to the GMP pursuant to paragraph 16.2, then, subject to the terms and conditions of this Agreement and Owner's approval of Construction Manager's claim, Construction Manager's compensation and the GMP shall be adjusted by a Change Order; provided, however, that no upward adjustment shall be made if the change in the scope of the Work or Services, or the basis of the claim for additional compensation or adjustment to the GMP, is caused by the fault, in whole or in part, of Construction Manager, a Subcontractor, or anyone for whom they are, or may be, responsible. As conditions precedent to any increase to Construction Manager's compensation or the GMP, Construction Manager shall: (a) give Owner's Representative written notice within seven (7) days after the occurrence of the event or commencement of the condition giving rise to the claim for additional compensation and adjustment to the GMP, (b) not later than ten (10) days after the date of such notice, submit to Owner's Representative Construction Manager's documented claim for additional compensation and adjustment to the GMP, (c) make available to Owner all pertinent Information requested by Owner's Representative relating to such claim, and (d) otherwise comply with the terms and conditions of Article 16 of this Agreement. The failure of Construction Manager to satisfy any of the foregoing conditions precedent shall constitute a waiver by Construction Manager of any entitlement to an increase in Construction Manager's compensation or the GMP. If a change in the scope of the Work or Services reduces Construction Manager's cost of performance, then the GMP, and the Design Phase Fee or the Construction Phase Fee, or, if applicable, both, shall be decreased accordingly. Subject to subparagraphs 15.3.1 and 15.3.2: (i) in the event of a change to the Construction Phase Work, the amount of any adjustment to the GMP, up or down, shall be an amount equal to: (a) the actual, reasonable Subcontract Costs and Reimbursable Expenses incurred or saved by Construction Manager on account of the change; and (b) an adjustment, up or down, to the Construction Phase Fee, calculated by multiplying the amount in part (a) by the percentage specified in Section 14.1.4. Notwithstanding the definitions of Reimbursable Expenses and Subcontract Costs contained elsewhere in this Agreement, for purposes of calculating the actual, reasonable Subcontract Costs and Reimbursable Expenses saved by Construction Manager on account of a change, the savings achieved shall be deemed to include amounts

that would be Reimbursable Expenses or Subcontract Costs if incurred or paid, even though such amounts are not incurred or paid.

15.3.1 As used in paragraph 15.3, the actual, reasonable Subcontract Costs incurred or saved by Construction Manager on account of a change shall be established on the basis of, and shall be limited to, the reasonable actual costs incurred or savings achieved, as defined below, by Subcontractors resulting from the change, plus a component for direct jobsite overhead and profit, as set forth below, but shall not include home office overhead or other indirect cost or components. The overhead and profit component for Subcontractors shall be five percent (5%); provided, however, that the foregoing five percent (5%) overhead and profit component for Subcontractors is intended to cover all Subcontractors and subcontractors of any tier, and there shall be no additional overhead and profit component for subcontractors below first-tier Subcontractors of the Construction Manager. Any such costs or savings shall be documented in the format, and with such content and detail, as the Owner or the Architect require.

15.3.2 As used in subparagraph 15.3.1, reasonable actual costs incurred or savings achieved means, and shall be limited to, the following:

- (i) Actual, reasonable costs of materials and the use of heavy construction equipment
- (ii) Actual, reasonable costs of supervision and labor, plus, solely as applicable thereto, social security, unemployment insurance, fringe benefits required by agreement or custom, and worker's compensation insurance;
- (iii) Actual, reasonable rental costs of machinery and equipment (exclusive of small tools or hand tools) whether rented from Construction Manager or others; and
- (iv) Actual, reasonable costs of premiums for bonds, permit fees, and sales, use or other taxes related to the Work.

All costs not set forth in the immediately preceding subsections (i) through (iv) shall be considered as overhead, including without limitation insurance other than that set forth above, travel (including transportation, meals and lodging), administrative staff, watchmen, hand tools, small power tools, incidental job burdens, engineering, drafting, and office expense (including costs of preparing Change Order proposal estimates). In no event shall any costs or savings associated with home office overhead or other indirect costs be considered to be actual costs incurred or savings achieved resulting from a Change Order and compensation for additional Work or Services shall be limited strictly as set forth herein.

15.4 Payment. Requests for payment for performance of Services and Work pursuant to a Change Order shall be made in accordance with paragraph 14.4, and payment shall be subject to the provisions of Article 14. The Construction Manager shall continue to diligently perform the Work and Services, including any change directed by the Owner by Change Order, and shall keep thorough records of the cost of performance of such Change Order consistent with and in accordance with the provisions of paragraph 15.3 above. Pending final determination of the amount of any adjustment to the Construction Manager's compensation or the GMP, payments on account shall be made to Construction Manager in accordance with paragraph 15.3 above and Article 14 of this Agreement.

15.5 Extensions of Time. Any extension of the time for the Construction Manager's performance requested by Construction Manager for performance of any change ordered by Owner may be granted by mutual agreement and then set forth in the Change Order. Otherwise, extensions of the time for the

Construction Manager's performance shall be requested by Construction Manager pursuant to the terms and conditions of Article 16 of this Agreement and any such request for extension of time shall be subject to paragraph 15.6 of this Agreement. The failure of Construction Manager to provide notice in writing to Owner in accordance with Article 16 of this Agreement of any request for extension of time, or the Construction Manager's execution of a Change Order, shall constitute a waiver by Construction Manager of any entitlement to an extension of time arising out of or relating to such Change Order.

15.6 Change Orders Final. The execution of a Change Order by Construction Manager shall constitute conclusive evidence of Construction Manager's agreement to the ordered changes in the Work, the Contract Documents as thus amended, Construction Manager's compensation, the GMP and the Substantial Completion Date. Construction Manager, by executing the Change Order, waives and forever releases any claim against Owner for additional time or compensation for matters in any manner relating to, arising out of or resulting from the executed Change Order. Any additional Work performed by Construction Manager or Subcontractors without prior written authorization by Owner shall be performed at the sole risk and expense of Construction Manager.

15.7 Surety Consent. The Construction Manager shall notify and obtain the consent and approval of the Construction Manager's Surety with reference to all Change Orders if such notice, consent or approval are required by the Owner, the Architect, the Construction Manager's Surety or by law. The Construction Manager's execution of the Change Order shall constitute the Construction Manager's warranty to the Owner that the Surety has been notified of, and consents to, such Change Order and the Surety shall be conclusively deemed to have been notified of such Change Order and to have expressly consented thereto.

ARTICLE 16

CLAIMS BY CONSTRUCTION MANAGER

16.1 Generally. All claims against Owner shall be initiated by a written claim submitted by Construction Manager to Owner's Representative. Such claims shall be submitted to, and received by, Owner's Representative not later than seven (7) days after the event, or the first appearance of the circumstances or conditions, giving rise to the claim, and same shall set forth in detail all known facts supporting the claim, including the amount claimed. Construction Manager and Owner shall continue their performance under this Agreement regardless of the existence of any claims submitted by Construction Manager.

16.2 Claims for Additional Compensation. In the event Construction Manager seeks to make a claim for an increase in its compensation, or an adjustment to the GMP, or both, then as a condition precedent to any liability of Owner therefor, Construction Manager shall strictly comply with the requirements of paragraph 16.1 and such claim shall be made by Construction Manager before proceeding to execute any additional or changed work. Failure to satisfy this condition precedent shall constitute a waiver by Construction Manager of any claim for additional compensation. Any liability of Owner for additional costs to Construction Manager shall be strictly limited to actual and reasonable direct costs incurred by Construction Manager and shall in no event include indirect costs or consequential damages of Construction Manager or others. Absent a Change Order, Owner shall not be liable to Construction Manager for claims of third parties, including Subcontractors, unless and until liability of the Owner has been established therefor in a court of competent jurisdiction. No change in Construction Manager's compensation, nor adjustment of the GMP, shall be made except by Change Order issued in accordance

with the terms of this Agreement.

16.3 Separate Records. Upon discovering an event or condition forming the basis of a claim for an increase in the Construction Manager's compensation or the GMP or an extension of the time for Construction Manager's performance, Construction Manager shall, until the claim is resolved, commence to maintain separate records evidencing all costs and delays incurred in connection with the event or condition forming the basis for the claim.

16.4 Formal Written Claim. No later than ten (10) days after the date of the written notice of claim, Construction Manager shall submit a formal written claim which shall include at least the following information: (1) a concise statement of the occurrence(s) supporting the claim; (2) identification of the facts giving rise to the claim; (3) the date Construction Manager discovered the occurrence(s); (4) a detailed schedule of values identifying all costs resulting from the claim; (5) documentation supporting the schedule of values; (6) identification of any impact the claim has on the critical path schedule; and (7) all correspondence, internal memoranda, progress notes, and other documentation relating to the events which form the basis of the claim. In the event the claim relates to a Change Order, Construction Manager's formal written claim shall also include Construction Manager's good faith estimate of the change in the Construction Manager's compensation or the GMP, the time for the Construction Manager's performance, or any combination thereof as applicable, determined in accordance with Article 15 in respect of the Change Order. Other information or documents shall be submitted to Owner and Architect within ten (10) days after written request by Owner or Architect. The failure to provide a claim as set forth herein, or the failure to provide such other documents or information requested by Owner or Architect within ten (10) days after the written request, shall constitute a waiver of any claim for additional compensation or time extension related thereto.

