LUMPKIN COUNTY
Board of Commissioners
Regular Meeting Agenda
Commissioners Boardroom

September 21, 2021
6:00 P.M.

- **CALL TO ORDER** Chairman Dockery
- **INVOCATION**
- **CONSIDERATION OF AGENDA**
- **PUBLIC COMMENTS (Agenda Specific)**
- **PROCLAMATIONS**

1. Community Helping Place Ornament for 2021 Joint Proclamation

- **CONSIDERATION OF MINUTES**

2. Board of Commissioners - Work Session - Aug 3, 2021 4:00 PM
3. Board of Commissioners - Public Hearing - Aug 10, 2021 5:00 PM
4. Board of Commissioners - Special Called Work Session - Aug 11, 2021 3:00 PM
5. Board of Commissioners - Special Called Meeting - Aug 17, 2021 5:00 PM
6. Board of Commissioners - Public Hearing - Aug 17, 2021 5:15 PM
7. Board of Commissioners - Work Session II - Aug 17, 2021 5:30 PM
8. Board of Commissioners - Regular Meeting - Aug 17, 2021 6:00 PM
9. Board of Commissioners - SLUA Public Hearing - Aug 17, 2021 6:30 PM
10. Board of Commissioners - Special Called Meeting - Aug 24, 2021 4:30 PM

- **RESOLUTIONS**

11. 2021 - 51 - A Resolution Dedicating the Dr. David J. Miller Commissioners' Boardroom
12. 2021 - 52 - Resolution for the GDNR Recreational Trails Program Grant *(Development Authority Director Rebecca Mincey)*

- **REPORTS**

Department reports can be viewed on the Commissioners web page at www.lumpkincounty.gov

Elected Officials

- **CONTRACTS/AGREEMENTS**

13. 2021-052 - Request for a Non-Exclusive Franchise to Community Television Company *(Public Works Director Larry Reiter)*

14. 2021-053 - Ninth District Opportunity Inc. Lease - Head Start Building *(Special Projects Director Ashley Peck)*
15. 2021-054 - Mobile Communications Service Agreement *(E-911 Director Carlton Chester)*
16. 2021-055 - Yahoola Creek Park Outdoor Basketball Court Construction Contract *(Special Projects Director Ashley Peck)*
17. 2021-056 - Aquatic Center IGA with Board of Education *(Special Projects Director Ashley Peck)*
18. 2021-057 - Aquatic Center Site Work GMP *(Special Projects Director Ashley Peck)*
19. 2021-058 - Little Mountain Road Bridge Replacement Contract Revision *(Public Works Director Larry Reiter)*
20. 2021-059 - Ratify Contract for Land Purchase - Ben Higgins Road *(County Attorney Joy Edelberg)*
21. 2021-060 - Accessible Solutions, Inc./ ServTracker Program Contract *(Senior Center Director Linda Kirkpatrick)*
22. 2021-061 - Justice Center HVAC Repair *(Special Projects Director Ashley Peck)*

- **OTHER ITEMS**

23. Alcoholic Beverage License – Georgia Farm Wines LLC d/b/a Seven Day Bottoms Farm Winery *(County Clerk Melissa Witcher)*
24. NGN Encroachment Permit Request *(Public Works Director Larry Reiter)*
25. 2019 TSPLOST 2021 Work Plan Amendment *(Finance Director Abby Branan)*
26. 2020 SPLOST 2021 Work Plan Amendment *(Finance Director Abby Branan)*
27. Consideration of a Moratorium in Certain Character Areas

- **COUNTY MANAGER**
- **COUNTY ATTORNEY**
- **COMMISSIONERS**
- **PUBLIC COMMENTS**
- **ADJOURNMENT**

Lumpkin County, Georgia

Board of Commissioners Department

Date: September 21, 2021

Agenda Item: Community Helping Place Ornament for 2021 Joint Proclamation

Item Description: Community Helping Place Ornament for 2021 Joint Proclamation

Attachments:
2021 Joint Proclamation Community Helping Place Ornament

Joint Proclamation

By
Lumpkin County
And
The City of Dahlonega

WHEREAS; **the City of Dahlonega and the County of Lumpkin, Georgia maintain their unique and warm sense of community as a community of choice by partnering with public and private entities to provide a safe, diverse, and economically sound environment; and**

WHEREAS; **the Community Helping Place is the largest outreach program in Dahlonega and Lumpkin County and is committed to providing basic needs such as food, clothing, medical and financial assistance to those Dahlonega and Lumpkin County residents in need, thereby enabling an economically sound environment;**

WHEREAS; **Dahlonega and Lumpkin County have a month-long Old Fashioned Christmas Celebration on their ornament-strewn historic public square that is nationally recognized as a taste of a Norman Rockwell-like Christmas with an Appalachian twist; and**

WHEREAS; **the Community Helping Place's White Christmas program provides food and toys to neighbors in need during the most festive time of the year; and**

WHEREAS; **the Community Helping Place has a series of Christmas collectible ornaments that celebrate and commemorate the uniqueness of Dahlonega and Lumpkin County and will make them available to all citizens, friends and supporters in an effort to raise funds for Community Helping Place programs.**

NOW, THEREFORE, BE IT RESOLVED **that the City of Dahlonega and Lumpkin County hereby proclaim the Community Helping Place Ornament to be the *Official 2021 City of Dahlonega/ Lumpkin County Collectors Ornament.***

Lumpkin County Georgia	*City of Dahlonega*
_____	_____
Chris Dockery, Chairman	**Sam Norton, Mayor**
Attest:	**Attest:**
_____	_____
Melissa Witcher, County Clerk	**Mary Csukas, City Clerk**

Attachment: 2021 Joint Proclamation Community Helping Place Ornament (3147 : Community Helping Place Ornament for 2021 Joint

LUMPKIN COUNTY
Board of Commissioners
Work Session Minutes
Commissioners Boardroom

August 3, 2021
4:00 P.M.

Minutes Acceptance: Minutes of Aug 3, 2021 4:00 PM (CONSIDERATION OF MINUTES)

CALL TO ORDER

The meeting was called to order at 4:05 PM by Chairman Chris Dockery

Attendee Name	Title	Status	Arrived
Chris Dockery	Chairman	Present	
Bobby Mayfield	District 2 Commissioner	Present	
Rhett Stringer	District 3 Commissioner	Present	
Jeffrey Moran	District 4 Commissioner	Present	

PRESENTATIONS

1. NOA Presentation

NOA Presentation

2. Rainbow Children's Home Presentation *(Melinda Frausto)*

Rainbow Children's Home Presentation

3. Pickleball Presentation *(Sally Trapnell)*

Pickleball Presentation

Sally Trapnell gave a PowerPoint presentation to the Commissioners about the Yahoola Creek Pickleball group and the benefits of pickleball. Chairman Dockery asked Ms. Trapnell if the City of Dahlonega had made any decision after she gave them the presentation recently. She stated they did not seem ready to make any commitment at this time. Chairman Dockery asked about the possibility of her organization assisting with funding for new courts, similarly to how the pickleball courts in White County were funded. Ms. Trapnell said the White County Pickleball group is a 501(c)(3) and they promised to contribute a certain amount of dollars. Additionally, they promised to run two tournaments per year with the funding going to local non-profits. She suggested that Yahoola Creek Pickleball could run tournaments to help defray the costs of the courts. Chairman Dockery suggested for her to work with Park & Rec Manager Wade Chandler on developing a funding plan for Yahoola Creek Pickleball to contribute to court construction. Ms. Trapnell asked if the City and County could coordinate this project together, but the Chairman said she would have to inquire with the City to see if it was an option.

MINUTES

4. Board of Commissioners - Work Session - Jul 6, 2021 4:00 PM

5. Board of Commissioners - Planned Unit Development (PUD) Hearing - Jul 6, 2021 4:30 PM
6. Board of Commissioners - Special Called Meeting - Jul 6, 2021 5:00 PM
7. Board of Commissioners - Work Session II - Jul 20, 2021 5:30 PM
8. Board of Commissioners - Regular Meeting - Jul 20, 2021 6:00 PM
9. Board of Commissioners - Special Called Work Session - Jul 23, 2021 2:00 PM

RESOLUTIONS

10. 2021 - 47 - August Surplus Property *(Finance Director Abby Branan)*

Consideration of list of County inventory items to be declared surplus.

11. 2021 - 50 - Appoint Member to Board of Tax Assessors - Bob Pullen to Seat 4, with a term expiring 06/30/2026

Appoint Member to Board of Tax Assessors - Bob Pullen to Seat 4, with a term expiring 06/30/2026

Commissioner Mayfield said Bob Pullen will be a great asset for the Board of Assessors.

CONTRACTS/AGREEMENTS

12. 2021-045 - UGA Extension Contract - MOU – Board of Regents/UGA & Lumpkin County *(Finance Director Abby Branan)*

MOU renewal with updated budget.

Commissioner Stringer asked if the Extension Office was going to stay in the old Planning Building or move to a new office, but Stan Kelley replied they had not yet worked out a plan and there were a few ADA issues that needed addressing.

13. 2021-046 - Legacy Link Local Share Commitment Letter FY2022 *(Senior Center Manager Linda Kirkpatrick)*

Local Share Match and Commitment Letter for the state fiscal year 2022 (July 1, 2021 – June 30, 2022) Each year the Lumpkin County Board of Commissioners is requested to submit an approved Local Share Match Commitment Letter and to pay its local share match. This year the match is $12,450.00.

14. 2021-047 - Yahoola Creek Park Lighting Project *(Special Projects Director Ashley Peck)*

Yahoola Creek Park Lighting Project

Special Projects Director Ashley Peck said this was put out for bid, but it came back high. Georgia Power reached out to us with these two proposal options, which would be either a greater up-front cost with a lower monthly fee, or no up-front cost with a greater monthly fee. Georgia Power would be responsible for all installation and maintenance of the lights. After some discussion it was determined doing the no up-front cost option would result in about $13,000 more per year in costs over the life of the lights.

15. 2021-048 - Safety Action Plan - Off System Road Striping *(Public Works Director Larry Reiter)*

Request for BOC to award the contract for the 2021 Safety Action Plan project to Roadside Specialties, LLC.

16. 2021-049 - NTIA Broadband Infrastructure Program Application *(Development Authority Director Rebecca Mincey)*

Minutes Acceptance: Minutes of Aug 3, 2021 4:00 PM (CONSIDERATION OF MINUTES)

Windstream sent a request for Lumpkin County to serve as the "Applicant" for the National Telecommunication & Information Administration (NTIA) broadband infrastructure grant. This program is managed by the Department of Commerce. The Broadband Infrastructure Program is a $288 million broadband deployment program directed to partnerships between a state, or one or more political subdivisions of a state, and providers of fixed broadband service to support broadband infrastructure deployment to areas lacking broadband, especially rural areas.

Development Authority Director Rebecca Mincey said earlier this year they had presented about their intent to pursue a state grant for broadband via a public-private partnership, but this is a separate issue. Windstream has sent a request for Lumpkin County to serve as the applicant for the National Telecommunication and Information Administration (NTIA) broadband infrastructure grant. The Development Authority itself cannot be the grant applicant. As the applicant, Lumpkin County would enter into an agreement with the NTIA and assume primary operational and financial responsibility for completing the project if we received the award. The request from Windstream was received on July 29, and the some of the application materials must be back to Windstream by August 6. The final deadline is August 17.

Ms. Mincey said she has been collaborating with Finance Director Abby Branan on exactly what the County's responsibilities would be. They may include the submittal of the grant, staff assistance, identifying five key personnel for the project, taking reference photos, documenting environmental issues, and gathering supporting data. Once submitted, the County would assume primary responsibility for completing the project.

Chairman Dockery said he met with Commissioner Stringer about this yesterday. From his understanding, Windstream would be a third-party technical administrator. Ms. Mincey said Windstream would have to submit reports to the NTIA and run tests verifying the network requirements. She said it may be possible to get Georgia Mountains Regional Commission involved as well. Ms. Mincey said Windstream has not asked for direct financial contribution but there will be staff hours required for the submittal of the application. They have requested certain information to be submitted by August 6 in order for the complete application to be submitted by August 17. The project value is $11 million, with $4 million from Windstream and $7 million from NTIA.

Commissioner Mayfield asked how this would benefit Lumpkin taxpayers. Ms. Mincey said their proposal is fiber to premises but she does not yet have the data on served citizens vs. unserved. The Chairman said this grant opportunity was announced May 19, and Windstream did not contact us until July 29. He said we need broadband in the underserved areas within the community, but there are a lot of unknowns with this grant. He said we could move forward with the application but we will need something in writing from Windstream.

Ms. Mincey said the grant allows for multiple entities to enter together with Lumpkin, but Windstream is not interested in partnering with other entities. However, Windstream itself could enter into the grant with as many other counties as they desire. She spoke with another Internet Service Provider but they are not interested in pursuing this grant.

Commissioner Mayfield said he is concerned that the ISP monopoly could use the money to keep competitors out rather than helping existing customers. Chairman Dockery said this almost seemed like a gratuity on behalf of Windstream, and he was concerned with how quickly the timeline was coming up. He said if we could get a commitment in writing from NTIA or Windstream guaranteeing reimbursement for the admin costs, then we could consider it. Commissioner Stringer said he would like to know whether this would be used to help underserved citizens or if it would be for turf wars with other ISPs.

Ms. Mincey said Windstream does intend to seek a state application similar to this federal one. If they are awarded the state grant, they are going to withdraw from this one. Commissioner Stringer suggested proceeding, but without allowing those questions to go unanswered. Chairman Dockery said we will need third party inspections and reimbursement for the grant administration. If they are unwilling, then we should not proceed. He said we also need more information on our responsibilities. He reiterated the requirement for grant administration reimbursement and a third party to perform inspections on the progress of the project.

OTHER ITEMS

17. Alcoholic Beverage License – Shalina Business LLC d/b/a Mart 24/7 *(County Clerk Melissa Witcher)*

This is for the issuance of an alcoholic beverage license for Beer & Wine Package sales located at 4766 Hwy 52 East, Dahlonega, GA 30533.

Minutes Acceptance: Minutes of Aug 3, 2021 4:00 PM (CONSIDERATION OF MINUTES)

18. Voting Delegate – Legislative Leadership Conference

This is to appoint a voting delegate to cast their county's vote on matters coming before the business session of the ACCG Legislative Leadership Conference.

19. Consideration of Donation/Loan of Antique Tractor *(Jeff Underwood)*

Consideration of Donation/Loan of Antique Tractor

Chairman Dockery asked Jeff Underwood how he would like to display the tractor. Mr. Underwood said he thought about rotating the tractor out for a new one every six months to a year. He would make the change on a weekend to avoid disrupting business hours. Commissioner Stringer and Commissioner Mayfield were supportive of having an exhibit relating to Lumpkin County's farm heritage. The Chairman asked Mr. Underwood about liability issues. If the tractor gets damaged, the County will need a liability release for such a scenario. He also said the tractor will need barriers around it so no children can climb on it and get hurt. There was some discussion over the appropriate type of barriers. Mr. Underwood said if the BOC approved the donation, he could bring it in the following Saturday.

20. GMRC Request for Assistance – GDNR Recreational Trails Program *(Development Authority Director Rebecca Mincey)*

This letter requests assistance from Georgia Mountain Regional Commission in preparing a 2021-2022 Georgia Department of natural Resources – Recreational Trails Program grant pre-application and (if selected) a second-level application.

Ms. Mincey summarized some of the work performed on the reservoir trails already and explained the intent of this grant is to hire a professional trail builder to be in a partnership with Yahoola Outdoors, the volunteer group. She explained the estimated cost would be around $100,000 and requires a minimum 20% match. She said they are requesting about 60% of the estimated budget, but there is not an official financial request to the Commissioners at this time. This item is to consider allowing Georgia Mountains Regional Commission to assist. The pre-application doesn't open until September 1st so there is no urgent action required.

21. Proposed LMIG FY2022 Road Resurfacing List *(Public Works Director Larry Reiter)*

Presentation of the proposed list of roads to be resurfaced in the 2022 paving season.

Public Works Director Larry Reiter told the Commissioners if they knew of any problematic roads that were not on the list, to please let him know. They hope to have the LMIG application completed next month in order to send it to GDOT. The rest of the paving will be TSPLOST funding, he added.

22. Request use of ARP Funds – CHP Water Service *(W&S Authority Director Sean Phipps)*

Staff review of a requested water service extension to serve Community Helping Place facility.

LCWSA Director Sean Phipps said they would like to complete the water service improvements before Community Helping Place completes their new building. Chairman Dockery said extending the water line to that area would be beneficial for future expansion around Yahoola Creek Park as well, not just CHP. He thinks the County should commit to those costs and said we could commit to an amount not to exceed "x", whatever the limit may be.

23. Request use of ARP Funds – Water Infrastructure Projects *(W&S Authority Director Sean Phipps)*

LCWSA request for ARP funds to complete multiple water infrastructure projects.

Sean Phipps gave some of the background and said it would be ideal to complete this in advance of next year's resurfacing project, in order to avoid damaging new roads. He explained the improvements in River Trace Subdivision will allow for the addition of more fire hydrants further into the subdivision, and they have some money set aside in a revenue bond. Mr. Phipps explained the improvements outlined in the request are systemic

Minutes Acceptance: Minutes of Aug 3, 2021 4:00 PM (CONSIDERATION OF MINUTES)

issues that have been occurring for some time. The LCWSA has set aside money for commercial/economic development, but using ARP funds for these projects will prevent them from dipping into that. It will also enable the LCWSA to fix the problems before they become worse. Chairman Dockery said the LCWSA should prioritize the project list and then allow the BOC to look over it. The BOC and Mr. Phipps then had a short discussion about some of the Sherwood Forest Subdivision issues.

24. Set Date for ARP Funds Meeting

Set Date for ARP Funds Meeting

It was decided to hold the meeting August 11 at 3:00 pm in the Executive Conference Room.

COUNTY MANAGER

The new County Manager, Alan Ours, expressed his appreciation for being allowed to serve Lumpkin County.

COUNTY ATTORNEY

COMMISSIONERS

PUBLIC COMMENT (Agenda Specific)

EXECUTIVE SESSION - Land Acquisition

Motion: *Commissioner Mayfield moved to enter into executive session at 6:03 pm, and was seconded by Jeff Moran. The motion was approved and carried.*

Motion: *Commissioner Mayfield moved to exit executive session and re-enter regular session at 6:45 pm. The motion was seconded by Rhett Stringer, and the motion was approved unanimously.*

There were no announcements from executive session.

ADJOURNMENT

The meeting was adjourned at 6:46 pm.

Date

Chris Dockery, Chairman
Lumpkin County Board of Commissioners

Attest:

Melissa Witcher
County Clerk, Lumpkin County

Minutes Acceptance: Minutes of Aug 3, 2021 4:00 PM (CONSIDERATION OF MINUTES)

LUMPKIN COUNTY
Board of Commissioners
Public Hearing Minutes
Commissioners Boardroom

August 10, 2021
5:00 P.M.

Minutes Acceptance: Minutes of Aug 10, 2021 5:00 PM (CONSIDERATION OF MINUTES)

Call to Order

The meeting was called to order at 5:00 PM by District 3 Commissioner Rhett Stringer

Attendee Name	Title	Status	Arrived
Chris Dockery	Chairman	Absent	
Bobby Mayfield	District 2 Commissioner	Present	
Rhett Stringer	District 3 Commissioner	Present	
Jeffrey Moran	District 4 Commissioner	Present	

Public Comment

Proposed 2022 Lumpkin County Budget

Allocation of funds among the various county offices, departments and services

There were no comments from the public.

Adjournment

The meeting was adjourned at 5:01 pm.

Date

Chris Dockery, Chairman
Lumpkin County Board of Commissioners

Attest:

Melissa Witcher
County Clerk, Lumpkin County

LUMPKIN COUNTY
Board of Commissioners
Special Called Work Session Minutes
Executive Conference Room

August 11, 2021
3:00 P.M.

Minutes Acceptance: Minutes of Aug 11, 2021 3:00 PM (CONSIDERATION OF MINUTES)

CALL TO ORDER

The meeting was called to order at 3:00 PM by Chairman Chris Dockery

Attendee Name	Title	Status	Arrived
Chris Dockery	Chairman	Present	
Bobby Mayfield	District 2 Commissioner	Present	
Rhett Stringer	District 3 Commissioner	Present	
Jeffrey Moran	District 4 Commissioner	Present	

OTHER ITEMS

Discuss American Rescue Plan (ARP) Funding

Discuss American Rescue Plan (ARP) Funding

Chairman Dockery stated the purpose of the meeting is to discuss a list of projects. Finance Director Abby Branan began with a PowerPoint presentation. In May we received $3,264,174 of the allocated $6,528,348. The remainder will be received in 2022. Funds must be obligated by December 24, 2024 and expended with all work completed by December 31, 2026. ACCG has suggested not rushing to use the funds until more information has been received clarifying how to use the funds. National Association of Counties (NACO) submitted comments on the U.S. Treasury's Interim Final Rule and has asked for expansion on some of the categories of uses. The payroll expenses for public health and public safety employees are listed on the eligible uses. This may sound the same as before, but this time you must be able to prove it was loss of employees directly linked to covid. There will be more information to come that has to do with the public sector revenue loss. Chairman Dockery asked how this was determined and Ms. Branan answered that GEFA puts out a calculator and there is a step-by-step guide to follow. They will look at the base year of 2019 and you can compare each year end through 2023. This is not finalized, so there will be more information coming about that. Water, sewer, and broadband infrastructure are the broadest categories for use of the funds.

Water & Sewerage Director Sean Phipps and Development Authority Director Rebecca Mincey explained the list of projects that they submitted were not an all-inclusive list and the BOC may want to add to it. Mr. Phipps stated the first four on the list were all requested at the work session this month. They had brought the projects to the BOC at this time because the roads are scheduled to be resurfaced and it will save funds by doing them at the same time. It was not created for a sense of urgency; it was because of the road resurfacing. They may want to consider delaying the resurfacing if it they are not ready to move forward with these projects, to help prevent doing the work twice since the water does go beneath the road. Mr. Phipps explained that every year they have to cut up the road and fix leaks because the size of the pipe is smaller than what is needed. Chairman Dockery agreed that should be addressed because it will have to be fixed and it will qualify to be paid for by the funds. They will look at the immediate needs and address those, until they receive more information on other funding sources.

Ms. Mincey stated the Development Authority has been working on an application for Broadband Infrastructure. They have met with two of the three companies to see who would be interested in applying for the grant funds. She will have more information next week because the grant application has an August 31 deadline. Commissioner Stringer asked how many people in the county have no internet access. Ms. Mincey has no way of knowing who has zero internet. There are companies they can use that can verify what the internet companies are saying they can provide, are possible and are in compliance of the grant. Ms. Mincey said there has not been a max set so far of how many grants or how much funding they can ask for. The grant funding would be bound by the county line, as we are the ones applying for the grant funding.

ADJOURNMENT

The meeting was adjourned at 4:25 PM.

Date

Chris Dockery, Chairman
Lumpkin County Board of Commissioners

Attest:

Melissa Witcher
County Clerk, Lumpkin County

Minutes Acceptance: Minutes of Aug 11, 2021 3:00 PM (CONSIDERATION OF MINUTES)

LUMPKIN COUNTY
Board of Commissioners
Special Called Meeting Minutes
Executive Conference Room

August 17, 2021
5:00 P.M.

Minutes Acceptance: Minutes of Aug 17, 2021 5:00 PM (CONSIDERATION OF MINUTES)

CALL TO ORDER

The meeting was called to order at 5:02 PM by Chairman Chris Dockery

Attendee Name	Title	Status	Arrived
Chris Dockery	Chairman	Present	
Bobby Mayfield	District 2 Commissioner	Present	
Rhett Stringer	District 3 Commissioner	Present	
Jeffrey Moran	District 4 Commissioner	Present	

CONSIDERATION OF AGENDA

Motion: *A motion was made by Commissioner Stringer to approve the agenda. The motion was seconded by Commissioner Mayfield. The motion was approved and carried.*

OTHER ITEMS

Executive Session - Land Acquisition

Motion: *A motion was made by Commissioner Mayfield to enter executive session. The motion was seconded by Jeff Moran. The motion was approved and carried, and executive session began at 5:03 pm.*

Motion: *A motion was made by Commissioner Mayfield to exit executive session and re-enter regular session. The motion was seconded by Commissioner Moran. The motion was approved and carried, and executive session ended at 5:13 pm.*

There were no announcements from executive session.

ADJOURNMENT

Motion: *A motion was made by Commissioner Stringer to adjourn the meeting. The motion was seconded by Bobby Mayfield, and the motion was approved and carried.*

The meeting ended at 5:14 pm.

Date

Chris Dockery, Chairman
Lumpkin County Board of Commissioners

Attest:

Melissa Witcher
County Clerk, Lumpkin County

LUMPKIN COUNTY
Board of Commissioners
Public Hearing Minutes
Commissioners Boardroom

August 17, 2021
5:15 P.M.

Call to Order

The meeting was called to order at 5:14 PM by Chairman Chris Dockery

Attendee Name	Title	Status	Arrived
Chris Dockery	Chairman	Present	
Bobby Mayfield	District 2 Commissioner	Present	
Rhett Stringer	District 3 Commissioner	Present	
Jeffrey Moran	District 4 Commissioner	Present	

Public Comment

Alcoholic Beverage License - (Beer/Wine Package Sales) - Jigna Patel for Shalina Business dba Mart 24/7

There were no comments from the public.

Adjournment

The meeting was adjourned at 5:15 pm.

Date

Chris Dockery, Chairman
Lumpkin County Board of Commissioners

Attest:

Melissa Witcher
County Clerk, Lumpkin County

Minutes Acceptance: Minutes of Aug 17, 2021 5:15 PM (CONSIDERATION OF MINUTES)

LUMPKIN COUNTY
Board of Commissioners
Work Session II Minutes
Commissioners Boardroom

August 17, 2021
5:30 P.M.

Minutes Acceptance: Minutes of Aug 17, 2021 5:30 PM (CONSIDERATION OF MINUTES)

CALL TO ORDER

The meeting was called to order at 5:31 PM by Chairman Chris Dockery

Attendee Name	Title	Status	Arrived
Chris Dockery	Chairman	Present	
Bobby Mayfield	District 2 Commissioner	Present	
Rhett Stringer	District 3 Commissioner	Present	
Jeffrey Moran	District 4 Commissioner	Present	

CONSIDERATION OF MINUTES

1. Board of Commissioners - Work Session - Jul 6, 2021 4:00 PM
2. Board of Commissioners - Planned Unit Development (PUD) Hearing - Jul 6, 2021 4:30 PM
3. Board of Commissioners - Special Called Meeting - Jul 6, 2021 5:00 PM
4. Board of Commissioners - Work Session II - Jul 20, 2021 5:30 PM
5. Board of Commissioners - Regular Meeting - Jul 20, 2021 6:00 PM
6. Board of Commissioners - Special Called Work Session - Jul 23, 2021 2:00 PM

RESOLUTIONS

7. 2021 - 47 - August Surplus Property *(Finance Director Abby Branan)*

Consideration of list of County inventory items to be declared surplus.

8. 2021 - 50 - Appoint Member to Board of Tax Assessors - Bob Pullen to Seat 4, with a term expiring 06/30/2026

Appoint Member to Board of Tax Assessors - Bob Pullen to Seat 4, with a term expiring 06/30/2026

CONTRACTS/AGREEMENTS

9. 2021-045 - UGA Extension Contract - MOU – Board of Regents/UGA & Lumpkin County *(Finance Director Abby Branan)*

MOU renewal with updated budget.

10. 2021-046 - Legacy Link Local Share Commitment Letter FY2022 *(Senior Center Manager Linda Kirkpatrick)*

Local Share Match and Commitment Letter for the state fiscal year 2022 (July 1, 2021 – June 30, 2022) Each year the Lumpkin County Board of Commissioners is requested to submit an approved Local Share Match Commitment Letter and to pay its local share match. This year the match is $12,450.00.

11. 2021-048 - Safety Action Plan - Off System Road Striping *(Public Works Director Larry Reiter)*

Request for BOC to award the contract for the 2021 Safety Action Plan project to Roadside Specialties, LLC.

12. 2021-049 - NTIA Broadband Infrastructure Program Application *(Development Authority Director Rebecca Mincey)*

Windstream sent a request for Lumpkin County to serve as the "Applicant" for the National Telecommunication & Information Administration (NTIA) broadband infrastructure grant. This program is managed by the Department of Commerce. The Broadband Infrastructure Program is a $288 million broadband deployment program directed to partnerships between a state, or one or more political subdivisions of a state, and providers of fixed broadband service to support broadband infrastructure deployment to areas lacking broadband, especially rural areas.

Development Authority Director Rebecca Mincey said our finalized materials were received on Friday.

13. 2021-050 - GDOT Grant Funding for LC Wimpy Airport Construct Primary Surface Grading Phase II *(Public Works Director Larry Reiter)*

Commitment for 25% funding for three projects at the Lumpkin County airport.

Larry Reiter explained two of the items were on the Airport CIP plan we approved last November. GDOT recommended the restriping after an inspection last spring, and they have asked that we send them a letter committing to all three projects and the funding. All three projects will need to be included in the motion, including the regrading of primary surface phase II, obstruction removal, and remarking of the runway. He said the schedule will be quite tight as a result.

14. 2021-051 - Consideration of Donation/Loan of Antique Tractor *(Jeff Underwood)*

Consideration of Donation/Loan of Antique Tractor

Commissioner Stringer asked the other Commissioners if the County might consider purchasing the barriers for potential future displays. Chairman Dockery asked if he knew what that would cost. Commissioner Stringer said he was informed by Jeff Underwood that his barriers were about $7,000, but there is no need for the County to buy them since he has them.

OTHER ITEMS

15. Alcoholic Beverage License – Shalina Business LLC d/b/a Mart 24/7 *(County Clerk Melissa Witcher)*

This is for the issuance of an alcoholic beverage license for Beer & Wine Package sales located at 4766 Hwy 52 East, Dahlonega, GA 30533.

16. Voting Delegate – Legislative Leadership Conference

This is to appoint a voting delegate to cast their county's vote on matters coming before the business session of the ACCG Legislative Leadership Conference.

Minutes Acceptance: Minutes of Aug 17, 2021 5:30 PM (CONSIDERATION OF MINUTES)

17. GMRC Request for Assistance – GDNR Recreational Trails Program *(Development Authority Director Rebecca Mincey)*

This letter requests assistance from Georgia Mountain Regional Commission in preparing a 2021-2022 Georgia Department of natural Resources – Recreational Trails Program grant pre-application and (if selected) a second-level application.

18. Proposed LMIG FY2022 Road Resurfacing List *(Public Works Director Larry Reiter)*

Presentation of the proposed list of roads to be resurfaced in the 2022 paving season.

Commissioner Stringer asked if any of this will involve shoulder-building, or if this is different. Mr. Reiter said we will probably bid out the shoulder-building but it may be possible to do it in-house.

19. Request use of ARP Funds – Water Line Extension to Entrance of Proposed Reservoir Property *(W&S Authority Director Sean Phipps)*

Staff review of a requested water service extension to serve Community Helping Place facility.

20. Request use of ARP Funds – Water Infrastructure Projects *(W&S Authority Director Sean Phipps)*

LCWSA request for ARP funds to complete multiple water infrastructure projects.

21. Request for a Letter of Support for ARP Grant Money - Water & Sewerage Authority *(W&S Authority Director Sean Phipps)*

LCWSA is requesting a letter of support from the Board of Commissioners for an application for grant funding.

Commissioner Stringer said he requests the BOC to consider adding verbiage to the letter committing to a 30% match for the state grant funding up to $3 million, as it would greatly assist the Water & Sewerage Authority in obtaining the grant.

COUNTY MANAGER

County Manager Alan Ours gave an update on county roads following the heavy rainfall from Tropical Storm Fred.

COUNTY ATTORNEY

COMMISSIONERS

The Commissioners expressed their thanks to the Road Department crew for their hard work following the storms.

PUBLIC COMMENT (Agenda Specific)

ADJOURNMENT

The meeting was adjourned at 5:46 pm.

Minutes Acceptance: Minutes of Aug 17, 2021 5:30 PM (CONSIDERATION OF MINUTES)

Date

Chris Dockery, Chairman
Lumpkin County Board of Commissioners

Attest:

Melissa Witcher
County Clerk, Lumpkin County

Minutes Acceptance: Minutes of Aug 17, 2021 5:30 PM (CONSIDERATION OF MINUTES)

LUMPKIN COUNTY
Board of Commissioners
Regular Meeting Minutes
Commissioners Boardroom

August 17, 2021
6:00 P.M.