16.4.1 Construction Manager shall provide, and continue to provide, to Owner all such documentation, including cost and time records, as and when Owner or Architect may request so that Owner may evaluate Construction Manager's claim.

16.5 Extensions of Time. Subject to the restrictions in 16.5.1 and 16.5.2, in the event the Construction Manager is delayed in performing any task which at the time of the delay is then critical, or which during the delay becomes critical, as the sole result of: (i) any act or omission by the Owner or someone acting in the Owner's behalf, (ii) any Owner-authorized Change Order, (iii) acts of God, (iv) Weather Delay Days as defined in Section 16.7, (v) any order of a governmental authority having jurisdiction over the Project which order is issued through no fault of the Construction Manager, (vi) acts of war, (vii) acts of terrorism, or (viii) for concealed or unknown conditions as provided in paragraph 16.6, then the Substantial Completion Date, or as applicable, the date for Final Completion and (except in the case of Weather Delay Days) Construction Manager's compensation and the GMP, shall be appropriately adjusted by the Owner upon the written notice and claim of the Construction Manager to the Owner and the Architect for such reasonable time as Owner may determine. A task is critical within the meaning of this paragraph 16.5 if, and only if, said task is on the critical path of the Project schedule so that a delay in performing such task will delay the ultimate completion of the Project. Any claim for an extension of time by the Construction Manager shall strictly comply with the requirements of paragraph 16.1 above and such notice shall be given by Construction Manager before proceeding to execute any additional or changed Work. If the Construction Manager fails to make such claim as required in this paragraph 16.5,

any claim for an extension of time shall be waived.

16.5.1 The Construction Manager agrees that the Work shall be prosecuted regularly, diligently, and without interruption at such rate of progress as will ensure full completion thereof within the time required by the Contract Documents. It is expressly understood and agreed that the Construction Manager has considered all contingencies and factors affecting its ability to perform all the Work within this time, including without limitation, delays caused by any fact or condition other than those expressly set forth in clauses (i) through (viii) of paragraph 16.5, and after consideration of all such contingencies and factors, Construction Manager has made an allowance for such contingencies and factors before agreeing to the time for completion specified in the Contract Documents, and does further agree that all things considered, such time for completion is a reasonable time for completion of all Work to be performed hereunder, without the need for any extension of time for any reasons other than those expressly set forth in clauses (i) through (vii) of paragraph 16.5.

16.5.2 No change in the Construction Manager's compensation or the GMP shall be due because of weather. *Extensions of substantial and final completion dates due to Weather Delay Days will be granted in accordance with Sections 16.5 and 16.7.*

16.6 Claims for Concealed or Unknown Conditions. In the event the Construction Manager discovers previously concealed and unknown site conditions which are materially at variance from those typically and ordinarily encountered in the general geographical location of the Project, the Construction Manager's compensation and the GMP shall be modified, either upward or downward, upon the written claim made by either party within seven (7) calendar days after the first appearance to such party of the circumstances. As a condition precedent to the Owner having any liability to the Construction Manager due to concealed and unknown conditions, the Construction Manager must give the Owner and the Architect written notice of, and an opportunity to observe, such condition prior to disturbing it. The failure by the Construction Manager to give the written notice and make the claim as provided by this paragraph 16.6 shall constitute a waiver by the Construction Manager of any rights arising out of or relating to such concealed and unknown condition.

16.7 Weather Delays

16.7.1 Standard Baseline for Average Climatic Range

- A. The Owner has reviewed weather data available from the National Oceanic and Atmospheric Administration and determined a Standard Baseline of average climatic range for the State of Georgia.
- B. Standard Baseline shall be regarded as the normal and anticipatable number of calendar days for each month during which construction activity shall be expected to be prevented and suspended by cause of adverse weather. Suspension of construction activity for the number of days each month as listed in the Standard Baseline is included in the Work and is not eligible for extension of Contract Time. Saturdays and Sundays are eligible workdays.

C. Standard Baseline is as follows:

Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
4	5	6	4	3	2	2	2	2	2	2	3

16.7.2 Adverse Weather And Weather Delay Days

- A. Adverse Weather is defined as the occurrence of one or more of the following conditions which prevents exterior construction activity or access to the site within 24 hours as determined by the Owner:
1. Precipitation (rain, snow, or ice) in excess of 0.10" liquid measure.
 2. Temperatures which do not rise above 32 degrees F by 10:00 a.m.
 3. Temperatures which do not rise above that specified for the day's construction activity by 10:00 a.m., if any are specified.
 4. Sustained wind in excess of 25 m.p.h.
 5. Standing snow in excess 1".
- B. Adverse Weather may include, if appropriate, "dry-out" or "mud" days:
1. For rain days above the standard baseline.
 2. Only if there is a hindrance to site access or sitework, such as excavation, backfill, and footings.
 3. At a rate no greater than 1 make-up for each day or consecutive days of rain beyond the standard baseline that total 1" or more, liquid measure.
- C. A Weather Delay Day may be counted if Adverse Weather prevents work on the Project for 50% or more of the Contractor's scheduled workday, including a weekend day or holiday if Contractor has scheduled construction activity that day.
- D. Contractor shall submit requests for extension of contract completion time due to Weather Delay Days in accordance with Section 16.5.

ARTICLE 17

PAYMENT AND PERFORMANCE BONDS

Before the GMP is deemed finally accepted by Owner, Construction Manager shall provide separate payment and performance bonds to Owner. Each of the bonds shall include a penal sum in the amount of one hundred percent (100%) of the GMP. In the event the GMP is increased, the penal sum of both the performance bond and the payment bond shall be deemed increased by like amount. The performance and payment bonds furnished by the Construction Manager shall be in the exact form provided at Exhibit M and Exhibit N of this Agreement, and shall be executed by a surety, or sureties, licensed in the State of Georgia by the Office of Commissioner of Insurance, rated A- or better by A.M. Best Company, listed on the United States Department of Treasury's Listing of Approved Sureties (Treasury Department Circular 570) as a surety authorized to write bonds for the U.S. Government with a total underwriting limitation equal to or greater than the penal sum of the bonds as adjusted from time to time, and not otherwise reasonably objectionable to the Owner. Construction Manager's surety(ies) shall be deemed to have waived notice of, and to have consented to, changes to the Contract Documents, including changes in: (a) the time for performing the Services and the Work and payment of

compensation to Construction Manager hereunder; (b) the sums payable under this Agreement; and (c) the Work and Services to be performed. The Contract Documents shall be incorporated by reference into each of the bonds.

ARTICLE 18

CONSTRUCTION MANAGER'S PERSONNEL AND SUBCONTRACTORS

18.1 Personnel. Construction Manager shall assign only qualified personnel to perform the Services. At the time of execution of this Agreement, the parties anticipate that the individuals named in Exhibit "F," attached hereto, will perform those functions indicated. So long as the individuals named in Exhibit "F" remain actively employed or retained by Construction Manager or its affiliates or subsidiaries, and Owner does not require removal as provided in paragraph 18.2, they shall perform the functions indicated next to their names. Construction Manager shall not remove or substitute such personnel without Owner's Representative's written approval, which shall not be unreasonably withheld.

18.2 Removal of Personnel and Subcontractors. If, at any time during the course of the Project, Owner's Representative reasonably determines that the performance of any member of Construction Manager's staff or any of Construction Manager's Subcontractors or consultants working on the Project is unsatisfactory, Owner's Representative may, in writing, require Construction Manager to remove such staff member or terminate such Subcontractor or consultant from the Project immediately and replace the staff member, Subcontractor or consultant at no cost to Owner, including those resulting from delay or inefficiency the change may cause.

18.3 Employment Taxes. Construction Manager shall be responsible for payment of all unemployment compensation, social security, and other similar taxes and benefits covering its employees.

ARTICLE 19

OWNERSHIP OF DOCUMENTS

All Contract Documents, as well as information and items provided by Owner to Construction Manager to facilitate Construction Manager's performance hereunder, shall remain the exclusive property of Owner, and all such documents, information, and items, including all copies thereof, shall be returned to Owner's Representative upon Final Completion and as a condition precedent to Final Payment; provided that Construction Manager may retain one copy of same for record purposes only.

ARTICLE 20

INDEMNITY

20.1 General Indemnity. To the fullest extent permitted by law, and subject to the exception in 20.2, the Construction Manager shall indemnify and hold harmless Owner and its elected and appointed officials, officers, boards, commissions, employees, representatives, consultants, servants, agents, attorneys and volunteers from and against any and all claims, suits, actions, judgments, injuries, damages, losses, costs, expenses and liability of any kind whatsoever, if caused by the Construction Manager, or anyone for whose acts the Construction Manager may be liable, regardless of whether such

liability, claim, damage, loss, cost or expense is caused in part by the Owner.