Minutes Acceptance: Minutes of Aug 17, 2021 6:00 PM (CONSIDERATION OF MINUTES)

CALL TO ORDER

The meeting was called to order at 6:02 PM by Chairman Chris Dockery

Attendee Name	Title	Status	Arrived
Chris Dockery	Chairman	Present	
Bobby Mayfield	District 2 Commissioner	Present	
Rhett Stringer	District 3 Commissioner	Present	
Jeffrey Moran	District 4 Commissioner	Present	

INVOCATION - Pastor Michael Rodgers, Bethlehem Baptist Church

CONSIDERATION OF AGENDA

Motion: *A motion was made by District 3 Commissioner Stringer to approve the agenda and move contract 2021-051 above contract 2021-045 on the agenda. The motion was seconded by District 4 Commissioner Moran. The motion was approved and carried.*

PUBLIC COMMENTS (Agenda Specific)

CONSIDERATION OF MINUTES

Motion: *A motion was made by District 4 Commissioner Moran to approve the minutes by acclamation. The motion was seconded by District 2 Commissioner Mayfield. The motion was approved and carried.*

1. Board of Commissioners - Work Session - Jul 6, 2021 4:00 PM
2. Board of Commissioners - Planned Unit Development (PUD) Hearing - Jul 6, 2021 4:30 PM
3. Board of Commissioners - Special Called Meeting - Jul 6, 2021 5:00 PM
4. Board of Commissioners - Work Session II - Jul 20, 2021 5:30 PM
5. Board of Commissioners - Regular Meeting - Jul 20, 2021 6:00 PM
6. Board of Commissioners - Special Called Work Session - Jul 23, 2021 2:00 PM

RESOLUTIONS

7. 2021 - 47 - August Surplus Property *(Finance Director Abby Branan)*

Consideration of list of County inventory items to be declared surplus.

Motion: *A motion was made by District 3 Commissioner Stringer to approve August Surplus Property. The motion was seconded by District 2 Commissioner Mayfield. The motion was approved and carried.*

8. 2021 - 50 - Appoint Member to Board of Tax Assessors - Bob Pullen to Seat 4, with a term expiring 06/30/2026

Appoint Member to Board of Tax Assessors - Bob Pullen to Seat 4, with a term expiring 06/30/2026

Motion: *A motion was made by Chairman Dockery to appoint Bob Pullen to Seat 4 with a term expiring 6/30/2026. The motion was seconded by District 2 Commissioner Mayfield. The motion was approved and carried.*

REPORTS

Department reports can be viewed on the Commissioners web page at www.lumpkincounty.gov

Elected Officials

CONTRACTS/AGREEMENTS

9. 2021-051 - Consideration of Donation/Loan of Antique Tractor *(Jeff Underwood)*

Consideration of Donation/Loan of Antique Tractor

Motion: *A motion was made by District 4 Commissioner Moran to approve the loan agreement. The motion was seconded by District 3 Commissioner Stringer. The motion was approved and carried.*

10. 2021-045 - UGA Extension Contract - MOU – Board of Regents/UGA & Lumpkin County *(Finance Director Abby Branan)*

MOU renewal with updated budget.

Motion: *A motion was made by District 2 Commissioner Mayfield to approve UGA Extension Contract - MOU – Board of Regents/UGA & Lumpkin County. The motion was seconded by District 3 Commissioner Stringer. The motion was approved and carried.*

11. 2021-046 - Legacy Link Local Share Commitment Letter FY2022 *(Senior Center Manager Linda Kirkpatrick)*

Local Share Match and Commitment Letter for the state fiscal year 2022 (July 1, 2021 – June 30, 2022) Each year the Lumpkin County Board of Commissioners is requested to submit an approved Local Share Match Commitment Letter and to pay its local share match. This year the match is $12,450.00.

Motion: *A motion was made by District 3 Commissioner Stringer to approve Legacy Link Local Share Commitment Letter FY2022. The motion was seconded by District 2 Commissioner Mayfield. The motion was approved and carried.*

12. 2021-048 - Safety Action Plan - Off System Road Striping *(Public Works Director Larry Reiter)*

Request for BOC to award the contract for the 2021 Safety Action Plan project to Roadside Specialties, LLC.

Motion: *A motion was made by District 3 Commissioner Stringer to approve Safety Action Plan - Off System Road Striping. The motion was seconded by District 2 Commissioner Mayfield. The motion was approved and carried.*

Minutes Acceptance: Minutes of Aug 17, 2021 6:00 PM (CONSIDERATION OF MINUTES)

13. 2021-049 - NTIA Broadband Infrastructure Program Application *(Development Authority Director Rebecca Mincey)*

Windstream sent a request for Lumpkin County to serve as the "Applicant" for the National Telecommunication & Information Administration (NTIA) broadband infrastructure grant. This program is managed by the Department of Commerce. The Broadband Infrastructure Program is a $288 million broadband deployment program directed to partnerships between a state, or one or more political subdivisions of a state, and providers of fixed broadband service to support broadband infrastructure deployment to areas lacking broadband, especially rural areas.

Motion: *A motion was made by District 3 Commissioner Stringer to approve NTIA Broadband Infrastructure Program Application. The motion was seconded by District 4 Commissioner Moran. The motion was approved and carried.*

14. 2021-050 - GDOT Grant Funding for LC Wimpy Airport Construct Primary Surface Grading Phase II *(Public Works Director Larry Reiter)*

Commitment for 25% funding for three projects at the Lumpkin County airport.

Motion: *A motion was made by District 3 Commissioner Stringer to approve all three items on the project list: Regrading of primary surface phase II, obstruction removal, and remarking the runway. The motion was seconded by District 4 Commissioner Moran. The motion was approved and carried.*

OTHER ITEMS

15. Alcoholic Beverage License – Shalina Business LLC d/b/a Mart 24/7 *(County Clerk Melissa Witcher)*

This is for the issuance of an alcoholic beverage license for Beer & Wine Package sales located at 4766 Hwy 52 East, Dahlonega, GA 30533.

Motion: *A motion was made by District 4 Commissioner Moran to approve Alcoholic Beverage License – Shalina Business LLC d/b/a Mart 24/7. The motion was seconded by District 2 Commissioner Mayfield. The motion was approved and carried.*

16. Voting Delegate – Legislative Leadership Conference

This is to appoint a voting delegate to cast their county's vote on matters coming before the business session of the ACCG Legislative Leadership Conference.

Motion: *A motion was made by District 3 Commissioner Stringer to appoint Chairman Dockery as the voting delegate. The motion was seconded by District 2 Commissioner Mayfield. The motion was approved and carried.*

17. GMRC Request for Assistance – GDNR Recreational Trails Program *(Development Authority Director Rebecca Mincey)*

This letter requests assistance from Georgia Mountain Regional Commission in preparing a 2021-2022 Georgia Department of natural Resources – Recreational Trails Program grant pre-application and (if selected) a second-level application.

Motion: *A motion was made by District 2 Commissioner Mayfield to approve the request. The motion was seconded by District 4 Commissioner Moran. The motion was approved and carried.*

18. Proposed LMIG FY2022 Road Resurfacing List *(Public Works Director Larry Reiter)*

Presentation of the proposed list of roads to be resurfaced in the 2022 paving season.

Minutes Acceptance: Minutes of Aug 17, 2021 6:00 PM (CONSIDERATION OF MINUTES)

Motion: *A motion was made by District 3 Commissioner Stringer to approve Proposed LMIG FY2022 Road Resurfacing List. The motion was seconded by District 4 Commissioner Moran. The motion was approved and carried.*

19. Request use of ARP Funds – Water Line Extension to Entrance of Proposed Reservoir Property *(W&S Authority Director Sean Phipps)*

Staff review of a requested water service extension to serve Community Helping Place facility.

Motion: *A motion was made by Chairman Dockery to approve Request use of ARP Funds – Water Line Extension to Entrance of Proposed Reservoir Property. The motion was seconded by District 2 Commissioner Mayfield. The motion was approved and carried.*

20. Request use of ARP Funds – Water Infrastructure Projects *(W&S Authority Director Sean Phipps)*

LCWSA request for ARP funds to complete multiple water infrastructure projects.

Motion: *A motion was made by District 3 Commissioner Stringer to approve funds to complete each project in phase, and for the remainder of the funds to remain in the long-term for water & sewerage. The motion was seconded by District 2 Commissioner Mayfield. The motion was approved and carried.*

21. Request for a Letter of Support for ARP Grant Money - Water & Sewerage Authority *(W&S Authority Director Sean Phipps)*

LCWSA is requesting a letter of support from the Board of Commissioners for an application for grant funding.

Motion: *A motion was made by District 2 Commissioner Mayfield to approve 30% with a $3 million cap. The motion was seconded by District 4 Commissioner Moran. The motion was approved and carried.*

COUNTY MANAGER

COUNTY ATTORNEY

COMMISSIONERS

PUBLIC COMMENTS

ADJOURNMENT

Motion: *A motion was made by Commissioner Mayfield to adjourn the meeting. The motion was seconded by Commissioner Stringer. The motion was approved and carried.*

The meeting ended at 6:19 pm.

Date

Chris Dockery, Chairman
Lumpkin County Board of Commissioners

Attest:

Minutes Acceptance: Minutes of Aug 17, 2021 6:00 PM (CONSIDERATION OF MINUTES)

Melissa Witcher
County Clerk, Lumpkin County

LUMPKIN COUNTY
Board of Commissioners
SLUA Public Hearing Minutes
Commissioners Boardroom

August 17, 2021
6:30 P.M.

Minutes Acceptance: Minutes of Aug 17, 2021 6:30 PM (CONSIDERATION OF MINUTES)

Call to Order

The meeting was called to order at 6:30 PM by Chairman Chris Dockery

Attendee Name	Title	Status	Arrived
Chris Dockery	Chairman	Present	
Bobby Mayfield	District 2 Commissioner	Present	
Rhett Stringer	District 3 Commissioner	Present	
Jeffrey Moran	District 4 Commissioner	Present	

Consideration of Agenda

Motion: *A motion was made by Commissioner Stringer to approve the agenda. The motion was seconded by Bobby Mayfield. The motion was approved and carried.*

Timeline for: Complete Combatant Outdoor Shooting Range (Chairman Dockery)

Chairman Dockery read aloud the timeline of the Complete Combatant's SLUA application.

SLUA Presentation (Planning Director Bruce Georgia)

Mr. Georgia read the requirements of the Special Land Use Approval process.

SLUA Hearing Rules (Chairman Dockery)

Chairman Dockery read aloud the rules for the SLUA hearing. He allowed a five-minute break to enable each side to discuss their speaking points.

Proposed Outdoor Shooting Range Special Land Use Request (Mr. Brian Hill)

Complete Combatant Outdoor Shooting Range Special Land Use Application *(Brian Hill)*

Complete Combatant Outdoor Shooting Range Special Land Use Application

Mrs. Shelley Hill spoke on behalf of her husband Brian Hill regarding their SLUA application. She explained how their previous business had not survived due to COVID. She said they have been off and on using this range on the private property for almost ten years, as they are good friends with the property owner of 2755 Porter Springs Road. Mrs. Hill explained the variety of classes they offer at The Complete Combatant, including live fire, gun safety, self-defense, and other gun and safety-related classes. The Complete Combatant

is not a public range; it is invite-only. Mrs. Hill stated the range itself faces a heavily-wooded hill atop a 25-foot berm. She then went over a list of concessions they are willing to make, including suspending shotgun and rifle classes and reducing the amount of live-fire classes. They also plan to erect a sound barrier.

Karen McDonald of Kennesaw spoke in support of The Complete Combatant and explained how they have helped fundraise thousands of dollars for her nonprofit, Rachel's Rest, which assists victims of domestic violence. She said the Hills also provide education on personal defense and de-escalation.

Joe West, 397 Skyline Drive, said he has over 40 years of shooting range experience and assists the Lumpkin County Sheriff's Office with programs at their range. He visited The Complete Combatant's shooting range and said he was thoroughly impressed with their stringent safety protocols and the quality of their training. He said he also cares about supporting small businesses.

Bill Dermody of Waverly Hall spoke in support of the SLUA application. He introduced himself as the Director of Marketing for Heckler & Koch, a firearms manufacturer. He said his company prizes their relationship with Brian and Shelley Hill and they have very high standards for their brand ambassadors. Mr. Dermody said they also teach other subjects besides gun safety, including de-escalation, medical, reaction training, and more. He believes this business will have a positive impact on the surrounding area.

Patrick Collins, resident of Atlanta, introduced himself as an experienced firearms instructor. He also offered his support for The Complete Combatant and said they provide many different kinds of defense and victim prevention classes. Mr. Collins urged the Commissioners to not put too many limits on their business.

Steve Havey of Cumming claimed that shooting has occurred on this property for ten years, yet the complaints have only started in the last year or two. Mr. Havey said the noise issue comes up in many communities, and it would be a shame if we could not find a way to accommodate The Complete Combatant.

Shelley Hill spoke again and said she and her husband are very serious about their concessions. They are also thankful for the Planning Department's fairness with this issue. Mrs. Hill thanked her friends and course alumni for coming and giving their support for the SLUA application. She said she also intends to provide the latest results from their lead soil sampling tests which were conducted on Monday morning, and she described the decibel testing they conducted on their property this week. Mrs. Hill said the highest decibel reading they registered anywhere on their property was 69 decibels. She ended her remarks by stating she and Mr. Hill are willing to do whatever is needed. They want to do what they love but they also want to make everyone happy.

Dwight Bearden, 260 Kim Drive, said everyone needs to learn how to use guns because development is moving north.

Opposed SLUA Information - The Complete Combatant

Opposed SLUA Information - The Complete Combatant

Steve Sylvester of 215 Stancil Dyer Road said although he is a gun owner and 2nd Amendment supporter, the negative impacts of The Complete Combatant need to be considered. He and his neighbors are concerned about noise, times of operation, setbacks, fencing, and the impact on soil and water. He was concerned that the business did not obtain a license before beginning operation, and that their "friends and family" pavilion structure was being used commercially since 2018. Mr. Sylvester went over some of the course calendars from The Complete Combatant's website and claimed they displayed a tremendous increase in usage since 2018.

Mr. Sylvester made additional comments concerning some of the definitions of "structure" and "building" in the Land Use Code and how that might affect the required setbacks for this property. He questioned how the required setbacks will be applied throughout this property and argued that the setback should be 500 feet, not 100 feet. Mr. Sylvester said the live-fire range is out of character with the rest of the area and said the noise is an adverse impact on all surrounding properties. He is also concerned with safety, as many of the nearby properties have families with children and pets. He stated many of the neighbors cannot escape the noise even when they are inside, and this will be detrimental to property values. Most of the noise occurs on weekends, when residents are at home trying to rest and visit with their families, or when White Oaks is trying to host weddings. Mr. Sylvester said the EPA normally regulates outdoor shooting ranges, and the neighbors are concerned about water contamination in their wells or the creek near the range.

Robert Warner, owner of White Oaks Barn, said he owns 130 acres of land that was purchased about 20 years ago, along with the wedding venue. He has nothing against firearms, he stated, but this is more about the noise disturbance this business is causing. Mr. Warner said everyone expects to hear certain sounds in a rural area, such as dogs barking, hunting, and occasional target shooting, but not the rapid fire coming from this business.

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He said it is amazing how the sound reverberates through the woods, and he does not believe there is a way to get rid of the noise.

Over the last ten years, he continued, we've had about 40 weddings per year with about 150 guests per wedding. 95% of the weddings are for tourists, not local couples, so it brings in a lot of visitors. Mr. Warner said lately during property tours for potential wedding guests, they have been hearing rapid fire from the gun range. He said guests are cancelling their bookings after they heard shooting during a tour. Mr. Warner said if shots ring out during a ceremony, it will be disastrous for his reputation. He said the decision the BOC makes with this will set a precedent. What if there is a shooting range next to a winery next? If you approve this one, he claimed, it will force you to approve the next one. Mr. Warner said he does not begrudge the Hills their business, but he thinks this venture would be more appropriate for a light industrial area.

Jason Hutcheson, 114 Wildlife Trail, said he reached out to Brian and Shelley Hill last year about the noise. He said their character is not the issue here, it is the gun range. He told the Hills he would financially participate with them to create some type of noise barrier. Mr. Hutcheson commented on an earlier remark that the gun range had been here for ten years and said it wasn't true; the noise has only gotten bad over the past couple of years since it was expanded into a commercial range. Mr. Hutcheson said he left the issue alone when he heard the Commissioners were discussing a noise ordinance, but that possibility seems to have died. He heard they were conducting sound testing over at the property, but it didn't sound like the guns they normally use. Mr. Hutcheson said he recorded 80 decibels on his porch. His main concern is with how this gun range could affect his property values. He believes there should be a decibel limit for the property line. He hopes to assist in finding a solution to reducing the noise.

Mike Moran of 3038 Porter Springs Road said he and his family moved here in 2019 from Kennesaw, and reside about two tenths of a mile north of The Complete Combatant's driveway. If they had known a commercial gun range was being constructed across the street, they never would have moved here. Mr. Moran said he respects The Complete Combatant as a gun owner himself, but he doesn't think it belongs there. Having a commercial gun range across the street is definitely detrimental to everyone's property values, he declared.

Chris Adams, 248 Stancil Dyer Road, said no one is disputing the importance of gun safety. Everyone has been adversely impacted by the noise, he said, and his family is no longer able to enjoy the formerly peaceful atmosphere on his property. He claimed his family can even hear the shots inside their house on the weekends. Even their dogs cower and hide when the shooting is taking place. This isn't about the Second Amendment, he said, it is about not being able to enjoy living in the woods anymore. He said it is ironic that The Complete Combatant has signs on their property saying "Do Not Disturb."

Nancy Cole of 2039 McDonald Road said she originally moved here from Texas, where gun ownership is a big deal. She said she understands about losing a business from COVID, because the same thing happened to her. She said she would not have purchased this house had she known a gun range was being built. Ms. Cole said things are changing in Dahlonega, but Dahlonega is a hidden gem that needs protecting. A lot of people are moving here from the suburbs, she said, and many people are working from home. We need to protect the traditions of Dahlonega, including great families. She said people will be watching the Commissioners to see how they are working to improve the community.

Bob Lear, 12 Serendipity Road, also came to speak against the SLUA application. He and his wife own 14 acres and have lived here since 2007, but if he had known there was gun range, he would not have moved here. He said although they aren't directly in the line of fire from the range, he and his wife rarely go out in their yard anymore and have to listen to a lot of the noise. Mr. Lear said it was concerning to him that the applicants claimed their pavilion was for family/friends only, but now they are using it commercially. He is pro-business, but this is not one we need, as it will bring down everyone's property values.

Judy Wheeler, resident of Porter Springs Road, pointed out that not one of the supporter's tonight is a local or a neighbor. She is concerned about how the required fencing will look and said this business is better suited for an industrial area.

Dennis Grizzle said he lives right above the shooting range and the noise really echoes up the hollow to his house. He said there seems to be some kind of shooting every day, and it's even louder when they have classes. Mr. Grizzle said his son lives in a double wide on the same property, and he has to sleep during the day since he works at night. He said he wishes the Hills all the best as he is a gun owner himself, but this has become very aggravating. He shoots sometimes as well, but it doesn't go on all day long. Mr. Grizzle said it would be better for everyone if The Complete Combatant moved somewhere else.

Theresa Northcutt, 421 River Trail, said she built here in 2004. Their property is normally very peaceful, but the gunshots have increased greatly over the past couple of years. They now have to hear it all weekend, and it has

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destroyed their peace and quiet. Mrs. Northcutt said this isn't the correct area for this type of business.

Kathy Anderson of 648 Marlie Seabolt Road said she has had to listen to this for two years. They have been running a commercial business with no license and now we have to hear it every weekend from 9 am to 6 pm, she said. Ms. Anderson said she has no idea where the applicants came up with the 68 decibels. This is not the right place for such a business, she stated, nor has it been occurring at this level for ten years as they claimed. She said The Complete Combatant should have gotten a business license when they first started, and they will have to comply with all fencing requirements if this SLUA is approved.

Andy Sullens, 2069 Red Oak Flats Road, said we need to address respecting our neighbors. He said if the applicants had followed the correct procedures, this wouldn't be happening. He said we also need to understand Lumpkin County is a rural area, and we do not have a noise ordinance. He said the wedding venue doesn't necessarily have more value than the shooting range as a business. He wished everyone the best and said he hopes the issue will be resolved.

Jeramy Nye made comments on the availability of sound encapsulating technology that can be used to mitigate shooting noises. He said these systems are affordable and easy to install; he himself has installed two of them before.

Shirley Pritchard of Wildlife Trail said the noise has been very bad and she wishes this business was in a different location.

Theresa Northcutt made an additional comment about the lack of protection for passerby, whether pedestrians or vehicles.

Rebuttal

Applicant Shelley Hill said they generally only have classes once or twice per month from 9-6 on the weekends. She said not all of the classes are live fire. Different types of guns will have different decibel levels. She said when they conducted their sound testing last Tuesday, they stayed on their property to take the measurements and they recorded everything live. Mrs. Hill said many ranges use curtains as a sound barrier; she does not know the expense of those but they are willing to purchase it. She explained the do not disturb signs are for safety, as they do not want anyone accidentally wandering onto the property during shooting practice. As for the pavilion, Mrs. Hill said it was built for friends and family, as they have been friends with the property owner for years. The pavilion has been used for many of their family gatherings over the years. She herself has been coming up here since she was a teenager. This isn't just a gun range, she said, it is their heart.

Bob Lear and Jason Hutcheson both said the "one weekend per month" firing is not true. They claimed the applicants have been shooting every weekend. Mr. Lear said he has archived copies of their website, which they have since changed. He said on the day of their sound testing, it appeared that the Hills were only using a .22 rifle, which is much quieter than pistols or shotguns. They were not shooting commercially back in 2010. Mr. Hutcheson said even when they are not holding live fire classes, the Hills themselves are shooting or teaching private lessons, which are not always listed on the calendar.

Dean Pullis said he came up from Atlanta to support Brian and Shelley Hill. He commented how someone said this use is incompatible with agricultural uses, but he disagrees. In agricultural areas, you will have tractor sounds, hunting, animal noises, etc. There will also be smells associated with farms. He said these things, along with shooting, are typical for agricultural settings. Mr. Pullis said the wedding venue isn't the only thing that draws in visitors; he was drawn here by The Complete Combatant. Many other visitors will also come to enjoy the range, and they will spend their money in the County when they come up. He said overall this will be good for Dahlonega.

Carol Moran, 3038 Porter Springs, said Brian and Shelley are lovely people and she wouldn't mind having them as neighbors. However, all of the rapid fire shooting is not agricultural. She said she is sorry that COVID has hurt so many businesses, but farm noises are not the same as rapid fire gun noises. Mrs. Moran said she has no animosity towards the Hills and she would love for them to relocate to a light industrial area. She does not believe a small wall is going to help much with the noise because it really carries.

Commissioners Discussion/Decision Timeline

Minutes Acceptance: Minutes of Aug 17, 2021 6:30 PM (CONSIDERATION OF MINUTES)

Commissioner Moran said we are talking about a commercial gun range surrounded by residents, and there is a big difference between a recreational and commercial gun range. He has received input from dozens of residents all in opposition to this business; not a single call, e-mail, or text from a resident has been in favor. Only people from elsewhere have shown support. Additionally, The Complete Combatant has said they will remove their shotgun and rifle live fire classes, but they will still have private lessons for shotgun and rifle. Commissioner Moran said he also has concerns with their schedule and the perception it will only be one weekend per month. He commented on the setback requirements and said the written text in the Land Use Code doesn't capture the spirit or intent of the required buffer. Why would it matter where the structure is when the actual use could occur anywhere on the property? He thinks the intent was missed in the Land Use Code with these setback requirements. He said the Commissioners have some work to do, since growth is coming.

Commissioner Stringer asked Mrs. Hill why would The Complete Combatant limit itself as an outdoor range when they could consider creating an indoor range? He said there is one in the middle of Cumming, so it is a possibility to consider.

Chairman Dockery said there is some validity to the sound barrier discussion. His biggest concerns are safety and noise. He has had a lot of experience with military ranges himself, and they always have a completely empty area behind the backstop with warning signs. The Complete Combatant will be teaching a lot of inexperienced people how to shoot, so that is a safety concern. There is a bank with some trees behind the range, but it doesn't seem that high to him. The Chairman said the noise seems to be the biggest issue. People around him shoot a lot, but if it were all day all weekend, it would be different, he said. We need to look at a noise solution that has a guarantee of noise reduction, not just an attempt. Someone commented that shooting in rural areas is an expectation. Chicken smells are an expectation. However, the typical recreational shooting that occurs here isn't consistent. One option, he suggested, would be to limit the amount of hours per week or per month. Maybe the applicants could consider building an indoor range. If they did construct sound barriers, the Chairman said we would have to ensure they actually work.

It was decided to hold a decision meeting at 6:30 pm following the September 21 regular meeting.

Adjournment

Motion: *A motion was made by Commissioner Mayfield to adjourn the meeting. The motion was seconded by Commissioner Stringer. The motion was approved and carried.*

The meeting ended at 8:58 PM.

Date

Chris Dockery, Chairman
Lumpkin County Board of Commissioners

Attest:

Melissa Witcher
County Clerk, Lumpkin County

LUMPKIN COUNTY
Board of Commissioners
Special Called Meeting Minutes
Commissioners Boardroom

August 24, 2021
4:30 P.M.

Minutes Acceptance: Minutes of Aug 24, 2021 4:30 PM (CONSIDERATION OF MINUTES)

CALL TO ORDER

The meeting was called to order at 4:30 PM by Chairman Chris Dockery

Attendee Name	Title	Status	Arrived
Chris Dockery	Chairman	Present	
Bobby Mayfield	District 2 Commissioner	Present	
Rhett Stringer	District 3 Commissioner	Present	
Jeffrey Moran	District 4 Commissioner	Present	

CONSIDERATION OF AGENDA

Motion: *A motion was made by Commissioner Stringer to approve the agenda. The motion was seconded by Bobby Mayfield. The motion was approved and carried.*

RESOLUTIONS

1. 2021 - 48 - Establish the 2022 Budget *(Finance Director Abby Branan)*

Establish the 2022 Budget

Motion: *A motion was made by District 2 Commissioner Mayfield to approve Establish the 2022 Budget. The motion was seconded by District 3 Commissioner Stringer. The motion was approved and carried.*

2. 2021 - 49 - Establish the 2021 Ad Valorem Tax Millage Rate *(Finance Director Abby Branan)*

Establish the 2021 Ad Valorem Tax Millage Rate

Chairman Dockery read aloud a letter from Superintendent Rob Brown and the Board of Education.

Motion: *A motion was made by District 2 Commissioner Mayfield to approve Establish the 2021 Ad Valorem Tax Millage Rate. The motion was seconded by District 4 Commissioner Moran. The motion was approved and carried.*

The Chairman asked County Manager Alan Ours to inform all County employees and Sheriff Jarrard that the BOC is implementing the full recommendation from the salary study.

CONTRACTS

3. 2021-047 - Yahoola Creek Park Lighting Project *(Special Projects Director Ashley Peck)*

Yahoola Creek Park Lighting Project

Motion: *A motion was made by District 2 Commissioner Mayfield to approve The Georgia Power option to pay in full up front. The motion was seconded by District 3 Commissioner Stringer. The motion was approved and carried.*

EXECUTIVE SESSION - Potential Land Acquisition

Motion: *A motion was made by Chairman Dockery to enter executive session. The motion was seconded by Commissioner Moran. The motion was approved and carried, and executive session began at 4:39 PM.*

Motion: *A motion was made by Commissioner Mayfield to exit executive session and re-enter regular session at 4:53 PM. The motion was seconded by Commissioner Stringer. The motion was approved and carried.*

There were no announcements from executive session.

ADJOURNMENT

Motion: *A motion was made by Commissioner Mayfield to adjourn the meeting. The motion was seconded by Commissioner Stringer. The motion was approved and carried, and the meeting ended at 4:53 PM.*

Date

Chris Dockery, Chairman
Lumpkin County Board of Commissioners

Attest:

Melissa Witcher
County Clerk, Lumpkin County

Minutes Acceptance: Minutes of Aug 24, 2021 4:30 PM (CONSIDERATION OF MINUTES)

Lumpkin County, Georgia

Board of Commissioners Department

Date: September 21, 2021

Agenda Item: A Resolution Dedicating the Dr. David J. Miller Commissioners' Boardroom

Item Description: A Resolution Dedicating the Dr. David J. Miller Commissioners' Boardroom

Lumpkin County Resolution No. 2021 - 51

A Resolution Dedicating the
Dr. David J. Miller Commissioners' Boardroom

Whereas, Dr. David J. Miller served Lumpkin County as the District 1 Commissioner from January, 2017 until he went to be with the Lord in May, 2021; and

Whereas, Dr. Miller held many positions throughout his career and most recently served as Professor of Healthcare Management at the Brenau University College of Business and Communication; and

Whereas, during his time as Commissioner, Dr. Miller served a term as Vice Chair of the Board of Commissioners, served on the Lumpkin County Board of Health, the Health Insurance Committee, and was appointed as the Board of Commissioners' liaison to Northeast Georgia Health Systems; and

Whereas, Dr. Miller was instrumental during the 2020 Census as a member of the Complete Count Committee and was the official Lumpkin County liaison to the United States Census Bureau; and

Whereas, Dr. Miller was involved in numerous aspects of the community, including serving as the Chair of the Lumpkin County Republican Party, Vice Chair of the Holly Theatre Board of Directors, Treasurer of the Friends of the Dahlonega Gold Museum, and member of the Enotah CASA Board. He spent many hours participating in community events such as Dancing with the North Georgia Stars and the Holly Theatre play "Bright Star"; and

Whereas, Dr. Miller played an indispensable role in helping Lumpkin County obtain a grant from the Healthcare Georgia Foundation. This "Two Georgia's Initiative" created the Lumpkin Matters Coalition, an inclusive partnership dedicated to improving the lifestyle and health of under-served citizens through Community Navigation Events; and

Whereas, Dr. Miller will be forever remembered by the Board of Commissioners, County Staff, citizens, and his family, not only as a leader and community servant, but as a beloved husband, father, and friend; and

Whereas, the Board of Commissioners now desires to dedicate this boardroom in memory of Dr. David J. Miller to commemorate his legacy of service to Lumpkin County;

Now, therefore, be it resolved that, in honor of Dr. David J. Miller's selfless dedication to Lumpkin County and the community, the Commissioners' Boardroom is hereby dedicated and named the Dr. David J. Miller Commissioners' Boardroom.

Resolved, adopted and effective this 21st day of September, 2021.

_____
Chris Dockery, Chairman
Lumpkin County Board of Commissioners

Attest:

_____
Melissa Z. Witcher
Lumpkin County Clerk

Lumpkin County, Georgia

Development Authority Department

Date: September 21, 2021

Agenda Item: Resolution for the GDNR Recreational Trails Program Grant

Item Description: Resolution for the GDNR Recreational Trails Program Grant. The BOC agreed for the Development Authority of Lumpkin County to work on a grant application for the Recreational Trails Program to add new trails, restore existing trails, and add signage to the reservoir trail. The provided resolution is a requirement of the grant application packet.

Facts: The resolution states Lumpkin County Government will pay 100% of the project costs, and then be reimbursed for up to 80% when the project is completed. The preliminary project budget is listed below.

Item	Unit	Total
• New trail construction	$6.50/linear foot (clearing, tread construction and all finish work.)	$68,640 (Approximately 2 miles of new trail)
• Trail restoration	$5/linear foot (such as berm removal for)	$13,200 (.5-mile restoration work areas)
• Boardwalk		$10,000 (75’ of 4’ boardwalk)
• Wayfinding throughout	13 (trail intersections & mileage; double sided)	$6000
• Trailhead kiosk	2 (boat ramp & dam) - map & info to access map online	$6,200
Total Project Estimate	$104,040	

Cash/In Kind Match	Total
• General volunteer hours	$4,443 in kind contribution for general labor
• Skilled volunteer hours (team leader)	$2,520 in kind contribution for skilled labor
• Cash contribution from DALC	$33,500

• Other contributions	TBD
Total Cash/In Kind Contribution	$40,463 (39% of project budget)

Potential Courses of Actions:

1) Approve the resolution as presented.
2) Approve the resolution with revisions.
3) Take no action.

Staff Recommendation: Staff recommends approving the resolution as presented to move forward with the pre-application.