20.2 Indemnity for Architectural and Engineering Services. Section 20.1 shall not apply to claims, suits, actions, judgments, injuries, damages, losses, costs, expenses and liability that are in connection with or collateral to the portion of the Services that are engineering or architectural services. As to the portion of the Services that are exempted from Section 20.1, the Construction Manager shall indemnify, and hold harmless the Owner and its elected and appointed officials, officers, boards, commissions, employees, representatives, consultants, servants, agents, attorneys and volunteers from and against any and all claims, suits, actions, judgments, injuries, damages, losses, costs, expenses and liability of any kind whatsoever, including, but not limited to, attorney's fees and costs of defense, to the extent caused by or resulting from the negligence, recklessness, or intentionally wrongful conduct of the Construction Manager or other persons employed or utilized by the Construction Manager in performance under this Agreement.

20.3 Enforcement of This Agreement. In the event Owner retains legal counsel to secure performance by Construction Manager of any of its obligations under this Agreement, or if Owner retains or utilizes such counsel to represent its interest with respect to any matter for which Construction Manager has an indemnity obligation to Owner under any provision of this Agreement or otherwise, Construction Manager shall pay and reimburse Owner for the cost of such counsel and shall further pay and reimburse Owner for any and all other cost and expense incurred in preparing, negotiating, or prosecuting any claim against Construction Manager, including, but not limited to, any and all expert witness fees and expenses.

20.4 Limitation of Liability. The Construction Manager and Owner waive claims against each other for indirect and consequential damages arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all indirect or consequential damages due to either party's termination. Nothing contained in this section shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

ARTICLE 21

INSURANCE

The Construction Manager shall have and maintain insurance in accordance with the requirements of Exhibit "G" attached hereto and incorporated herein by reference.

ARTICLE 22

SUSPENSION

22.1 Suspension of Work. Owner may for any reason whatsoever suspend, in whole or in part, performance of the Work and Construction Manager's performance under this Agreement. Owner's Representative shall give written notice of such suspension to Construction Manager specifying when such suspension is to become effective and the scope of the Work and the Services affected by such suspension. Unless the circumstances causing a suspension of the Work require a shorter time period, then such suspension shall become effective five (5) days after the date of the Owner's Representative's written notice of such suspension to Construction Manager. If the circumstances causing a suspension of the Work require a shorter time period, then the Owner's Representative's written notice of such suspension to

Construction Manager shall include the date and time when such suspension shall become effective and the reason(s) therefor.

22.2 Ceasing Performance Upon Suspension. From and upon the effective date of any suspension ordered by Owner, Construction Manager shall not incur, nor permit any Subcontractor to incur, any further expense or obligations in connection with the suspended portion of the Work or the Services. From and upon the effective date of any suspension ordered by Owner, Construction Manager shall cease performing under this Agreement, and shall cause all Subcontractors to cease performing, in connection with the suspended portion of the Work or the Services and shall utilize its best efforts to mitigate its costs resulting from the suspension.

22.3 Resumption of Work After Suspension. If Owner lifts the suspension it shall do so in writing signed by Owner's Representative, and Construction Manager shall promptly resume, and shall cause Subcontractors to resume, performance of the Services and the Work, unless, prior to receiving the notice to resume, Construction Manager has exercised its right of termination as provided in paragraph 23.8 herein.

22.4 Claim for Costs of Suspension. Within twenty (20) days after either the resumption of the suspended portion of the Work or Services or the termination of this Agreement by Construction Manager pursuant to paragraph 23.8, Construction Manager shall submit an itemization of the following cost items reasonably and necessarily expended by Construction Manager as a direct result of the suspension, together with pricing or other data required by Owner's Representative:

- (a) salaries of Construction Manager's home or branch office employees, or both, but only to the extent that such employees were directly impacted by said suspension;
- (b) salaries of Construction Manager's field employees, costs of construction tools, equipment, and field office costs; and
- (c) Subcontract Costs reasonably and unavoidably incurred on account of the suspension; and

(d) any other items directly related to the suspended part of the Services or the Work. Construction Manager's failure to provide such itemized information within such twenty (20) daytime period shall constitute a waiver of any claim to compensation relating to the suspension of Construction Manager's work under this Agreement. Owner shall promptly review Construction Manager's itemization and shall issue a Change Order providing for payment to Construction Manager of such amounts, and only such amounts, listed above as may be due on account of the suspension and increasing the GMP by like amount. In no event shall Construction Manager be entitled to lost profits, other consequential damages, or any items of damage related to or resulting from a suspension of the Services or of the Work except for those items enumerated in this paragraph 22.4.

ARTICLE 23

TERMINATION

23.1 Termination for Convenience. Owner may for any reason whatsoever terminate performance of the Services, the Work, this Agreement, or any part of any of them, for Owner's convenience. Owner shall give written notice of such termination to Construction Manager specifying when termination becomes effective and the scope thereof. In light of Owner's ability to terminate for convenience, the parties intend and acknowledge that this Agreement is not a "multi-year purchase contract" under O.C.G.A. § 36-60-13(a).

23.2 Ceasing Performance Upon Termination. From and after the effective date of any termination, Construction Manager shall not incur, nor permit any Subcontractor to incur, any further expense or obligations in connection with the terminated portion of the Work or Services. From and after the effective date of any termination, Construction Manager shall cease performance and cause the Subcontractors to cease performance, to the extent of the terminated portion of the Work or Services. In the event of termination of this Agreement, Construction Manager shall terminate outstanding Subcontracts and purchase orders related to the terminated portion of the Work or Services unless directed to do otherwise by Owner's Representative. Owner's Representative may direct Construction Manager to assign, and Construction Manager hereby agrees to assign, Construction Manager's right, title and interest under open or terminated Subcontracts to Owner or its designee. Unless directed otherwise by Owner's Representative, Construction Manager shall settle the liabilities and claims arising out of the termination of the Subcontracts. If requested by Owner's Representative, Construction Manager shall vacate the Project site immediately.

23.3 Submission of Termination Claim. In the event of termination of all or any part of the Services, the Work or this Agreement for convenience, Construction Manager shall, within one (1) year after the effective date of termination, submit a written termination claim to Owner specifying the amounts due because of the termination together with costs, pricing, and other supporting documentation or data required by Owner's Representative. Construction Manager's failure to file a termination claim within such one (1) year period shall constitute a waiver of any claim to compensation relating to the termination. If a proper termination claim is submitted, then Owner shall pay Construction Manager an amount derived in accordance with paragraph 23.4 herein. Claims submitted under this Article 23 shall not be subject to the procedure set forth in Article 16.

23.4 Compensation for Termination for Convenience. As full compensation due to Construction Manager for any termination for convenience, including any amounts due to a Subcontractor on account of such termination, Owner shall, subject to subparagraph (e) below, pay Construction Manager the following amounts:

- (a) Reimbursable Expenses incurred in performing Construction Phase Services and Work accepted under this Agreement;
- (b) Reimbursable Expenses (i) incurred prior to termination in preparing to perform and in performing the terminated portion of the Construction Phase Work and Services, and

- (ii) incurred in terminating Construction Manager's or Subcontractors' performance;
- (c) Reasonable costs of settling and paying claims arising out of the termination of Subcontracts or orders necessitated by such termination; and
- (d) The unpaid portion of Construction Manager's Design Phase and Construction Phase Fees earned to the date of termination as determined by the terms of paragraph 14.1.
- (e) If it appears that the Construction Manager would not have profited, would have sustained a loss, or that its fees would have been diminished if the entire contract would have been completed, no fees shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss, if any, notwithstanding the provisions of subparagraphs (a), (b), (c) and (d) of this paragraph 23.4.

23.4.1 The total sum to be paid the Construction Manager under this paragraph 23.4 shall not exceed the GMP, as properly adjusted, reduced by the amounts of payments otherwise made, and shall in no event include duplication of payment.

23.4.2 In no event shall Construction Manager be entitled to recover from Owner, on its own account or on behalf of a Subcontractor, lost profits or other consequential damages, whether its own or those of a Subcontractor, on account of a termination for convenience or an erroneous termination for cause, as described below.

23.5 Termination for Cause. If Construction Manager refuses or fails to perform its Services and duties under this Agreement in a timely manner, supply enough properly skilled supervisory personnel, labor or proper equipment or materials, make prompt payment to its Subcontractors, suppliers, employees, or consultants, or comply with Applicable Laws, or if Construction Manager is otherwise guilty of a material breach of this Agreement or any warranty made herein, then Owner may, by written notice to Construction Manager, and without prejudice to any other right or remedy, terminate the employment of Construction Manager, in whole or in part, and take possession of the Project site, the Contract Documents, Subcontracts, Project Documentation in the possession of Construction Manager, and all equipment and materials at the site. Owner shall also be compensated for any increased cost it incurs by virtue of Construction Manager's breach and Owner's completion of the work.

23.6 Erroneous Termination for Cause. In the event the employment of Construction Manager is terminated by Owner for cause and it is subsequently determined by a court or other tribunal of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a Termination for Convenience under paragraph 23.1 and the provisions of paragraph 23.4 regarding compensation shall apply.

23.7 Completion by Owner and Survival of Obligations. Following any termination, whether for convenience or for cause and whether in whole or in part, Owner may complete the terminated portion of the Work and the Services by whatever means Owner deems most expedient. Construction Manager's

obligations and all provisions of this Agreement shall continue in full force and effect as to all Work or Services performed prior to the effective date of the termination and as to that portion of the Work and Services not affected by the termination. Construction Manager shall not be entitled to any payment based upon any savings realized by the Owner upon its completion of the Work.