LUMPKIN COUNTY RESOLUTION NO. 2021 – 52

STATE OF GEORGIA
LUMPKIN COUNTY

WHEREAS, at the regular Board of Commissioners meeting of Lumpkin County held on the 17th day of August 2021, a motion was made and duly seconded that Lumpkin County shall submit an application for funding from the Georgia Department of Natural Resources' Recreational Trails Program in order to fund the construction of a new trail; and,

WHEREAS, Lumpkin County further states that in the event its application is recommended for funding by the Georgia Department of Natural Resources, Lumpkin County certifies and assures that it has the ability and intention to finance 100 percent of the total project cost and be reimbursed for up to 80 percent of eligible costs by the Georgia Department of Natural Resources; and,

NOW, THEREFORE BE IT RESOLVED by Lumpkin County that it shall submit an application for funding from the Georgia Department of Natural Resources' Recreational Trails Program, and that it shall, in the event that the application is recommended for funding, take action to assure that it will finance 100 percent of the total project cost and be reimbursed for up to 80 percent of eligible costs by the Georgia Department of Natural Resources.

Read and unanimously adopted in the regular Board of Commissioners meeting of Lumpkin County held on the 21st day of September 2021.

_____
Chris Dockery, Chairman
Lumpkin County Board of Commissioners

Attest:

_____
Melissa Z. Witcher
Lumpkin County Clerk

Lumpkin County, Georgia

Public Works Department

Date: September 21, 2021

Agenda Item: Request for a Non-Exclusive Franchise to Community Television Company

Item Description: Request for a Non-Exclusive Franchise to Community Television Company

Facts & Historical Information: On August 13th 2021 staff received a request for a non-exclusive franchise agreement between Lumpkin County and Community Television Company to construct operate and maintain a cable television system in Lumpkin County. The agreement provides that the company will each year pay an annual franchise fee to Lumpkin County of 5% of gross revenues generated by the franchise in Lumpkin County. This is the same amount as the current franchise agreement with Windstream dba Teleview, LLC (2009-016). Staff has reviewed of the draft agreement submitted and is proposing that the agreement be edited to include a restriction on open cutting of any county road. This restriction could be placed in section 4. (b) of the agreement.

Potential Courses Of Action:

1. Approve the franchise agreement as written
2. Approve the franchise agreement with revised wording to restrict open cutting of any county road
3. Do not approve the agreement

Budget Impact: There will be some revenue to the county from this agreement if approved.

Staff Recommendation: **Staff recommends COA 2 approve the agreement with a restriction of open cutting of county roads.**

Attachments:
Community Telephone - ETC Franchise Agreement

Attachment: Community Telephone - ETC Franchise Agreement (2021-052 : Request for a Non-Exclusive Franchise to Community Television

AN AGREEMENT GRANTING A NON-EXCLUSIVE FRANCHISE TO COMMUNITY TELEVISION COMPANY, ITS SUCCESSORS AND ASSIGNS, TO CONSTRUCT, OPERATE, AND MAINTAIN A CABLE TELEVISION SYSTEM IN THE COUNTY OF LUMPKIN, GEORGIA; AND SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF THE FRANCHISE; AND PROVIDING FOR REGULATION AND USE OF THE CABLE SYSTEM.

Section 1. Definitions. For the purpose of this Agreement, the following words and phrases shall have the meanings set forth in this section.

(a) "Cable Service" shall have the meaning set forth and further defined in O.C.G.A. § 36-76-2.

(b) "Cable System" shall have the meaning set forth and further defined in O.C.G.A. § 36-76-2.

(c) "Facilities" means any reception, processing, distribution or transmission component of the Cable System, including cables, conduits, converters, splice boxes, cabinets, manholes, vaults, poles, equipment, drains, surface location markers, appurtenances, fiber, and related facilities maintained by Grantee.

(d) "FCC" means the Federal Communications Commission.

(e) "Franchise" shall have the meaning set forth and further defined in O.C.G.A. § 36-76-2.

(f) "Grantee" means Community Television Company, a Georgia Corporation, and its permitted successors.

(g) "Gross revenues" shall have the meaning set forth and further defined in O.C.G.A. § 36-76-2.

(h) "Person" is any person, firm, partnership, association, corporation, company, or other legal entity.

(i) "Road" means the surface of, and the space above and below any public road, highway, freeway, lane, alley, path, court, sidewalk, parkway, or drive, or any easement or right-of-way now or later existing within the County.

(j) "Subscriber" shall have the meaning set forth and further defined in O.C.G.A. § 36-76-2.

(k) "County" means Lumpkin County, Georgia.

(l) "Commissioners" means the governing body of the County.

Section 2. Grant of authority.

(a) Grant of nonexclusive authority. The County grants to Grantee the right and privilege to construct, erect, operate, and maintain, in, upon, along, across, above, over and under the Roads, all Facilities necessary or desirable for the construction, maintenance, and operation of the Cable System. This Franchise shall be nonexclusive, and the County may grant franchises to other Persons. Any

additional franchises shall contain the same substantive terms and conditions as this Franchise. Grantee may use the Cable System to deliver non-Cable Services as permitted by applicable law. The County may promulgate ordinances, rules, regulations, terms and conditions governing its rights-of-way utilization and accommodation as it solely deems necessary that Grantee must abide by during the term of this Agreement.

(b) Rules of Grantee. The Grantee may promulgate rules, regulations, terms and conditions governing its business and services as reasonably necessary to enable Grantee to exercise its rights and perform its obligation under this Agreement.

Section 3. Franchise term. The Franchise granted under this Agreement commences upon approval by the Board of Commissioners and acceptance by Grantee and shall continue for 10 years, unless renewed, revoked or terminated sooner.

Section 4. Conditions of road occupancy.

(a) Location of Facilities. Grantee shall locate all Facilities as to minimize interference with the use of the Roads and with the rights and reasonable convenience of adjacent property owners.

(b) Construction codes and permits. Grantee shall obtain all necessary permits and shall comply with all ordinances of general applicability before commencing any construction, upgrade or extension of the Cable System, including the disturbance of any Road. Facilities that cross a County road must be installed overhead or underground by boring under the road. Facilities may not be installed across a County road by open cut.

(c) Repair of Roads and property. Grantee, at its expense, shall promptly restore any road or public property damaged by Grantee during the construction, repair, maintenance or reconstruction of the Cable System.

(d) Public projects. After reasonable prior notice, Grantee, at its expense, shall relocate its Facilities as required by the County due to traffic conditions, public safety, road construction, or other public improvements by the County.

(e) Building movement. Upon request of any Person holding a moving permit issued by the County and after reasonable prior notice, Grantee shall temporarily move its Facilities to permit the moving of buildings. Grantee may require the requesting Person to pay all costs related to the temporary relocation of Facilities, and may require payment in advance.

Attachment: Community Telephone - ETC Franchise Agreement (2021-052 : Request for a Non-Exclusive Franchise to Community Television

(f) Tree trimming. Grantee may trim any trees in or overhanging the roads, alleys, sidewalks, or public easements of the County as necessary to protect Grantee's Facilities.

Section 5. Cable System operations and safety.

(a) Technical standards. Grantee shall operate the Cable System in compliance with all applicable technical standards promulgated by the FCC.

(b) Safety requirements. Grantee shall employ ordinary care and shall maintain in use commonly accepted methods and devices to reduce failures and accidents.

(c) System maps. Upon request by the County, Grantee shall make available to County representatives for review at Grantee's office up-to-date as-built maps showing locations of all Facilities in the roads.

(d) System maintenance. When feasible, Grantee shall schedule Cable System maintenance to minimize service interruptions.

Section 6. Service obligations and Cable System extension. Grantee shall provide Cable Services without discrimination to all Persons who request such services and who comply with Grantee's terms and conditions of service. Grantee is not obligated to extend service to residences beyond 500 feet from Grantee's Facilities. Isolated residences requiring more than a standard 500 foot aerial drop or underground line may be provided at a premium installation rate if such service has been requested by the resident. Grantee may request advanced payment for such installation before service is installed.

Section 7. Service to public buildings. Grantee shall provide, upon request and free of charge, one service drop and basic Cable Service to each County owned building within Lumpkin County, and to each public school and library within the County, that is located within Community Television Company's service area.

Section 8. Customer service and rates.

(a) Subscriber Inquiries. Grantee shall have a publicly listed toll-free telephone number and be operated to receive Subscriber complaints and requests during normal business hours. Grantee shall investigate and promptly resolve customer complaints regarding quality of service or service outages.

(b) Rates. Grantee shall provide the County and Subscribers with 30 days written notice of changes to Cable Services or rates.

Attachment: Community Telephone - ETC Franchise Agreement (2021-052 : Request for a Non-Exclusive Franchise to Community Television

Section 9. Franchise fee.

(a) Base franchise fee. Grantee shall pay to County an annual franchisee fee in an amount equal to five percent (5%) of Gross Revenues. For each year, Grantee shall deliver the payment to the County by March 1st for the preceding calendar year ending December 31st. Following reasonable prior notice, the County may inspect Grantee's books, records, and reports to verify franchise fee calculations and payments for a period not to exceed 5 years from the date of notice.

(b) Billing. The Grantee may designate that portion of a subscriber's bill attributable to any franchise fee as a separate item on the bill and recover such amount from the subscriber; provided, however, that such separate listing be referred to as a "franchise" or a "franchise fee".

Section 10. Insurance and Indemnification.

(a) Insurance. During the term of the Franchise granted under this Agreement, Grantee shall maintain a comprehensive general liability insurance policy with the following minimum coverage limits:

(i) $1,000,000 for personal injury or death;
(ii) $1,000,000 for property damage; and
(iii) $500,000 automobile insurance/combined bodily injury and property damage.

Each policy of insurance shall contain a statement that the insurer will not cancel the policy or fail to renew the policy for any reason without first giving 30 days' advance written notice to the County.

(b) Indemnification. During the term of the Franchise granted under this Agreement, Grantee shall indemnify and hold harmless the County, its officers, agents and employees ("Indemnitees") from and against any claims, liabilities, damages, losses, and expenses (including, without limitation, reasonable attorney fees) ("Losses"), which may arise out of or be in any way connected with Grantee's construction, installation, operation, maintenance of the Cable System, unless such Losses arise from the negligence or intentional misconduct of the County, its officers, agents or employees.

Section 11. Transfer of Franchise. Grantee shall not transfer or assign its rights granted under this Agreement without providing prior written notice to the County. Prior notice shall not be required for the following: (i) the assignment of, or the granting of a security interest in, the Franchise or the Cable System for the purpose of securing indebtedness; or (ii) the assignment or

Attachment: Community Telephone - ETC Franchise Agreement (2021-052 : Request for a Non-Exclusive Franchise to Community Television

transfer of the Franchise or the Cable System to an affiliate under common ownership or control with Grantee.

Section 12. Franchise extension and renewal.

(a) Extension. County and Grantee may extend by mutual agreement the term of the Franchise granted under this Agreement, and the existing terms and conditions of this Agreement shall govern the extended term.

(b) Renewal. Any renewal of the Grantee's Franchise shall be done in accordance with Section 546 of the Federal Cable Act, 47 USC § 546, and applicable FCC regulations.

Section 13. Franchise termination. The County may terminate the Franchise granted under this Agreement in case of material noncompliance by Grantee. Material noncompliance shall include:

(a) A material violation by Grantee of any term, condition, or provision of this Agreement that remains uncured within the applicable cure period;

(b) Failure of Grantee to comply with any reasonable provision of any applicable Agreement;

(c) Grantee becomes insolvent, unable or unwilling to pay its debts, or is adjudged bankrupt, or there is a notice of prospective foreclosure or other judicial sale of all or a substantial part of the Cable System;

(d) Grantee abandons the Cable System;

(e) Grantee fails to operate the Cable System for a period of 30 days; or

(f) Grantee is found to practice any fraud upon the County.

Section 14. Termination procedures. If the County seeks to terminate the Franchise under Section 13, the County shall follow the procedures in this section.

(a) Notice of complaint. The County shall provide Grantee with written notice describing with reasonable specificity the alleged noncompliance.

(b) Opportunity to cure. Grantee shall have 60 days from receipt of written notice to cure the alleged noncompliance. If Grantee cures the alleged noncompliance within the 60-day period, the County shall provide Grantee with written notice withdrawing the complaint.

Attachment: Community Telephone - ETC Franchise Agreement (2021-052 : Request for a Non-Exclusive Franchise to Community Television

(c) Public hearing. If Grantee fails to cure the alleged noncompliance within the 60-day cure period, or if Grantee provides the County with written notice disputing the complaint, and the parties fail to resolve the matter, the County shall schedule a public hearing on the alleged noncompliance. At the hearing, both the County and Grantee may present testimony, cross-examine witnesses and deliver to the County all evidence relevant to the matter. The hearing shall be open to the public. At the conclusion of the public hearing, the County may dismiss the complaint, defer action, order appropriate sanctions, or terminate the Franchise in accordance with this section.

(d) Termination. The County may after a duly noticed public hearing, terminate the Franchise for material and willful continuing noncompliance by Grantee. If Grantee contests the termination in a court of competent jurisdiction, Grantee may operate the Cable System in accordance with this Agreement while the case is pending.

(e) Force Majuere. Grantee's failure to comply with any provision of this Agreement shall not constitute noncompliance when the failure is due to circumstances beyond Grantee's control, including, without limitation, acts of nature, adverse weather, natural or man-made disaster, civil disturbance, war or insurrection, or shortage of supplies, material, or labor.

(f) Removal of Facilities. Upon expiration or termination of the Franchise, Grantee shall be afforded a six-month period to sell or otherwise dispose of the Cable System. During the six-month period, Grantee shall operate the Cable System in accordance with this Agreement. At the expiration of the six-month period, Grantee has the right to remove its Facilities within a reasonable time.

Section 15. Unauthorized reception of Cable Service; tampering with Facilities.

(a) It shall be unlawful for any Person without Grantee's consent to willfully tamper with, remove or injure any of Grantee's Facilities.

(b) It shall be unlawful for any Person to make or use any unauthorized connection to any part of Grantee's Cable System.

(c) Any violation of this subsection regarding theft of service shall be guilty of a misdemeanor and punished as otherwise provided in the ordinances of the County of Lumpkin. Each day a violation occurs shall constitute a separate offense.

Section 16. Notices. Notices under this Agreement shall be in writing and shall be deemed given delivery by hand delivery, certified mail return receipt requested, or overnight courier to the following addresses:

Attachment: Community Telephone - ETC Franchise Agreement (2021-052 : Request for a Non-Exclusive Franchise to Community Television

To: County:

Lumpkin County Board of Commissioners
Mr. Chris Dockery, Chairman
99 Courthouse Hill
Dahlonega, Ga 30533
Phone: 706-864-3742

To: Grantee

Community Television Company
Attn: Cora Payne
P.O. Box O or 224 Dalton St.
Ellijay, Georgia 30540
Phone: 706-276-2271

A party may designate other addresses for providing notice by providing notice in writing of such addresses.

Section 17. Effective date. This Agreement shall become effective upon Grantee's acceptance as dated below.

Lumpkin County, Georgia,
Board of Commissioners

By:

_____
Chris Dockery, Chairman

Attest:

_____
Melissa Z. Witcher
Lumpkin County Clerk

Accepted this ___ day of September, 2021 by:

Community Television Company

By:

_____
Name:
Title:

Attest:

_____
Name:
Title:

Attachment: Community Telephone - ETC Franchise Agreement (2021-052 : Request for a Non-Exclusive Franchise to Community Television

Lumpkin County, Georgia

Special Projects Department

Date: September 21, 2021

Agenda Item: Ninth District Opportunity Inc. Lease - Head Start Building

Item Description: Ninth District Opportunity Inc. Lease - Head Start Building. Lease renewal for JB Jones Pre-School/Head Start.

Facts & Historical Information: This is an annual lease renewal for Ninth District Opportunity, Inc. (NDO) to operate the Lumpkin County Head Start Program in a county facility. The terms of the lease have not changed from the last annual renewal. The County has agreed that should the Head Start Program not be funded by the Federal Government, the County and NDO will cooperate to assure that the building will be used for a similar Child Development Program or other use which will be of equal benefit for low to moderate income persons. NDO is responsible for the cost of all repairs exclusive of roof, structure, and exterior building repairs. NDO will not make or permit to be made any alterations or deletions to the premises, nor sublet any portion of the premises. The County has had no issues with the lessee during the past year and they are current on any funds due to the County. The contract terms are October 1, 2021 through September 30, 2022.

Potential Courses Of Action:

1. Renew the lease with Ninth District Opportunity, Inc.

2. Do not renew the lease with Ninth District Opportunity, Inc.

Budget Impact: There is no impact to the operating budget for this lease.