23.8 Termination by Construction Manager. If the Work, the Services, or this Agreement is suspended by Owner in its entirety for a period of one hundred and twenty (120) consecutive days or more, through no fault of Construction Manager or the Subcontractors, by governmental authority or by direction or neglect of Owner's Representative, or if Owner fails to perform its material obligations to the Construction Manager for a period of sixty (60) days after receipt of written notification from Construction Manager of its intent to terminate hereunder, then Construction Manager may, upon seven (7) days written notice to Owner, terminate its performance under this Agreement. In such event, the Construction Manager shall be entitled to recover from the Owner as though the Owner had terminated the Construction Manager's performance for convenience pursuant to paragraph 23.1 above.

23.9 Assignment of Contracts. Upon any termination, Construction Manager shall, upon the request of Owner, assign to Owner any subcontracts, and any material or equipment contracts, entered Construction Manager in connection with the Work.

ARTICLE 24

ENVIRONMENTAL ISSUES

24.1 Environmental Licenses, Certifications, & Permits. Construction Manager covenants and agrees that during the term of the Agreement and any extensions or renewals thereof, all of its employees, agents, representatives, and Subcontractors, if any, performing Work will have the requisite skills, licenses, certifications, training, permits and the like mandated by all applicable federal, state and local governing authorities with jurisdiction over environmental matters. Construction Manager agrees to provide to Owner's Representative evidence of compliance with the requirements of this paragraph upon demand.

24.2 Environmental Laws. Construction Manager, its Subcontractors, representatives, employees, and agents shall comply with all federal, state, and local laws, rules, and ordinances relating to environmental protection governing the Work.

24.3 Termination. Construction Manager agrees that a material breach of any of the terms, conditions, and obligations of this Article would be detrimental to Owner, a material breach of this Agreement and grounds for Owner's immediate termination of the Agreement.

24.4 Application with Other Provisions. The provisions of this Article 24 shall operate in addition to, and not in limitation of, any other obligations contained in the Contract Documents.

ARTICLE 25

INTENTIONALLY LEFT BLANK

ARTICLE 26

MISCELLANEOUS PROVISIONS

26.1 Notices. No notice is effective until the writing containing the notice is placed in the hand of the Owner's Representative or the Construction Manager's Project Manager or is postmarked by certified U.S. Mail, to the following addresses:

To Owner: City of Auburn, Georgia - Mayor, and Council
Attention: Mr. Alex Mitchem, City Administrator
1369 4th Avenue,
Auburn, Georgia 30011

To Construction Manager: _____

All notices shall be effective upon receipt.

26.2 Successors and Assigns. Construction Manager shall not assign its rights hereunder, excepting its right to payment, nor shall its delegate any of its duties hereunder without Owner's Representative's written consent; Owner shall have the right to assign its rights under this Agreement, but any such assignment shall not relieve Owner of its obligations hereunder. Subject to the provisions of the immediately preceding sentence, Owner and Construction Manager, respectively, bind themselves, their successors, assigns and legal representatives to the other party to this Agreement and to the successors, assigns and legal representatives of such other party with respect to all terms and conditions of this Agreement.

26.3 No Third-Party Beneficiaries. Nothing contained in this Agreement shall create a contractual relationship with, or any rights in favor of, any third party, including any Subcontractor.

26.4 Immigration and Security Compliance.

Pursuant to O.C.G.A. § 13-10-91, the Owner shall not enter into a contract for the physical performance of services unless:

(1) the Construction Manager shall provide evidence on Owner-provided forms, attached hereto as "Exhibits H-1 and H-2" (affidavits regarding compliance with the E-Verify program to be sworn under oath under criminal penalty of false swearing pursuant to O.C.G.A. § 16-10-71), that it and its subcontractors have registered with, are authorized to use and use the federal work authorization program commonly known as E-Verify, or any subsequent replacement program, in accordance with the applicable provisions and deadlines established in O.C.G.A. § 13-10-91, and that they will continue to use the federal work authorization program throughout the contract period, or

(2) the Construction Manager provides evidence that it is not required to provide an affidavit

because it is an individual licensed pursuant to Title 26 or Title 43 or by the State Bar of Georgia and is in good standing.

The Construction Manager hereby verifies that it has, prior to executing this Agreement, executed a notarized affidavit, the form of which is provided in "Exhibit G.1", and submitted such affidavit to Owner or provided the Owner with evidence that it is an individual not required to provide such an affidavit because it is licensed and in good standing as noted in sub-subsection (2) above. Further, Construction Manager hereby agrees to comply with the requirements of the federal Immigration Reform and Control Act of 1986 (IRCA), P.L. 99-603, O.C.G.A. § 13-10-91 and Georgia Department of Labor Rule 300-10-1-.02.

In the event the Construction Manager employs or contracts with any subcontractor(s) in connection with the covered contract, the Construction Manager agrees to secure from such subcontractor(s) attestation of the subcontractor's compliance with O.C.G.A. § 13-10-91 and Rule 300-10-1-.02 by the subcontractor's execution of the subcontractor affidavit, the form of which is attached hereto as "Exhibit G.2", which subcontractor affidavit shall become part of the contractor/subcontractor agreement, or evidence that the subcontractor is not required to provide such an affidavit because it is licensed and in good standing as noted in sub-subsection (2) above. If a subcontractor affidavit is obtained, Construction Manager agrees to provide a completed copy to the Owner within five (5) business days of receipt from any subcontractor.

Where Construction Manager is required to provide an affidavit pursuant to O.C.G.A. § 13-10-91, the Owner shall be authorized to conduct an inspection of the Construction Manager's and Construction Manager's subcontractors' verification process at any time to determine that the verification was correct and complete. The Construction Manager and Construction Manager's subcontractors shall retain all documents and records of their respective verification process for a period of five (5) years following completion of the contract. Further, where Construction Manager is required to provide an affidavit pursuant to O.C.G.A. § 13-10-91, the Owner shall further be authorized to conduct periodic inspections to ensure that no contractor or subcontractors employ unauthorized aliens on Owner contracts. By entering into a contract with the Owner, the Construction Manager and Construction Manager's subcontractors agree to cooperate with any such investigation by making their records and personnel available upon reasonable notice for inspection and questioning. Where a Construction Manager or Construction Manager's subcontractors are found to have employed an unauthorized alien, the Owner may report same to the Department of Homeland Security. The Construction Manager's failure to cooperate with the investigation may be sanctioned by termination of the contract, and the Construction Manager shall be liable for all damages and delays occasioned by the Owner thereby.

26.5 Nondiscrimination. Nondiscrimination. In accordance with Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and all other provisions of Federal law, the Construction Manager agrees that, during performance of this Agreement, the Construction Manager, for itself, its assignees and successors in interest, will not discriminate against any employee or applicant for employment, any subcontractor, or any supplier because of race, color, creed, national origin, gender, age or disability. In addition, the Construction Manager agrees to comply with all applicable implementing regulations and shall include the provisions of this paragraph in every subcontract for services contemplated under this Agreement.

26.6 Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction or other competent tribunal or rendered invalid by any legislative or regulatory enactment, the remaining provisions of this Agreement shall remain in full force and effect, and such holding or enactment shall not invalidate or render unenforceable any other provision hereof.

26.7 Headings. The headings used in this Agreement are merely for convenience and shall have no other force, effect or purpose.

26.8 Exhibits. All exhibits annexed hereto, "A" through "N," are incorporated by reference and made a part of this Agreement.

26.9 "Including". The terms "including," "includes," and their derivatives are not intended as terms of limitation and shall be deemed in each instance to be followed by the phrase "without limitation."

26.10 Governing Law. This Agreement shall be construed, interpreted, and enforced in accordance with the laws of the State of Georgia. Each and every provision required by law to be inserted in this Agreement shall be deemed to be inserted herein and the Agreement shall be read and enforced as though it were included herein. The Construction Manager and its Surety(ies) irrevocably consent to the non-exclusive venue and jurisdiction of the Superior Court of City of Auburn, Georgia,, regarding any matter arising out of or relating to this Agreement.

26.11 Entire Agreement / Amendments in Writing. This Agreement represents the entire agreement between Owner and Construction Manager and supersedes all prior communications, negotiations, representations, or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Construction Manager.

26.12 Waiver. No waiver by Owner of any one or more defaults by Construction Manager in the performance of the provisions of this Agreement shall be construed as a waiver of any other defaults, whether of a like kind or different nature.

26.13 Immunities. Nothing contained in this Agreement shall be construed to be a waiver of the Owner's sovereign immunity or any individual's qualified good faith or official immunities.

26.14 Counterparts. This Agreement may be executed in multiple counterparts.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates indicated below.