Staff Recommendation:

Attachments:
MOU Lumpkin County Commissioners

NINTH DISTRICT OPPORTUNITY, INC.
GAINESVILLE, GEORGIA

This agreement, entered into this 7th day of July, 2021, by and between **Lumpkin County, Georgia** hereinafter referred to as "the county", and **Ninth District Opportunity, Inc.** (Grantee and operator of the Lumpkin County Head Start Program), hereinafter referred to as "NDO", shall be considered a contract for use of a building located on Mechanicsville Road in Lumpkin County, Georgia from October 1, 2021 through September 30, 2022.

The parties agree as follows:

1. NDO will occupy the above described building for operating, at its expense, the Lumpkin County Head Start Program for approximately ninety-one children under a grant received from the Department of Health and Human Services, Administration for Children and Families. Operations are inclusive of furnishings and supplies needed to implement program activities.

2. The use of space provided to NDO by the county (rent-free) shall be considered an in-kind contribution, as the former is a private non-profit corporation and is required by law to match twenty percent (20%) of its federal funding with in-kind or cash contributions. This in-kind contribution shall be valued at $159,177 (13,298 square feet at $11.97 per sq. ft.) annually ($13,264.75/mo.).

3. NDO will have access to the above described building for as long as it operates the Lumpkin County Head Start Program. It is understood that operation of the Head Start Program is contingent upon federal funding. Should funding not be available, NDO will provide the county a thirty-day (30) written notice.

In the event that the Head Start Program is not funded by the Federal Government, the county and NDO will cooperate to assure that the above described building is used for a similar Child Development Program or other use which will be of equal benefit to low and moderate income persons.

4. NDO shall be responsible for the cost of all repairs necessitated by the use of said property, exclusive of roof, structure and exterior building repairs.

5. NDO will not make or permit to be made any alterations or deletions to the premises, nor sublet the whole or any part of the premises without the county's written consent.

6. The Agency will indemnify and save harmless the Contractor from any and every claim or demand of every kind or character which may ever be asserted by reason of any injuries, illnesses, or diseases, or the effects or consequences thereof, or damage to property or person, which may arise due to the actions of the Agency, its agents, servants or employees, on or off the premises occupied by the Agency.

Attachment: MOU Lumpkin County Commissioners (2021-053 : Ninth District Opportunity Inc. Lease - Head Start Building)

7. The county will maintain property insurance on the building to be reimbursed in full by NDO. During the terms of occupation of the above described building, NDO will maintain general public disability insurance on said property with limits of at least five-hundred thousand dollars (500,000.00) for bodily injury and one-hundred thousand ($100,000.00) for property damage. Such policies shall name the county as an additional insured.

8. NDO will pay all utility costs connected with building usage (gas, electricity, water, sewerage and telephone).

9. NDO will be responsible for all janitorial services.

10. This contract reflects the entire understanding as between the parties.

Wherefore, Lumpkin County, Georgia and Ninth District Opportunity, Inc. have duly executed this agreement as of the date first above written.

Lumpkin County, Georgia

By: _____
Chris Dockery, Commission Chair

Attest: _____

Ninth District Opportunity, Inc.

By: Patsy Thomas
Patsy Thomas, Executive Director

Attest: Kay Laws

Attachment: MOU Lumpkin County Commissioners (2021-053 : Ninth District Opportunity Inc. Lease - Head Start Building)

Lumpkin County, Georgia

E-911 Department

Date: September 21, 2021

Agenda Item: Mobile Communications Service Agreement

Item Description: Mobile Communications Service Agreement. Renewal of Annual Preventive Maintenance and Testing Agreement.

Facts & Historical Information: Lumpkin County has been covered by an Annual Maintenance and Testing Agreement the 911 phone and radio system for several years. By choosing this option, we are covered for all parts and labor (excluding batteries, antennas, abuse, and acts of God). It also provides us with 24/7 priority response by Mobile Communications technicians. This cost is already budgeted for in the 911 budget.

This contract amount (see attached) is less than last year. We have budgeted for an upgrade to part of the radio system. This was a necessary, end of service life for the equipment upgrade. The new equipment does not need to be maintained under this contract.

Potential Courses Of Action:

A) Renew the Annual Agreement
B) Not renew agreement and take the risk of equipment failure and afterhours surcharges. Also, we will incur the cost of all testing.

Budget Impact: Already in the budget.

Staff Recommendation: **I recommend that we continue with the service agreement. The service we have received from Mobile Communications has been exceptional.**

Attachments:
2021-2022 SA Contract

COMMUNICATIONS EQUIPMENT MAINTENANCE SERVICE AGREEMENT

This Agreement is entered into on 9/30/2021 between Mobile Communications America with principal offices at Gainesville (hereafter “Mobile Communications America”) and; (the "Customer") Lumpkin County E-911 .

This Agreement is an offer to purchase service by the customer and applies to maintenance service, parts and labor for the equipment and/or systems as described in Attachment Mobile Communications America agrees to maintain the equipment under the terms and conditions described in this Agreement. Beginning on the effective date of this Agreement Mobile Communications America agrees to provide maintenance service to keep covered equipment in good working order.

Payment Terms:

In consideration of the maintenance service provided, the customer agrees to pay to Mobile Communications America $1,670.00 per month, $20,040.00 annually (*State/Local taxes NOT included*). The customer will pay on a Annualy basis. This service agreement will expire on: 8/1/2022 . This agreement will auto renew upon the expiration date.

Once the agreement is accepted, services may be added or adjusted but may not be reduced below the initial payment terms agreement upon when executed.

By signing this Agreement, Customer agrees to accept maintenance service for the listed equipment according to all specified terms and conditions of the Agreement. Customer al agrees to provide full, free and safe access to the equipment and/or systems covered by this Agreement. The amounts noted above are due and payable within thirty (30) days of t Effective Date. This Agreement is valid only if signed by an authorized representative or officer of Mobile Communications America.

The additional terms and conditions attached to this Agreement are part of this Agreement. This Agreement is the complete understanding between Mobile Communications Ameri and Customer superseding all prior proposals or agreements, oral or written, and all other communications between the parties relating to the subject matter of this Agreement. Customer agrees that no other representations have been made relative to this Agreement, except that which is expressed in writing herein. The Customer acknowledges that the Customer has read this entire Agreement, understands it, and agrees to be bound by its terms and conditions.

By: _____ Customer	By: Thomas Priddy Mobile Communications America
Title: _____	Title: Service Manager
Date: _____	Date: 8/19/2021

Terms And Conditio

TERM AND ACCEPTANCE: THIS AGREEMENT SHALL BECOME BINDING UPON THE PARTIES WHEN ACKNOWLEDGED IN WRITING BY THE AUTHORIZED REPRESENTATIVE OF THE CUSTOMER AND MCA. It is agreed t service shall be provided only upon the terms included in this Agreement. MCA shall not be bound by terms within the Customer's purchase order or in any other document provided by Customer and provision of services to Customer do not constitute acceptance of any of Customer's terms and conditions and does not serve to modify or amend this Agreement.

GENERAL PROVISIONS: MCA agrees to provide services for the Customer for the Equipment. Services provided hereunder do not assure uninterrupted operation of the Equipment or service and MCA is not responsible for failure to render covered service due to causes beyond its control.

NORMAL WORKING HOURS: Normal working hours shall be from 8:00 AM to 5:00 PM, Monday through Friday, except holidays.

SERVICE: MCA will perform such repairs as may be required to restore Equipment to their normal operating level, provided that such repairs are necessitated by the failure of the Equipment due to normal usage. Non-fixed Equipment s be serviced at an MCA shop during normal working hours. This Agreement will not cover service call(s) required to resolve a covered malfunction of the Equipment. Travel charges and expenses incurred by MCA at the request of the Customer to resolve a malfunction of the Equipment that is not covered under this Agreement shall be billable to the Customer at current MCA rates. For emergency service or other service performed at Customer's request outside of normal working hours, for equipment not covered under this Agreement or for Equipment whose failure was due to causes not considered to be "normal usage," Customer will be billed for the service at the then current MCA rates for ea occurrence.

ENHANCED SERVICE OPTION: If Customer has elected to purchase the Enhanced Service Option, emergency service is included at no additional charge per occurrence, provided that all other terms of this Agreement are satisfied. Emergency service is provided 24 hours per day, seven days per week. Customers not electing the Enhanced Service Option shall pay an additional charge for emergency service rendered at current MCA rates for each occurrence.

REPLACEMENT PARTS: MCA will replace parts and components of the Equipment on an exchange basis when failure is due to the normal and proper use of the Equipment. Parts replaced during maintenance service become the property of MCA.

PREVENTIVE MAINTENANCE: MCA will inspect the Equipment and make such repairs, adjustments, and replacements of parts and components as may be necessary to maintain the Equipment in normal operating condition provided that such services and maintenance are necessitated by normal usage of the Equipment. Inspections and preventive maintenance service will be provided by MCA during normal working hours at the locations specified. All preventive maintenance inspections will be scheduled for mutual convenience and may be performed during remedial service.

PRICE CHANGES: Unless otherwise indicated, prices quoted in this Agreement shall remain in effect for the duration indicated in this Agreement or if none is specified, for a period of [one year]. Thereafter, at the sole discretion of MCA prices for service under this Agreement may be increased by MCA upon thirty days written notice to Customer. Such changes will become effective on the first day of the first full month following the date specified in the notice.

LIMITATIONS: MCA reserves the right to inspect any equipment or service prior to its inclusion under the terms of this Agreement. MCA may at its sole discretion require that said equipment or system be restored to proper operating specifications at Customer's expense prior to its being covered under this Agreement. MCA may at its sole discretion declare Equipment to be unserviceable. In such case, MCA’s sole responsibility is to remove such Equipment from the billing under this Agreement.

EXCLUDED SERVICES: The following services are not included under the terms of this Agreement. The repair of Equipment, replacement of parts, or any additional service labor due to accident, abuse, disaster, neglect, misuse, physi damage, liquid damage, damage by lightning or other Acts of God, service by personnel other than those authorized by MCA, alterations, modifications, attachments, accessories (other than those specifically designed for use with the particular piece of Equipment), use of Equipment with unauthorized batteries and/or power supplies or reprogramming by other than MCA personnel. This Agreement will not cover service call(s), shipping and handling that may be requ to resolve a covered malfunction of the Equipment. Travel charges and expenses incurred by MCA at the request of the Customer to resolve a malfunction of equipment or systems not covered under this Agreement shall be billable to th Customer at current MCA rates. If MCA finds that any Equipment has been altered or repaired by others, such Equipment shall not be covered by this Agreement and any services shall be billable to the Customer at current MCA rates.

TAXES: Applicable taxes will be billed to the Customer and the Customer hereby agrees to pay said taxes, unless the Customer has provided a current tax exemption certificate.

Attachment: 2021-2022 SA Contract (2021-054 : Mobile Communications Service Agreement)

LIABILITY INSURANCE: MCA agrees to carry reasonable liability insurance and applicable worker's compensation insurance.

WARRANTY: MCA warrants that it will perform the services using personnel of required skill, experience and qualifications and in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services and shall devote adequate resources to meet its obligations under this Agreement. EXCEPT FOR THE WARRANTY SET FORTH IN THIS PARAGRAPH, MCA MAKES NO WARRANTY WHATSOEVER WITH RESPEC TO THE SERVICES, INCLUDING ANY (A) WARRANTY OF MERCHANTABILITY; OR (B) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; OR (C) WARRANTY OF TITLE; OR (D) WARRANTY AGAINST INFRINGEMENT INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.
LIMITATION OF LIABILITY: MCA SHALL NOT BE LIABLE TO CUSTOMER OR TO ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT, DAMAGE OR LOSS OF OTHER PROPERTY OR EQUIPMENT OR SYSTEM OR FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT MCA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. THE LIABILITY OF MCA WITH RESPECT TO ANY OF ITS OBLIGATIONS HEREUNDER, INCLUDING SERVICE, SALE, DELIVERY, RESALE, INSTALLATION OR TH TECHNICAL DIRECTION OF INSTALLATION, REPAIR OR USE OF ANY ITEM COVERED BY OR FURNISHED HEREUNDER, WHETHER SUCH LIABILITIES ARE FOUNDED IN CONTRACT, IN TORT, UNDER ANY WARRANTY, OTHERWISE, SHALL NOT EXCEED THE PRICE PAID TO MCA WITH RESPECT TO THE SERVICE GIVING RISE TO THE CLAIM. NO ACTION SHALL BE BROUGHT FOR ANY BREACH OF THIS AGREEMENT MORE THAN ONE YEAR AFTER THE ACCRUAL OF SUCH CAUSE OF ACTION EXCEPT FOR MONEY DUE UPON OPEN ACCOUNT.

TERMINATION: This Agreement shall terminate upon the expiration date set forth in this Agreement. With the exception of the Customer's liability for any and all payments outstanding under this Agreement, neither the Customer nor M shall retain any liability for any performance under this Agreement on any date following the expiration of this Agreement.

NO CHANGES: Except as previously described, no changes, alteration or modification of this Agreement may be made without the express written consent of both parties. This Agreement may not be assigned or transferred without the express written consent of MCA.

ATTORNEYS' FEES: Should any dispute arise between the parties regarding the interpretation, application, effect or enforcement of the Agreement, the prevailing party in any legal or arbitration proceedings commenced to resolve the dispute shall be entitled to costs and reasonable attorney's fees incurred in said legal proceeding.

COVENANT NOT TO SOLICIT: During the term of this Agreement and continuing for a period of two (2) years thereafter, Customer will not hire, engage on contract, solicit the employment of, or recommend employment to any third par any employee of MCA or its subcontractors without the prior written authorization of MCA. This provision applies only to those employees of MCA or its subcontractors who are responsible for rendering services under this Agreement. If provision is found to be overly broad under applicable law, it shall be modified as necessary to conform to such law.

GOVERNING LAW AND VENUE: This Agreement and the parties' performance hereunder shall be governed by South Carolina law, excluding choice-of-law rules. Furthermore, to the extent permitted under South Carolina law, the par waive the benefit all substantive, non-procedural, foreign and international laws, which might otherwise grant the parties rights which are different than those contemplated under this Agreement. The parties agree that a party shall commence any action with respect to any dispute regarding the performance or breach of this Agreement exclusively in the State of South Carolina Courts in Spartanburg County, South Carolina or the United States District Court for the District of South Carolina, and the parties, by entering into this Agreement, submit to the exclusive venue and personal jurisdiction of such courts, and waive all objections to jurisdiction and venue of such courts, including forum non-convenes.

COUNTERPARTS: The Agreement may be executed in counterparts, which together constitute one and the same agreement. A facsimile copy or computer image, such as a PDF or tiff image, of a signature shall be treated as and sha have the same effect as an original signature. In addition, a true and correct facsimile copy or computer image of the Agreement shall be treated as and shall have the same effect as an original signed copy of this document.

MISCELLANEOUS: This Agreement: (i) constitutes the entire agreement between MCA and Customer relating to the maintenance of the Equipment, and supersedes all prior agreements relating thereto, whether written or oral, and (ii) not be amended or modified except in a writing signed by the parties hereto. If any provision of the Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition invalidity, without invalidating the remainder of such provision or the remaining provisions of the Agreement. All notices given by one party to the other under this Agreement must be delivered by: (a) hand delivery, (b) certified mail, retur receipt requested, (c) nationally recognized overnight courier service, or (d) facsimile, to the other party's respective address given in the preamble to the Agreement.

MOBILE COMMUNICATIONS AMERICA

Equipment and Coverage Details - Attachmen

Essential Services - Repair	Qty	Coverage

Premier Services - Repair	Qty	System Coverage	
Repeater Total:	10	Services:	24X7X265 Response, Annual PM with Firmware Updates
Other Equipment Total:	9	Services:	M-F 8X5 Response, Annual PM

Customer Locations
Lumpkin 911

Special Instructions

Attachment: 2021-2022 SA Contract (2021-054 : Mobile Communications Service Agreement)

Crown Mountain site

Black Mountain Site

Auraria Water tank site

Station 6 / Hester Valley

MCA Essential Service with Repair - Subscribers

Subscriber support includes repair and depot repair handling. It is the customer's responsibility to get the subscriber to their local MCA facility and ensure MCA ha the current programming files on hand. It is MCA's responsibility to:

- Triage the device
- Ship to the depot if repair cannot be addressed locally
- Track repair status
- Receive the device back from the depot
- Confirm that the radio has been repaired and is programmed to the customer's specifications
- Communicate to the customer their device is fixed.

Subscriber support also includes one annual preventative maintenance check. It is the customer's responsibility to ensure the devices are made available for this check and update. It is MCA's responsibility to complete the preventative maintenance check and communicate results of this service with the customer. One annual firmware update of the device will be completed at the time of the preventative maintenance check.