CITY OF AUBURN, GEORGIA

CONSTRUCTION MANAGER:

By: _____

Linda Blechinger, Mayor

By: _____

Print Name: _____

Date: _____

Date: _____

Attest:

Its: **[CIRCLE ONE]**

President/Vice President (Corporation)

General Partner (Partnership/Limited Partnership)

Member/Manager (LLC)

Owner (Sole Proprietorship/Individual)

Joyce Brown, City Clerk

Approved as to form:

[CORPORATE SEAL]

(required if corporation)

City Attorney

Attest/Witness:

Date

Print Name: _____

Its: _____

((Assistant) Corporate Secretary if corporation)

[City Seal]

EXHIBIT "A"

SCHEDULE OF REIMBURSABLE EXPENSES

The Reimbursable Expenses for which the Construction Manager may be paid pursuant to this Agreement shall be limited to amounts actually and reasonably incurred and paid by Construction Manager in the interest of the Project, and in performance of Services and the Work, for the following specific items:

- (1) Transportation, lodging and meals in connection with travel for the Project Owner will not reimburse for first-class air travel or higher than business-class lodging).
- (2) The direct costs of maintaining an office on the job site.
- (3) Long-distance communications.
- (4) Fees paid for securing approvals and certifications of authorities having jurisdiction or regulatory power over the Project or its operations.
- (5) Actual costs of reproduction, postage, and handling of drawings, specifications and other documents.
- (6) Surety bonds and insurance required by this Agreement, to the extent such insurance is not ordinarily carried by Construction Manager.
- (7) Construction Manager's reasonable cost of job site mobilization.
- (8) Material, supplies and equipment actually incorporated into the Project or suitably stored, insured, and protected at the job site.
- (9) Job site utilities.
- (10) Cost of removal of garbage and debris.
- (11) Cost incurred due to an emergency affecting safety of persons or property (including the Project), provided such emergency is not caused by, or a result of, acts or omissions on the part of Construction Manager or any Subcontractor.
- (12) Wages actually paid to full-time hourly rate workers directly employed by Construction Manager, at the base hourly wage rate of each such employee, for time actually spent in performance of Services and the Work.
- (13) Salaries paid to salaried personnel of Construction Manager performing Services and Work for the Project, at the hourly rate per hour of each such employee as set forth in Exhibit "F," for time actually spent in performance of Services and the Work
- (14) Overtime wages actually paid. Only those hours worked by an individual in excess of forty (40) hours per week shall be deemed overtime hours, provided that all hours worked by such individual during the week are in performance of Services and the Work for the Project. Overtime hours shall be paid at not more than one and one half (1.5) times the base hourly wage rate of such employee, except that such hours shall be billed at the straight time base hourly wage rate for all exempt personnel. No time charges for overtime hours will be reimbursed if the individual is not paid at an overtime rate for the overtime worked. Except for overtime hours worked due to emergencies, overtime wages shall not be chargeable to Owner unless the overtime hours are authorized in writing in advance by Owner's Representative. Only events or circumstances posing a threat to persons or property (including the Project) or to Owner's interests shall be deemed emergencies for purposes of this paragraph. Insufficient planning or scheduling, or untimely performance,

by Construction Manager or its Subcontractors shall not qualify as an emergency. Construction Manager shall provide appropriate documentation, including relevant time sheets or logs, to support overtime charges.

- (15) Any and all other expenses as may be agreed upon in writing by Owner. All sums billed and paid as Reimbursable Expenses shall be at prices and rates consistent with those prevailing in City of Auburn, Georgia, during the scheduled time for performance of this Agreement.

EXHIBIT"B"

MINIMUM REQUIREMENTS FOR CONSTRUCTION MANAGER'S CONSTRUCTION SCHEDULE

PART 1 -GENERAL

- 1.1 DEFINITIONS. For purposes of this Exhibit, the following terms shall have the meanings set forth below.
- A. Activity: A discrete part of a project that can be identified for planning, scheduling, monitoring, and controlling the construction project. Activities included in a construction schedule consume time and resources.
 - 1. Critical activities are activities on the critical path. They must start and finish on the planned early start and finish times.
 - 2. Predecessor Activity: An activity that precedes another activity in the network.
 - 3. Successor Activity: An activity that follows another activity in the network.
 - B. Cost Loading: The allocation of the schedule of values for the completion of an activity as scheduled. The sum of costs for all activities must not exceed that portion of the GMP attributable to Construction Phase Compensation, unless otherwise approved by Architect and Owner.
 - C. CPM: Critical path method, which is a method of planning and scheduling a construction project where activities are arranged based on activity relationships. Network calculations determine when activities can be performed and the critical path of the project.
 - D. Critical Path: The longest connected chain of interdependent activities through the network schedule that establishes the minimum overall project duration and contains no float.
 - E. Event: The starting or ending point of an activity.
 - F. Float: The measure of leeway in starting and completing an activity.
 - 1. Float time belongs to Owner.
 - 2. Free float is the amount of time an activity can be delayed without adversely affecting the early start of the successor activity.
 - 3. Total float is the measure of leeway in starting or completing an activity without adversely affecting the planned project completion date.
 - G. Fragnet: A partial or fragmentary network that breaks down activities into smaller activities for greater detail.
 - H. Major Area: A story of construction, a separate building, or a similar significant construction element.
 - I. Milestone: A key or critical point in time for reference or measurement.
 - J. Network Diagram: A graphic diagram of a network schedule, showing activities and activity relationships.
 - K. Resource Loading: The allocation of manpower and equipment necessary for the completion of an activity as scheduled.

1.2 SUBMITTALS

- A. Preliminary Construction Schedule: Submit two opaque copies.
 - 1. No action or inaction by Architect or Owner in connection with cost-loaded preliminary construction schedule shall constitute or be deemed to constitute approval or acknowledgment of schedule of values for cost-loaded activities.
- B. Preliminary Network Diagram: Submit two opaque copies, large enough to show entire network or entire construction period. Show logic ties for activities.
- C. Construction Manager's Construction Schedule: Submit two opaque copies of initial schedule and each updated schedule, large enough to show entire schedule for entire construction period.
 - 1. Submit an electronic copy of schedule, using software indicated, on CD-R, and labeled to comply with requirements for submittals. Include type of schedule (Initial or Updated) and date on label.
 - 2. No action or inaction by Architect or Owner in connection with cost-loaded Construction Manager's Construction Schedule shall constitute or be deemed to constitute approval or acknowledgment of schedule of values for cost-loaded activities.
- D. CPM Reports: Concurrent with CPM schedule, submit three copies of each of the following computer-generated reports. Format for each activity in reports shall contain activity number, activity description, cost and resource loading, original duration, remaining duration, early start date, early finish date, late start date, late finish date, and total float in calendar days.
 - 1. Activity Report: List of all activities sorted by activity number and then early start date, or actual start date if known.
 - 2. Logic Report: List of preceding and succeeding activities for all activities, sorted in ascending order by activity number and then early start date, or actual start date if known.
 - 3. Total Float Report: List of all activities sorted in ascending order of total float.
 - 4. Earnings Report: Compilation of Construction Manager's total earnings from commencement of the Work until most recent Application for Payment.
- E. Submittal of the preliminary construction schedule, the initial Construction Manager's Schedule of Construction and updates thereto are for Architect's and Owner's information. No action or inaction by the Architect or Owner shall constitute or be deemed to constitute an approval of Construction Manager's Construction Schedule.

1.3 QUALITY ASSURANCE

- A. Scheduling Consultant Qualifications: An experienced specialist in CPM scheduling and reporting, with capability of producing CPM reports and diagrams within 24 hours of Architect's or Owner's request.
- B. Prescheduling Conference: Conduct conference to review methods and procedures related to the preliminary Construction Schedule and Construction Manager's Construction Schedule, including, but not limited to, the following:

1. Review software limitations and content and format for reports.
2. Verify availability of qualified personnel needed to develop and update schedule.
3. Discuss constraints, including, if applicable, phasing, work stages, area separations, interim milestones, and partial Owner occupancy.
4. Review delivery dates for Owner-furnished products, if any.
5. Review schedule for work of Owner's separate contracts, if any.
6. Review time required for review of submittals and resubmittals.
7. Review requirements for tests and inspections by independent testing and inspecting agencies.
8. Review time required for completion and startup procedures.
9. Review and finalize list of construction activities to be included in schedule.
10. Review submittal requirements and procedures.
11. Review procedures for updating schedule.

1.4 COORDINATION

- A. Coordinate preparation and processing of schedules and reports with performance of construction activities and with scheduling and reporting of separate contractors, if any.
- B. Coordinate Construction Manager's Construction Schedule with the schedule of values, list of subcontracts, submittals schedule, progress reports, payment requests, and other required schedules and reports.
 1. Secure time commitments for performing critical elements of the Work from parties Involved.
 2. Coordinate each construction activity in the network with other activities and schedule them in proper sequence.