MCA Premier Service with Repair - Subscribers

Subscriber support includes repair and depot repair handling. It is the customer's responsibility to get the subscriber to their local MCA facility and ensure MCA ha the current programming files on hand. It is MCA's responsibility to:

- Triage the device
- Ship to the depot if repair cannot be addressed locally
- Track repair status
- Receive the device back from the depot
- Confirm that the radio has been repaired and is programmed to the customer's specifications
- Communicate to the customer the status of their repair as it changes

Subscriber support also includes one annual preventative maintenance check of the device. It is the customer's responsibility to ensure the devices are made available for this check. It is MCA's responsibility to complete the preventative maintenance check and communicate results of this service with the customer. On annual firmware update of the device will be completed at the time of the preventative maintenance check.

Batteries, antennas, and belt clip replacement is covered under this service. Antennas and belt clips will be replaced when they no longer function as the manufacturer intended. ***A battery will be replaced when it falls below a 80% charge capacity, provided they have a date code within MCA's contract terms and are charged by Impress chargers ONLY.***

MCA Essential Service with Repair - Infrastructure Components

Infrastructure support includes M-F 8X5 response to all issues arising from infrastructure, infrastructure cabling and antenna systems. Issues that result from powe failure, force majeure, or tampering are excluded from this service. Removal of infrastructure equipment for warranty repair is the responsibility of MCA. Repair of cabling and antenna systems is not a part of this service. After hours support is available upon request but is not covered under this service. Additional charges would apply at after hour rates.

One annual preventive maintenance check of all infrastructure, infrastructure cabling and antenna systems is also included. It is the customer's responsibility to gi access to all infrastructure, cabling, and antenna systems for this check. It is MCA's responsibility to schedule with the customer and communicate any and all system impact. One annual firmware update of the infrastructure equipment will be completed at the time of the preventative maintenance check. ***Microwave radi UPS, and any other specialized equipment is EXCLUDED from repair and PM services, and will only receive response/troubleshooting.***

MCA Premier Service with Repair - Infrastructure Components

Infrastructure support includes 24X7X365 response to all system issues arising from infrastructure, infrastructure cabling and antenna systems. Issues that result from power failure, force majeure, or tampering are excluded from this service. Repair of cabling and antenna systems is not a part of this service.

This service also includes depot repair handling of the infrastructure equipment. Should the equipment suffer a failure that cannot be addressed in the field, MCA will:

- Uninstall the infrastructure equipment
- Send to the Motorola Depot
- Track repair status
- Receive the equipment back from the Motorola Depot
- Confirm normal operation
- Re-install the equipment at the customer location

Attachment: 2021-2022 SA Contract (2021-054 : Mobile Communications Service Agreement)

• Re-install the equipment at the customer location.
• Communicate to the customer the status of their repair as it changes

One annual preventive maintenance check of all infrastructure, infrastructure cabling and antenna systems is also included. It is the customer's responsibility to gi access to all infrastructure, cabling, and antenna systems for this check. It is MCA's responsibility to schedule with the customer and communicate any and all system impact. One annual firmware update of the infrastructure equipment will be completed at the time of the preventative maintenance check. ***Microwave radi UPS, and any other specialized equipment is EXCLUDED from repair and PM services, and will only receive response/troubleshooting.***

Attachment: 2021-2022 SA Contract (2021-054 : Mobile Communications Service Agreement)

Lumpkin County, Georgia

Special Projects Department

Date: September 21, 2021

Agenda Item: Yahoola Creek Park Outdoor Basketball Court Construction Contract

Item Description: Yahoola Creek Park Outdoor Basketball Court Construction Contract. This is for the Concrete and Fencing of Yahoola Creek Basketball Court.

Facts & Historical Information: In October, 2020 the Board of Commissioners approved a list of projects to be funded with General Fund savings from the CARES Act. On the list of projects was construction of an outdoor basketball court at Yahoola Creek Park. In June of 2021 the Board of Commissioners approved the addition of fencing to this project to ensure safety at the site. In July of 2021 the Board of Commissioners approved the full court concrete option with 6 goals for this project. The estimated cost of that option was $86,287.00. The concrete and fencing were put out for bid and those bids were returned on September 1, 2021. The county received two bids. The lowest bid was $61,600.00. This bid price for concrete and fencing is over the estimated budget of $56,000.00. To complete the project as approved an additional $5,600 will need to be allocated.

Potential Courses Of Action:

1. Approve the bid and award the contract for the concrete and fencing and allocate an additional $5,600 to the project. This option will allow the completion of the project as originally approved by the Board of Commissioners in July.

2. Approve the bid and award the contract for the concrete and fencing and do not allocate additional funds to the project. This option will complete the concrete and fencing portion of the project. The 2 end goals have already been ordered. Without additional funds allocated to this project we would need to change the scope which would impact the side goals. The cost of the side goals is $13,356.00. If we remove the side goals the total cost of the project would be $78,531.00.

3. Approve the bid and award the contract for the concrete and fencing and do not allocate additional funds to the project. The option will complete the concrete and fencing portion of the project, but would impact the side goals. 2 side goals could be removed with the option to add 2 additional goals at a later date. The cost of the project with removing 2 side goals would be $85,209.00

4. Do not approve the bid and award the contract.

Budget Impact: $86,277.00 has already been allocated for this project. Course of Action 1 would require an additional $5,600. This money would need to either come from the general fund or could be reallocated from another project. Course of Action 2 would have no impact on the budget as it would decrease the budgeted cost for this project. Course of Action 3 would have no impact on the current budget, but funds for the additional side goals would need to be allocated at a future date.

Staff Recommendation: **Staff's recommendation is to approve the bid/contract and allocate additional funds to the project. The funds could be reallocated from the field restoration project. This will allow the project to be completed at a known cost. Waiting to add additional goals or postponing the project could result in additional costs as the market is still volatile and unknown.**

Lumpkin County, Georgia

Special Projects Department

Date: September 21, 2021

Agenda Item: Aquatic Center IGA with Board of Education

Item Description: Aquatic Center IGA with Board of Education. IGA with the Board of Education concerning the Joint Development, Construction and Use of the Roads, Utilities and Parking Areas Serving the Site for a New Elementary School and Aquatic Facility

Facts & Historical Information: Lumpkin County entered into an IGA with the Board of Education on October 30, 2020 for the joint development of a site for a new elementary school and aquatic facility and other recreational facilities. As outlined in the October 30, 2020 IGA the Board of Education has purchased 28.835 acres of real property located off Pinetree Way for the construction of a new elementary school by the Board of Education and the construction of an aquatic facility by the County. The final site layout for the project has been developed and the boundaries of the county site have been determined so that the Board of Education can deed a portion of the property to the County for the construction of an aquatic facility. (A legal description and sketch of the property to be deeded to the County is attached) The October 30, 2020 IGA also addresses separate agreements. The IGA states that the Board of Education and the County shall enter into an agreement setting forth the terms of each party's use of the shared parking areas. The IGA up for consideration establishes the agreements for the use of parking areas and also outlines the construction of parking areas, and roads which is required before county funds can be expended at the site. The IGA establishes that the Board of Education shall convey 7.4305 acres to the County for the construction of an aquatic facility. The Board of Education shall be responsible for the location and construction of all utilities up to the boundary of the County Site and the Board of Education shall allow the County to connect to any utilities needed for the aquatic center. The Board of Education agrees to sign any necessary easements to allow said utility connections. The Board of Education shall allow the County to use the parking areas on the School Site as needed when students are not on campus and shall provide gate codes to County Staff. The County shall allow the Board of Education to use the parking areas on the County Site as needed for large events so long as there is no conflict with a County event. The County agrees to pave and stripe the asphalt parking areas, the perimeter road and service roads, and install curb and gutter. The County agrees to construct upgrades to the existing portion of Pinetree Way and any associated sidewalks on existing portions of Pinetree Way. The final top coat of asphalt may not be applied to the perimeter road or Pinetree Way until construction of the elementary school is complete. The County shall not be responsible for continued maintenance of any parking areas or service roads within the School Site. This IGA will be considered by the Board of Education at their September 13, 2021 monthly meeting.

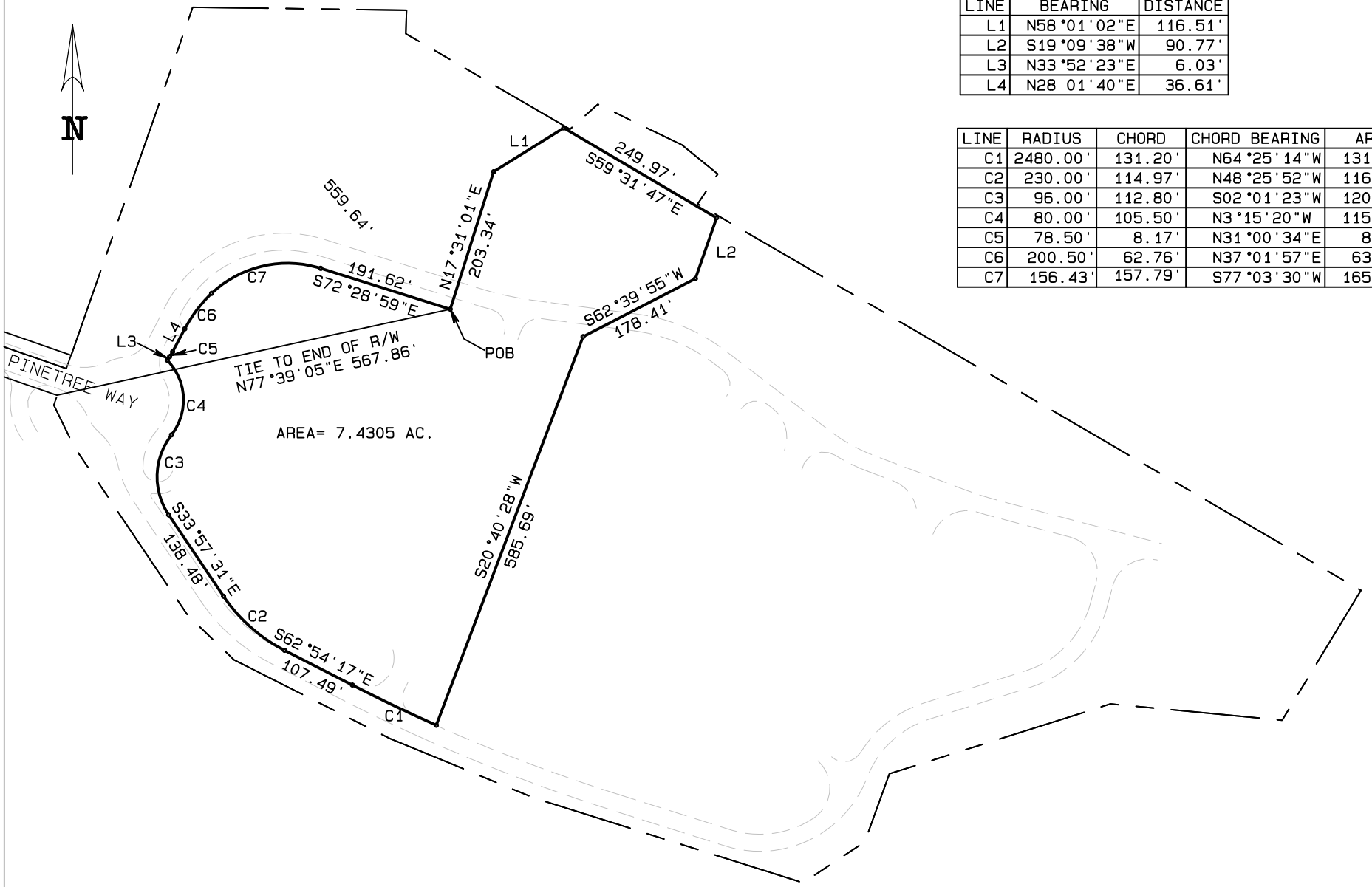
Potential Courses Of Action: 1. The Board could choose to approve the IGA with the Board of Education. Approval of this IGA will allow the County to move forward with work on the site. Approval of an IGA must be completed before county funds can be used at the site.

2. The Board could choose not approve the IGA with the Board of Education. Not approving the IGA will delay the sitework as county funds will not be used until agreements are reached concerning the use of the property.

Budget Impact: Approval of the IGA will not impact the budget. The IGA does outline what work the County will conduct at the site, but the cost of that will be determined in the GMP for the sitework.

Staff Recommendation:

Attachments:
sketch of property split 6-17-21
Legal Description 6-17-21
IGA with Bd of Education on Aquatic Center Site and Parking



LINE	BEARING	DISTANCE
L1	N58°01'02"E	116.51'
L2	S19°09'38"W	90.77'
L3	N33°52'23"E	6.03'
L4	N28 01'40"E	36.61'

LINE	RADIUS	CHORD	CHORD BEARING	ARC
C1	2480.00'	131.20'	N64°25'14"W	131.22'
C2	230.00'	114.97'	N48°25'52"W	116.20'
C3	96.00'	112.80'	S02°01'23"W	120.58'
C4	80.00'	105.50'	N3°15'20"W	115.20'
C5	78.50'	8.17'	N31°00'34"E	8.17'
C6	200.50'	62.76'	N37°01'57"E	63.02'
C7	156.43'	157.79'	S77°03'30"W	165.38'

0' 100' 200' 300' 400'

1 INCH = 200 FEET

SKETCH OF

AQUATIC CENTER PROPERTY SPLIT

LAND LOT 1033 - 12 TH. DISTRICT
CITY OF DAHLONEGA, LUMPKIN COUNTY, GEORGIA

DATE: JUNE 17, 202
DRAWN BY: LR
FILE NAME: PROPERTY SPL. 6-17-21
SCALE: 1"=200'
SHEET:

Attachment: sketch of property split 6-17-21 (2021-056 : Aquatic Center IGA with Board of Education)

EXHIBIT 'A'

Aquatic center property
Legal Description.

All that certain tract or parcel of land located in Land Lot 1033 of the 12th District, 1st Section of the City of Dahlonega, Lumpkin County, Georgia and being more particularly described as follows:

Commencing at a 5/8" iron pin located at the intersection of the southern right of way line of Pinetree Way and the western property line of the L.C.B.O.E. property thence North 77°39'05" East, a distance of 567.86 feet to the true Point of Beginning; thence North 17°31'01" East, a distance of 203.34 feet; thence North 58°01'02" East, a distance of 116.51 feet; thence South 59°31'47" East, a distance of 249.97 feet; thence South 19°09'38" West, a distance of 90.77 feet; thence South 62°39'55" West, a distance of 178.41 feet; thence South 20°40'28" West, a distance of 585.69 feet to the beginning of a curve concave to the northeast having a radius of 2480.00 feet and being subtended by a chord which bears North 64°25'14" West 131.20 feet; thence northwesterly along said curve, a distance of 131.22 feet; thence North 62°54'17" West, a distance of 107.49 feet to the beginning of a curve; thence northwesterly a distance of 116.20 feet along the curve concave to the northeast, having a radius of 230.00 feet and being subtended by a chord which bears North 48°25'52" West 114.97 feet; thence North 33°57'31" West, a distance of 138.48 feet to the beginning of a curve; thence northwesterly, a distance of 120.58 feet along the curve concave to the east, having a radius of 96.00 feet and being subtended by a chord which bears North 02°01'23" East 112.80 feet to the beginning of a curve concave to the west having a radius of 80.00 feet being subtended by a chord which bears North 03°14'53" West 105.50 feet; thence northeasterly, northerly and northwesterly along said curve, a distance of 115.20 feet; thence North 33°52'23" East, a distance of 6.03 feet to the beginning of a curve; thence northeasterly a distance of 8.01 feet along the curve concave to the northwest, having a radius of 78.50 feet and being subtended by a chord which bears North 30°57'02" West 8.01 feet; thence North 28°01'40" East, a distance of 36.61 feet to the beginning of a curve; thence northeasterly a distance of 63.02 feet along the curve concave to the southeast, having a radius of 200.50 feet and being subtended by a chord which bears North 37°01'57" East 62.76 feet to a point of cusp on a curve concave to the south having a radius of 156.43 feet and being subtended by a chord which bears North 77°03'30" East 157.79 feet; thence northeasterly along said curve, a distance of 165.38 feet; thence South 72°28'59" East, a distance of 191.62 feet to the Point of Beginning. Containing 7.4305 Acres, more or less.