PART 2- PRODUCTS

2.1 CONSTRUCTION MANAGER'S CONSTRUCTION SCHEDULE, GENERAL

- A. Procedures: Comply with procedures not less stringent and protective of the Owner than contained in AGC's "Construction Planning & Scheduling."
- B. Time Frame: Extend schedule from date established for commencement of the Work to date of Final Completion.
 1. Contract completion date shall not be changed by submission of a schedule that shows an early completion date, unless specifically authorized by Change Order.
- C. Activities: Treat each story or separate area as a separate numbered activity for each principal element of the Work. Comply with the following:
 1. Activity Duration: Define activities so no activity is longer than 14 days, unless specifically allowed by Architect and Owner.
 2. Procurement Activities: Include procurement process activities for long lead items and major items, requiring a cycle of more than 60 days, as separate activities in schedule. Procurement cycle activities include, but are not limited to, submittals, approvals,

- purchasing, fabrication, and delivery.
 - 3. Submittal Review Time: Include review and resubmittal times in schedule. Coordinate submittal review times in Construction Manager's Construction Schedule with submittals schedule.
 - 4. Startup and Testing Time: Include a sufficient number of days for startup and testing.
 - 5. Substantial Completion: Indicate completion in advance of date established for Substantial Completion and allow time for Architect's and Owner's administrative procedures necessary for approval of Substantial Completion.
- D. Constraints: If applicable, include constraints and work restrictions indicated in the Contract Documents and as follows in schedule, and show how the sequence of the Work is affected.
 - 1. Phasing: Arrange list of activities on schedule by phase.
 - 2. Work under More Than One Contract: Include a separate activity for each contract.
 - 3. Work by Owner: Include a separate activity for each portion of work performed by Owner.
 - 4. Products Ordered in Advance: Include a separate activity for each product. Include delivery date. Delivery dates indicated stipulate the earliest possible delivery date.
 - 5. Owner-Furnished Products: Include a separate activity for each product. Include delivery date. Delivery dates indicated stipulate the earliest possible delivery date.
 - 6. Work Restrictions: Show the effect of the following items on the schedule:
 - a. Coordination with existing construction.
 - b. Limitations of continued occupancies.
 - c. Uninterruptible services.
 - d. Partial occupancy before Substantial Completion.
 - e. Use of premises restrictions.
 - f. Provisions for future construction.
 - g. Seasonal variations.
 - h. Environmental control.
 - 7. Work Stages: Indicate important stages of construction for each major portion of the Work, including, but not limited to, the following:
 - a. Subcontract awards.
 - b. Submittals.
 - c. Purchases.
 - d. Mockups.
 - e. Fabrication.
 - f. Sample testing.
 - g. Deliveries.
 - h. Installation.
 - i. Tests and inspections.
 - j. Adjusting.
 - k. Curing.

- I. Startup and placement into final use and operation.
 - 8. Area Separations: Identify each major area of construction for each major portion of the Work. Indicate where each construction activity within a major area must be sequenced or integrated with other construction activities to provide for the following:
 - a. Structural completion.
 - b. Permanent space enclosure.
 - c. Completion of mechanical installation.
 - d. Completion of electrical installation.
 - e. Substantial Completion
 - 9. Other Constraints: Show the effect of any additional constraints.
- E. Milestones: Include milestones indicated in the Contract Documents in schedule, including, but not limited to, the commencement of construction, Substantial Completion, and Final Completion and interim milestones required by Owner, if any.
- F. Cost Correlation: At the head of schedule, provide a cost correlation line, indicating planned and actual costs. On the line, show dollar volume of the Work performed as of dates used for preparation of payment requests.
- 1. Construction Manager shall assign cost to construction activities on the CPM schedule. Costs shall not be assigned to submittal activities unless specified otherwise but may, with Architect's and Owner's approval, be assigned to fabrication and delivery activities. Costs shall be under required principal subcontracts for testing and commissioning activities, operation and maintenance manuals, punch list activities, project record documents, and demonstration and training (if applicable), in an appropriate amount.
 - 2. Each activity cost shall reflect an accurate value subject to objection by Architect or Owner.
 - 3. Total cost assigned to activities shall not exceed that portion of the GMP attributable to Construction Phase Compensation.
- G. Contract Modifications: For each proposed contract modification and concurrent with its submission, prepare a time-impact analysis to demonstrate the effect of the proposed change on the overall project schedule.
- H. Computer Software: Prepare schedules using a program that has been developed specifically to manage construction schedules.
- 1. Use software, version and operating system required by Owner.

2.2 CONSTRUCTION MANAGER'S CONSTRUCTION SCHEDULE (CPM SCHEDULE)

- A. General: Prepare network diagrams using AON (activity-on-node) format.
- B. Preliminary Network Diagram: Submit diagram not later than 7 days prior to commencement of the Construction Phase. Outline significant construction activities for the first 60 days of construction. Include skeleton diagram for the remainder of the Work and a cash requirement prediction based on indicated activities.

- C. CPM Schedule: Prepare Construction Manager's Construction Schedule using a computerized, cost-loaded and resource-loaded, time-scaled CPM network analysis diagram for the Work.
1. Submit CPM schedule prior to commencement of the Construction Phase.
 - a. Failure to include any Work item required for performance of the Contract Documents shall not excuse Construction Manager from completing all Work within applicable completion dates.
 2. Conduct educational workshops to train and inform key Project personnel, including subcontractors' personnel, in proper methods of providing data and using CPM schedule information.
 3. Establish procedures for monitoring and updating CPM schedule and for reporting progress. Coordinate procedures with progress meeting and payment request dates.
 4. Use "one workday" as the unit of time. Include list of nonworking days and holidays incorporated into the schedule.
- D. CPM Schedule Preparation: Prepare a list of all activities required to complete the Work. Using the preliminary network diagram, prepare a skeleton network to identify probable critical paths.
1. Activities: Indicate the estimated time duration, sequence requirements, and relationship of each activity in relation to other activities. Include estimated time frames for the following activities:
 - a. Preparation and processing of submittals.
 - b. Mobilization and demobilization.
 - c. Purchase of materials.
 - d. Delivery.
 - e. Fabrication.
 - f. Utility interruptions.
 - g. Installation.
 - h. If applicable, work by Owner that may affect or be affected by Construction Manager's activities.
 - i. Testing and start up.
 2. Critical Path Activities: Identify critical path activities, including those for interim completion dates. Scheduled start and completion dates shall be consistent with contract milestone dates.
 3. Processing: Process data to produce output data on a computer-drawn, time-scaled network. Revise data, reorganize activity sequences, and reproduce as often as necessary to produce the CPM schedule within the limitations of the time for Construction Manager's performance.
 4. Format: Mark the critical path. Locate the critical path near center of network; locate paths with most float near the edges.
 - a. Sub networks on separate sheets are permissible for activities clearly off the

critical path.

- E. Initial Issue of Schedule: Prepare initial network diagram from a list of straight "early start-total float sort. Identify critical activities. Prepare tabulated reports showing the following:

1. Construction Manager or subcontractor and the Work or activity.
2. Description of activity.
3. Principal events of activity.
4. Immediately preceding and succeeding activities.
5. Early and late start dates.
6. Early and late finish dates.
7. Activity duration in workdays.
8. Total float or slack time.
9. Average size of workforce.
10. Dollar value of activity (coordinated with the schedule of values).

- F. Schedule Updating: Concurrent with revising schedule, prepare tabulated reports showing the following:

1. Identification of activities that have changed.
2. Changes in early and late start dates.
3. Changes in early and late finish dates.
4. Changes in activity durations in workdays.
5. Changes in the critical path.
6. Changes in total float or slack time.
7. Changes in the time for Construction Manager's performance.
8. Value Summaries: Prepare two cumulative value lists, sorted by finish dates.
 1. In first list, tabulate activity number, early finish date, dollar value, and cumulative dollar value.
 2. In second list, tabulate activity number, late finish date, dollar value, and cumulative dollar value.
 3. In subsequent issues of both lists, substitute actual finish dates for activities completed as of list date.
 4. Prepare list for ease of comparison with payment requests; coordinate timing with progress meetings.
 - a. In both value summary lists, tabulate "actual percent complete and cumulative value completed" with total at bottom.
 - b. Submit value summary printouts one week before each regularly scheduled progress meeting.

PART 3 - EXECUTION

3.1 CONSTRUCTION MANAGER'S CONSTRUCTION SCHEDULE

- A. Scheduling Consultant: Engage a consultant to provide planning, evaluation, and reporting using CPM scheduling.
 - 1. In-House Option: Owner may waive the requirement to retain a consultant if Construction Manager employs skilled personnel with experience in CPM scheduling and reporting techniques. Submit qualifications.
 - 2. Meetings: Scheduling consultant shall attend all meetings related to Project progress, alleged delays, and time impact.
- B. Construction Manager's Construction Schedule Updating: At monthly intervals, update schedule to reflect actual construction progress and activities. Issue schedule one week before each regularly scheduled progress meeting.
 - 1. Revise schedule immediately after each meeting or other activity where revisions have been recognized or made. Issue updated schedule concurrently with the report of each such meeting.
 - 2. Include a report with updated schedule that indicates every change, including, but not limited to, changes in logic, durations, actual starts and finishes, and activity durations.
 - 3. As the Work progresses, indicate actual completion percentage for each activity.
- C. Distribution: Distribute copies of schedule to Architect, Owner, separate contractors, testing and inspecting agencies, subcontractors and other parties identified by Construction Manager with a need-to-know.
 - 1. Post copies in Project meeting rooms and temporary field offices.
 - 2. When revisions are made, distribute updated schedules to the same parties and post in the same locations. Delete parties from distribution when they have completed their assigned portion of the Work and are no longer involved in performance of construction activities.

END OF EXHIBIT

EXHIBIT"C"

LIQUIDATED DAMAGES

Liquidated damages as provided by Article 7 of this Agreement shall be the amount stated in the right column below which is directly opposite the applicable Guaranteed Maximum Price (GMP) range stated in the left column below, based on the ratio of the cost of the Work (which shall include all Design Phase Compensation and all Construction Phase Compensation) to the GMP.

If the Original GMP Is:

Daily Liquidated Damages Shall Be:

Up to \$49,999.99	\$ 50
\$50,000.00 to \$99,999.99	\$100
\$100,000.00 to \$299,999.99	\$200
\$300,000.00 to \$599,999.99	\$300
\$600,000.00 to \$999,999.99	\$400
\$1,000,000.00 to	\$500
\$1,999,999.99	\$750
\$2,000,000.00 to	\$1,500
\$4,999,999.99	\$2,500
\$5,000,000.00 to	\$3,500
\$9,999,999.99	The product of .0002
\$10,000,000.00 to	multiplied by the original
\$14,999,999.99	GMP.
\$15,000,000.00 to	
\$19,999,999.99	
\$20,000,000.00 or above	

EXHIBIT"D"

PARTIAL WAIVER AND RELEASE OF CLAIM RIGHTS

OWNER: City of Auburn, Georgia

The undersigned does hereby forever release, waive and discharge any and all claim rights and claims, any and all labor and material bond rights and claims, and any and all equitable rights and claims for all labor, subcontract work, equipment, materials and services supplied to the above project through the date indicated below.

This RELEASE and WAIVER shall inure to the benefit of, and may be relied upon by, OWNER. The undersigned further warrants that all persons employed by the undersigned and all persons supplying materials to the undersigned and all persons renting equipment to the undersigned have been paid in full.

DATED: _____ FIRM: _____ BY: _____

TITLE: _____

STATE OF _____

COUNTY OF _____

Subscribed and sworn before me this _____ day of _____, 2022.

Notary Public

EXHIBIT"E"

FINAL WAIVER AND RELEASE OF CLAIM RIGHTS

PROJECT: Courts Complex

OWNER: City of Auburn, Georgia

The undersigned does hereby forever release, waive and discharge any and all claim rights and claims, any and all labor and material bond rights and claims, and any and all equitable rights and claims, and any and all liens, for all labor, subcontract work, equipment, materials and services supplied to the above project. This RELEASE and WAIVER shall inure to the benefit of, and may be relied upon by, OWNER. The undersigned further warrants that all persons employed by the undersigned and all persons supplying materials to the undersigned and all persons renting equipment to the undersigned have been paid in full.

DATED: _____ FIRM: _____

BY: _____

TITLE: _____

STATE OF _____

COUNTY OF _____

Subscribed and sworn before me this _____ day of _____, 2022.

Notary
Public

EXHIBIT "F"
CONSTRUCTION MANAGER'S PERSONNEL LIST

Group Manager	_____	\$ ____ / Hr.
Senior Project Manager	_____	\$ ____ / Hr.
Project Manager	_____	\$ ____ / Hr.
Senior Estimator	_____	\$ ____ / Hr.
Estimator 2	_____	\$ ____ / Hr.
Estimator 1	_____	\$ ____ / Hr.
Senior Project Engineer	_____	\$ ____ / Hr.
Project Engineer	_____	\$ ____ / Hr.
Scheduling	_____	\$ ____ / Hr.
MEP	_____	\$ ____ / Hr.
Safety	_____	\$ ____ / Hr.
Quality Assurance	_____	\$ ____ / Hr.
Administrative Assistant	_____	\$ ____ / Hr.
Senior Project Coordinator	_____	\$ ____ / Hr.
Project Coordinator	_____	\$ ____ / Hr.
General Superintendent	_____	\$ ____ / Hr.
Senior Superintendent	_____	\$ ____ / Hr.
Senior Architect	_____	\$ ____ / Hr.
Senior MEP Engineer	_____	\$ ____ / Hr.
Senior Civil Engineer	_____	\$ ____ / Hr.

EXHIBIT "G"

INSURANCE REQUIRED OF CONSTRUCTION MANAGER

1. The Design Build firm or team shall, at its own expense, provide and maintain during the entire performance of this contract, at least the kinds and minimum amounts of insurance specified in the Design Build Contract. The insurer shall be in good standing within the state of Georgia through the Insurance Commissioner's Office and must be rated A- or better with AM Best Company.
2. The Certificate of Insurance evidencing required insurance shall contain an endorsement to the effect that any cancellation or any material change adversely affecting City of Auburn, Georgia's interest shall not be effective until 30 days after the insurer or the Contractor gives written notice to the City Administrator and to the Mayor of the City of Auburn, Georgia.
3. The Certificate of Insurance shall reference the RFP identification number and description as evidencing this requirement.
4. The Contractor shall insert the substance of this requirement, including this paragraph, in Subcontracts under the Agreement that require work on property and shall require Subcontractors to provide and maintain a copy of all subcontractors' proofs of required insurance, and shall make copies available to the Purchasing Department upon request.

5. Comprehensive General Liability:

This shall be taken out in the name of the Construction Management firm with the Board of Commissioners of City of Auburn, Georgia, its Council members, officers, and employees, to be included as an additional insured. It shall include: Comprehensive Form, Premise Operations, Explosion and Collapse Hazard, Underground Hazard, Products and Completed Operations Hazard, Broad Form Property Damage, Independent Contractors, Contracts, Personal Injury, etc.

- Combined Single Limit shall not be less than \$1,000,000.00 for each occurrence and not less than \$2,000,000.00 aggregate.

6. Automobile Liability Insurance:

Taken out in the name of the Construction Management firm

- Combined Single Limit shall not be less than \$1,000,000.00 for each occurrence and not less than \$1,000,000.00 aggregate.

7. Worker's Compensation Insurance:

Both the Construction Management Firm and the Design-Build Firm (if different) shall obtain and maintain Worker's Compensation Insurance in accordance with statutory requirements and Employer's Liability Insurance covering all employees of the CM Firm, the Design-Build firm and any uninsured Subcontractor(s). It shall be the responsibility of the Construction Management firm to ensure Subcontractors' compliance with this requirement.

- For Employer's Liability Insurance coverage, the combined Single Limit shall not be less than \$1,000,000.00 for each occurrence.

Before commencing any job, the Construction Manager shall provide the Owner with satisfactory evidence that the above-mentioned insurance is in force, to be evidenced by an affirmative approval of the insurance from the City of Auburn, Georgia Purchasing Department.

8. Professional Liability Insurance:

This shall be taken out in the name of the Design-Build Team or subcontractor serving as the Architect.

- This shall provide \$2,000,000.00 Minimum for Errors and Omissions.

Before commencing any work, the Construction Manager shall provide the Purchasing Department with certificates of insurance or other satisfactory evidence that the required performance and payment bonds are in force, to be evidenced by an affirmative approval of the insurance from the Purchasing Department.

EXHIBIT"H-1"

STATE OF GEORGIA
COUNTY OF BARROW

CONTRACTOR AFFIDAVIT AND AGREEMENT

By executing this affidavit, the undersigned contractor 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 on behalf of City of Auburn, Georgia, has registered with, is authorized to use, and uses the federal work authorization program commonly known as E-Verify, or any subsequent replacement program, in accordance with the applicable provisions and deadlines established in O.C.G.A. § 13-10-91. Furthermore, the undersigned contractor will continue to use the federal work authorization program throughout the contract period, and the undersigned contractor will contract for the physical performance of services in satisfaction of such contract only with subcontractors who present an affidavit to the contractor with the information required by O.C.G.A. § 13-10-91(b).

The contractor attests that the employee-number category designated below is applicable to it.

- _____ 500 or more employees.
_____ 100 or more employees.
_____ Fewer than 100 employees.

Contractor hereby attests that its federal work authorization user identification number and date of authorization are as follows:

Federal Work Authorization User Identification
Number

Date of Authorization

Name of Contractor

Name of Project

City of Auburn, Georgia,
Name of Public Employer

I hereby declare under penalty of perjury that
the foregoing is true and correct.

Executed on _____, 2022 in _____
(city), _____ (state).

Signature of Authorized Officer or Agent

Printed Name and Title of Authorized Officer or
Agent

SUBSCRIBED AND SWORN BEFORE ME ON THIS
THE _____ DAY OF _____, 2022.

Notary Public

[NOTARY SEAL]

My Commission Expires:

**EXHIBIT H-2
SUBCONTRACTOR AFFIDAVIT**

**STATE OF GEORGIA
COUNTY OF BARROW**

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 _____ (name of contractor) on behalf of City of Auburn, Georgia, has registered with, is authorized to use, and uses the federal work authorization program commonly known as E-Verify, or any subsequent replacement program, in accordance with the applicable provisions and deadlines established in O.C.G.A. § 13-10-91. Furthermore, the undersigned subcontractor will continue to use the federal work authorization program throughout the contract period, and the undersigned subcontractor will contract for the physical performance of services in satisfaction of such contract only with sub-subcontractors who present an affidavit to the subcontractor with the information required by O.C.G.A. § 13-10-91(b). Additionally, the undersigned subcontractor will forward notice of the receipt of an affidavit from a sub-subcontractor to the contractor within five (5) business days of receipt. If the undersigned subcontractor receives notice that a sub-subcontractor has received an affidavit from any other contracted sub-subcontractor, the undersigned subcontractor must forward, within five (5) business days of receipt, a copy of the notice to the contractor. The subcontractor contractor attests that the employee-number category designated below is applicable to it:

_____ 500 or more employees. _____ 100 or more employees. _____ Fewer than 100 employees.

Subcontractor hereby attests that its federal work authorization user identification number and date of authorization are as follows:

Federal Work Authorization User Identification
Number

Date of Authorization

Name of Subcontractor

Name of Project

City of Auburn, Georgia,
Name of Public Employer

I hereby declare under penalty of perjury that
the foregoing is true and correct.

Executed on _____, 2022 in _____(city),
_____(state).

Signature of Authorized Officer or Agent

Printed Name and Title of Authorized Officer or
Agent

SUBSCRIBED AND SWORN BEFORE ME
ON THIS THE _____ DAY OF
_____, 2022.

NOTARY PUBLIC

[NOTARY SEAL]

My Commission Expires:

EXHIBIT "I"

ALLOWANCES, UNIT PRICES, CLARIFICATIONS OR LIMITATIONS UPON WHICH THE GMP IS BASED

Owner:

Mayor's initials: _____

City Administrator's initials: _____

Construction Manager:

Duly authorized officer's initials: _____

EXHIBIT "J"

WORK SITE RULES

1. All trades shall have a designated foreman or supervisor on the job site while they are working. The foreman or supervisor shall sign in daily at the job site and indicate how many workers are on the site.
2. All material deliveries shall be coordinated with the Design/Builder's on-site superintendent.
3. All visitors to the job site shall check in with the Design/Builder's supervisor as soon as they come on the property.
4. All individuals shall park personal and work vehicles in areas designated by the Design/Builder's superintendent.
5. All individuals present at the job site shall comply with all applicable Federal, State and local safety regulations. Hard hats shall be worn by all construction personnel and authorized visitors within the limits of construction. Protective eyewear hearing protection, respirators, dust masks, and gloves shall be worn as needed.
6. All individuals present at the job site shall comply with local noise and work hour regulations or ordinances.
7. Hard-soled shoes shall be worn. Shirts are required. All workers shall dress appropriately for weather and work conditions.
8. No smoking is permitted on or near the job site.
9. No drugs or alcoholic beverages are allowed on the job site, before, during or after work hours.
10. No pets associated with the Design/Builder or Subcontractors will be allowed at the job site.
11. All workers shall use the chemical toilet provided by the Design/Builder.
12. Profanity, offensive language, unprofessional behavior and unkempt appearances will not be tolerated.
13. Workers may eat on site only in areas designated by the Design/Builder's superintendent. Food debris shall be disposed of in approved containers.
14. Individuals shall treat other individuals present at the job site with respect and sensitivity to racial, cultural, and gender differences.
15. Workers shall not communicate or associate with patrons or employees of City of Auburn, Georgia.
16. All workers shall remain within the limits of construction and shall not enter any of the Owner's other facilities.
17. Trespassing on adjacent property will not be tolerated.
18. Everyone is responsible for protecting the Owner's property as well as the work of other trades. Any damage or installation conflicts shall be reported immediately to the Design/Builder's superintendent.
19. Radios shall not be used.
20. The job site shall be kept tidy. All materials and tools shall be kept in a safe and orderly fashion. Clean up and remove your construction debris on a daily basis. Each trade is responsible for cleaning up after themselves.

EXHIBIT "K"

REQUEST FOR PROPOSAL

EXHIBIT "L"

RFP SUBMISSION

EXHIBIT "M"

PERFORMANCE BOND

CITY OF AUBURN, GEORGIA

KNOW ALL MEN BY THESE PRESENTS THAT _____
(as CONTRACTOR, hereinafter referred to as the "Principal"), and

_____ (as SURETY COMPANY, hereinafter referred to as the
"Contractor's Surety"), are held and firmly bound unto City of Auburn, Georgia, (as OWNER, hereinafter
referred to as the "City"), for the use and benefit of the City, in the sum of

(Insert: GMP AMOUNT) _____ Dollars (\$ _____), lawful money of the United
States of America, for the payment of which the Principal and the Contractor's Surety bind themselves,
their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these
presents.

WHEREAS, the Principal has entered, or is about to enter, into a certain written agreement with
the City for the construction of a project known as Courts Complex (hereinafter referred to as "the
Project"), which agreement is incorporated herein by reference in its entirety (hereinafter referred to as
the "Contract").

NOW THEREFORE, the conditions of this obligation are as follows:

1. That if the Principal shall fully and completely perform each and all of the terms, provisions and requirements of the Contract, including and during the period of any warranties or guarantees required thereunder, and all modifications, amendments, changes, deletions, additions, and alterations thereto that may hereafter be made, and if the Principal and the Contractor's Surety shall indemnify and hold harmless the City from any and all losses, liability and damages, claims, judgments, liens, costs and fees of every description, including but not limited to, any damages for delay, which the City may incur, sustain or suffer by reason of the failure or default on the part of the Principal in the performance of any and all of the terms, provisions, and requirements of the Contract, including all modifications, amendments, changes, deletions, additions, and alterations thereto, and any warranties or guarantees required thereunder, then this obligation shall be void; otherwise to remain in full force and effect;
2. In the event of a failure of performance of the Contract by the Principal, which shall include, but not be limited to, any breach or default of the Contract:
 - a. The Contractor's Surety shall commence performance of its obligations and undertakings under this Bond no later than thirty (30) calendar days after written notice from the City to the Contractor's Surety; and
 - b. The means, method or procedure by which the Contractor's Surety undertakes to perform its obligations under this Bond shall be subject to the advance written approval of the City.

The Contractor's Surety hereby waives notice of any and all modifications, omissions, additions, changes, and advance payments or deferred payments in or about the Contract, and agrees that the obligations undertaken by this Bond shall not be impaired in any manner by reason of any such modifications, omissions, additions, changes, and advance payments or deferred payments. The Parties further expressly agree that any action on this Bond may be brought within the time allowed by Georgia

law for suit on contracts under seal.

IN WITNESS WHEREOF, the Principal and Contractor's Surety have hereunto affixed their corporate seals and caused this obligation to be signed by their duly authorized officers or attorneys-in-fact, as set forth below.

CONTRACTOR ("Principal"):

By: _____ (signature)

_____ (print)

Title: _____

Date: _____

Attest:

_____ (signature)

_____ (print)

(SEAL)

Title: _____

Date: _____

CONTRACTOR'S SURETY:

By: _____ (signature)

_____ (print)

Title: _____

Date: _____

Attest:

(SEAL)

_____ (signature)

_____ (print)

Title: _____

Date: _____

(ATTACH SURETY'S POWER OF ATTORNEY)

EXHIBIT "N"

PAYMENT BOND

CITY OF AUBURN, GEORGIA,

KNOW ALL MEN BY THESE PRESENTS THAT _____ (as CONTRACTOR, hereinafter referred to as the "Principal"), and

_____ (as SURETY COMPANY, hereinafter referred to as the "Contractor's Surety"), are held and firmly bound unto City of Auburn, Georgia, (as OWNER, hereinafter referred to as the "City"), for the use and benefit of any "Claimant," as hereinafter defined, in the sum of

(Insert GMP amount) _____ Dollars (\$_____.__), lawful money of the United States of America, for the payment of which the Principal and the Contractor's Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered, or is about to enter, into a certain written agreement with the City for the construction of a project known as Courts Complex (hereinafter referred to as "the Project"), which agreement is incorporated herein by reference in its entirety (hereinafter referred to as the "Contract").

NOW THEREFORE, the condition of this obligation is such that if the Principal shall promptly make payment to any Claimant, as hereinafter defined, for all labor, equipment, services, and materials used or reasonably required for use in the performance of the Contract, then this obligation shall be void; otherwise to remain in full force and effect.

A "Claimant" shall be defined herein as any subcontractor, person, party, partnership, corporation, or other entity furnishing labor, equipment, services, or materials used or reasonably required for use in the performance of the Contract, without regard to whether such labor, equipment, services, or materials were sold, leased, or rented, and without regard to whether such Claimant is or is not in privity of the Contract with the Principal or any Subcontractor performing Work on the Project.

In the event of any claim made by the Claimant against the City, or the filing of a Lien against the property of the City affected by the Contract, the Contractor's Surety shall either settle or resolve the Claim and shall remove any such Lien by bond or otherwise as provided in the Contract.

The Parties further expressly agree that any action on this Bond may be brought within the time allowed by Georgia law for suit on contracts under seal.

IN WITNESS WHEREOF, the Principal and Contractor's Surety have hereunto affixed their corporate seals and caused this obligation to be signed by their duly authorized officers, as set forth below.

[SIGNATURES ON FOLLOWING PAGE]

CONTRACTOR ("Principal"):

By: _____ (signature)

_____ (print)

Title: _____

Attest:

Date: _____

_____ (signature)

_____ (print) (SEAL)

Title: _____

Date: _____

CONTRACTOR'S SURETY:

By: _____ (signature)

_____ (print)

Title: _____

Attest:

Date: _____

(SEAL)

_____ (signature)

_____ (print)

Title: _____

Date: _____

(ATTACH SURETY'S POWER OF ATTORNEY)