Attachment: Legal Description 6-17-21 (2021-056 : Aquatic Center IGA with Board of Education)

INTERGOVERNMENTAL AGREEMENT BY AND BETWEEN THE LUMPKIN COUNTY BOARD OF EDUCATION AND LUMPKIN COUNTY, GEORGIA

FOR

THE JOINT DEVELOPMENT, CONSTRUCTION AND USE OF THE ROADS, UTILITIES AND PARKING AREAS SERVING THE SITE FOR A NEW ELEMENTARY SCHOOL AND AQUATIC FACILITY

GEORGIA, LUMPKIN COUNTY

This Agreement, made and entered into with an effective date of _____, 2021, by and between the **Lumpkin County Board of Education** (hereinafter, the "Board of Education"), and **Lumpkin County, Georgia** (hereinafter, the "County").

WITNESSETH:

WHEREAS, the Board of Education is the governing body for the Lumpkin County School District, a political subdivision of the State of Georgia pursuant to Article VIII, Section V, Paragraph I of the 1983 Georgia Constitution, operating under the laws and regulations of this State; and

WHEREAS, the County is a political subdivision of the State of Georgia pursuant to Article IX, Section III, Paragraph I of the 1983 Georgia Constitution, operating under the laws and regulations of this State; and

WHEREAS, pursuant to Article IX, Section III, Paragraph I of the 1983 Georgia Constitution, the parties are authorized to contract with one another for a purpose which the parties are otherwise authorized by law to undertake or provide; and

WHEREAS, the parties entered into an Intergovernmental Agreement dated October 30, 2020, for the Joint Development of a Site for a New Elementary School and Aquatic Facility and Other Recreation Facilities ('IGA1'); and

WHEREAS, the Board of Education did purchase 28.835 acres of real property located off Pinetree Way from Don Michael Cottrell for the construction of a new elementary school by the Board of Education and the construction of an aquatic facility by the County; and

Attachment: IGA with Bd of Education on Aquatic Center Site and Parking (2021-056 : Aquatic Center IGA with Board of Education)

WHEREAS, a final site layout for the project has been developed and the boundaries of the County Site have been determined so that the Board of Education can deed a portion of the real property to the County for the construction of an aquatic facility as contemplated by the above referenced IGA1; and

WHEREAS, in consideration of the mutual benefits and consideration accruing to each of the parties hereto, which benefits are hereby expressly acknowledged, and as contemplated by the above referenced IGA1, the parties enter into this agreement for purposes of 1) setting forth each party's obligation for the costs of construction and paving of roads and shared parking areas and 2) setting forth the terms of each party's use of the shared parking areas;

NOW THEREORE, the parties agree as follows:

A.
Agreements for Construction and Use of Parking Areas, Utilities and Roads

1) The Board of Education shall convey 7.4305 acres to the County for the construction of an aquatic facility, which shall include an indoor pool, said property being more particularly described in the Exhibit A attached hereto, together with easements for use of parking areas, the perimeter road and interior service/connecting roads ('County Site').
2) The Board of Education has procured a site layout of the entire Property, which incorporates the County Site and common drives and shared parking between the County Site and the School Site, and which has been approved by the County. Any changes to the site layout that impacts the County Site must be approved by the County prior to beginning construction.
3) As set forth in IGA1, the Board of Education shall be responsible for performing all site work for the entire Property, excluding the County Site.
4) As set forth in IGA1, the Board of Education shall be responsible for the location and construction of all utilities up to the boundary of the County Site. Said utilities shall include all necessary utilities for the site including, but not limited to, water, sewer, natural gas, electrical, stormwater and fiber optic.
5) The Board of Education shall allow the County to connect to any utilities needed for the aquatic center including, but not limited to, stormwater detention for any portion

Attachment: IGA with Bd of Education on Aquatic Center Site and Parking (2021-056 : Aquatic Center IGA with Board of Education)

of the county road that lies on the School Site. The Board of Education agrees to sign any necessary easements to allow said utility connections.

6) The Board of Education shall allow the County to use the parking areas on the School Site as needed when students are not on campus and shall provide gate codes to County staff.

7) The County shall allow the Board of Education to use the parking areas on the County Site as needed for large events so long as there is no conflict with a County event. Requests for use will be coordinated through the aquatic center manager.

8) The County agrees to use the County's professional engineer to create the maps necessary for both entities to obtain credits under the City of Dahlonega's Stormwater Management Program.

9) The County agrees to use the County's professional engineer to handle certain aspects of designing a road, roundabout, and sidewalks on Pinetree Way sufficient to serve the property and the engineer shall work with the Georgia Department of Transportation and the City of Dahlonega to ensure roads meet the requirements of each entity.

10) The County agrees to pave and stripe the asphalt parking areas, the perimeter road and the service roads, and install curb and gutter, to a standard width in accordance with the local building code. Any requests for expansion of the road to a larger width, curb and gutter, sidewalks, or guardrails shall be paid for by the Board of Education. The final top coat of asphalt for the perimeter road may not be applied until such time as construction of the elementary school is complete.

11) The County agrees to construct upgrades to the existing portion of Pinetree Way and any associated sidewalks on said existing portion of Pinetree Way. The final top coat of asphalt may not be applied until such time as construction of the elementary school is complete.

12) The County shall not be responsible for continued maintenance of any parking areas or service roads within the School Site.

B.

Notices.

Attachment: IGA with Bd of Education on Aquatic Center Site and Parking (2021-056 : Aquatic Center IGA with Board of Education)

Any and all notices or other communications hereunder required or permitted shall be deemed to have been given when made in writing, deposited in the United States mail, postage pre-paid, and addressed as follows: Superintendent, Lumpkin County School System, 56 Indian Drive, Dahlonega, Georgia 30533; and Lumpkin County Manager, 99 Courthouse Hill, Ste H, Dahlonega, Georgia 30533.

C.
Good Faith.

The Board of Education and the County agree to cooperate in good faith in fulfilling the terms of this Agreement. All parties shall negotiate in good faith to resolve any unforeseen difficulties or issues arising from this Agreement.

D.
Governing Law.

This Agreement shall be governed by, construed under, performed and enforced in accordance with the laws of Georgia.

E.
Amendment to Agreement.

This Agreement may be amended, from time to time, by mutual agreement of the parties. Any such amendment shall be in writing, signed by the parties, and attached hereto.

F.
Miscellaneous.

This Agreement is solely for the benefit of the formal parties hereto and no right or cause of action shall accrue upon or by reason hereof, to or for the benefit of any third party not a formal party hereto.

Attachment: IGA with Bd of Education on Aquatic Center Site and Parking (2021-056 : Aquatic Center IGA with Board of Education)

IN WITNESS WHEREOF, the parties have executed this Agreement in Lumpkin County, Georgia, on the day and year first above written.

LUMPKIN COUNTY BOARD OF EDUCATION

BY:_____(SEAL)
Chairman

LUMPKIN COUNTY

BY:_____(SEAL)
Chairman

Attachment: IGA with Bd of Education on Aquatic Center Site and Parking (2021-056 : Aquatic Center IGA with Board of Education)

Lumpkin County, Georgia

Special Projects Department

Date: September 21, 2021

Agenda Item: Aquatic Center Site Work GMP

Item Description: Aquatic Center Site Work GMP. Approve the GMP for the site work at the Aquatic Facility

Facts & Historical Information: In order to construct a new library facility, Lumpkin County closed the public pool in 2018. In 2020, the Board approved the financing for the construction of a new aquatic facility. In June of 2020 the Board of Commissioners contracted with Carroll Daniel Construction Company to serve as the County's Construction Manager at Risk. In October 2020 the County and the Board of Education entered into an IGA for the joint development of a site for a new elementary school and aquatic facility. The county has received the GMP for the sitework from Carroll Daniel. The County's portion of the sitework includes paving of the loop road, paving of parking areas, curb and gutter, striping and guardrail. A description and drawing of the site are attached. For reference a drawing of the site is attached with colored portions. The portions that are in color show what this GMP covers. The total cost for the County's portion of the site is $1,776,102.00.

Potential Courses Of Action: 1) Approve the GMP for the Aquatic Center Sitework

2) Do not approve the GMP for the Aquatic Center Sitework

Budget Impact: The Road portion of this GMP will be paid from TSPLOST funds and the remaining portion will be paid from SPLOST funds.

Staff Recommendation: **Staff recommendation is to approve the GMP for the sitework.**

Attachments:
Contract CM at Risk - Aquatic Facility GMP Phase 1
GMP Phase 1 Exhibit A (002)
Lumpkin ES (Site) - Paving Curb Guardrail (003)
guardrail areas that could be removed (004)

CONSTRUCTION MANAGEMENT AGREEMENT

(CM/GC)

BETWEEN

CARROLL DANIEL CONSTRUCTION COMPANY
(CM/GC)

AND

LUMPKIN COUNTY
(OWNER)

FOR

LUMKPIN COUNTY AQUATIC FACILITY

PROJECT NO. 21-601

INCLUDES:

CM/GC Form of Contract
General Requirements

Attachment: Contract CM at Risk - Aquatic Facility GMP Phase 1 (2021-057 : Aquatic Center Site Work GMP)

CONSTRUCTION MANAGEMENT CONTRACT
BETWEEN CM/GC AND OWNER

THIS CONSTRUCTION MANAGEMENT AGREEMENT (hereinafter the "Contract") made this ___ day of April, 2021, by and between **CARROLL DANIEL CONSTRUCTION COMPANY**, (hereinafter the "CM/GC" or "Construction Professional"), and the **BOARD OF COMMISSIONERS OF LUMPKIN COUNTY**, hereinafter called the "Owner".

WITNESSETH, that the CM/GC and the Owner, for the consideration set forth herein, the adequacy and sufficiency of which is hereby acknowledged by each party, agree as follows:

1. Project Name and Description: LUMPKIN COUNTY AQUATIC CENTER, PROJECT NO. 21 601 (hereinafter the "Project").

2. Notice. Notice in accordance with Section 1.1.5 shall be given to the following addresses:

CM/GC:
Carroll Daniel Construction Company
330 Main Street
Gainesville, GA 30501
Attention: Tommy Wiley
Phone Number: 678-997-7727
Facsimile Number: 770-534-3799

OWNER:
Lumpkin County Board of Commissioners
99 Courthouse Hill, Ste H
Dahlonega, GA 30533
Attention: Alan Ours
Phone Number: 706-864-3742
Facsimile Number: 706-482-2697

DESIGN PROFESSIONAL:
Architecture Unlimited
110 Matthews Station Street, Suite 2J
Matthews, NC
Attention: Jeff Sherer
Phone Number: 704-451-7436
Facsimile Number: jeffs@architecture-unlimited.com

3. Representatives: All notices sent to the Owner at the above address shall also be sent to the following respective Representatives. The following shall serve as the designated representatives established pursuant to Section 1.1.1.3.8:

OWNER'S REPRESENTATIVE:
Greg Trammell

Phone Number: 706-300-7085
Facsimile Number: 706-482-2697

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CM/GC'S REPRESENTATIVE: **Name: Tommy Wiley**
Phone Number: 678-997-7727
Facsimile Number: 770-534-3799

4. CM/GC Fee: The total CM/GC Fee shall be set forth in a Final GMP Addendum to this Contract.

5. CM/GC Costs and Expenses: The amounts allowable for the CM/GC's Construction Overhead Costs and Expenses shall be set forth in a Final GMP Addendum to this Contract.

6. The Material Completion Date shall be set forth in a Final GMP Addendum to this Contract.

7. The agreed daily amount for Liquidated Damages is $2,000.00 per day with maximum amount of $60,000.00.

8. Scope Of Basic Services And The Work. The CM/GC shall perform all of the Basic Services and furnish all of the materials and perform all of the Work described in the Contract Documents and shall do everything required by the Contract Documents.

9. Schedule And Completion. The Work to be performed under the Contract Documents shall be commenced upon issuance of a Proceed Order.

10. The Guaranteed Maximum Price (GMP). In consideration of certain conditions as a result of the pandemic, the lead time, shortages and costs of certain materials, the Owner and the CM/GC have agreed to establish the GMP in phases: The first phase ('Phase One') shall consist of paving, curb, striping and guardrail. The Phase One GMP is $1,776,102.00 as more particularly set forth in the GMP Phase 1 Exhibit A attached hereto and incorporated herein by reference. The GMP for all remaining items shall be determined at the conclusion of the bid process for all remaining items. The final GMP shall be set forth in a Final GMP Addendum to this Contract.

11. Payments. Payments on account of the Contract shall be made in accordance with Section 4 of the General Requirements.

12. Final Payment. Final payment will be made in accordance with Section 6, Part 4 of the General Requirements, provided that all other requirements of the Contract Documents shall have been met in full.

13. The Contract Documents. The Contract Documents include the executed Contract, the Construction Documents, and all Change Orders as defined in the General Requirements, which are attached hereto and made a part hereof as if stated herein verbatim. The Contract Documents specifically include the plans and specifications described as follows: New Lumpkin Co. Elementary School Site Package by Breaux & Associates Architects and Haines Gipson & Associated dated 04/01/2021 and Revised 07/09/2021 and including revised Guardrail location as requested by Lumpkin County.

14. Surety Bonds. The CM/GC shall furnish both a performance bond and a payment bond specified in the General Requirements and shall pay the premiums thereon as a Cost of the Work. The performance bond shall guarantee the full performance of the Contract and Contract Documents.

15. Full Performance. The Owner and the CM/GC hereby agree to the full performance of the Basic Services and the Work, including all the requirements, conditions and stipulations contained in the Contract Documents.

16. Applicable Law. This Contract and all rights, privileges and responsibilities shall be interpreted and construed according to the laws of the State of Georgia.

17. No Conflict Of Interest. The CM/GC covenants that it presently has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance required under this Contract. The CM/GC further covenants that, in the performance of this Contract, no person having any such interest shall be employed or contracted with.

18. No Assignment. This Contract and the proceeds of this Contract may not be assigned nor may the performance thereunder be assigned, without the prior written consent of the Owner.

19. No Waiver. The failure of the Owner at any time to require performance by the CM/GC of any provision hereof,

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shall in no way affect the right of the Owner thereafter to enforce any provision or any part of the Contract, nor shall the failure of the Owner to enforce any breach of any provision hereof to be taken or held to be a waiver of such provision, or as a waiver, modification or recession of the Contract itself.

20. Severability. If any term or provision of this Contract or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Contract, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Contract shall be valid and enforced to the fullest extent permitted by law.

21. Illegal Immigration Reform and Enforcement Act of 2011. Contractor certifies its compliance with Illegal Immigration Reform and Enforcement Act of 2011 and specifically those provisions codified at O.C.G.A. §13-10-90 *et. seq.* Contractor warrants that it has registered with and uses the federal work authorization program commonly known as "E-Verify." Contractor further agrees that it will contract for the physical performance of services in satisfaction of this contract only with subcontractors who present an affidavit as required by O.C.G.A. §13-10-91.

Contractor warrants that it will include a similar provision in all contracts entered into with subcontractors for the physical performance of services in satisfaction of this contract.

22. Full Agreement: The Contract Documents supersede all prior negotiations, discussion, statements, and agreements between Owner and CM/GC and constitute the full, complete, and entire agreement between Owner and CM/GC. There can be no changes to this Contract by oral means, nor by course of conduct of the parties, nor by custom of the trade. No changes to this Contract will be binding on either party hereto unless such change is properly authorized, in writing, in accordance with Section 3, Part 4 of the General Requirements.

IN WITNESS WHEREOF the parties hereto have executed this Contract the day and year first written above.

CM/GC:
By:

_____

_____
Printed Name: Tommy Wiley
Title: Vice President & Division Manager

Owner:

Lumpkin County Board of Commissioners
By:

_____
Chris Dockery, Chairman

_____
Attest: Melissa Z. Witcher, Clerk

Attachments:
1. General Requirements

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GENERAL REQUIREMENTS
OF THE CONSTRUCTION MANAGEMENT CONTRACT

SECTION 1 – GENERAL
PART 1 – GENERAL PROVISIONS

1.1.1 General Matters.

1.1.1.1 This Contract and Affiliated Agreements – Requirement for Written Agreements. Affiliated Agreements are any agreement required by this Contract or deemed necessary, efficient, or expedient by CM/GC, between the CM/GC and any party other than the Owner. All Affiliated Agreements, including any subsequent modifications, must be in writing, dated, and executed by the parties. Affiliated Agreements, including financial arrangements with respect to this Project, must be promptly and fully disclosed to the Owner upon their execution or modification.

1.1.1.2 Basic Statement of Owner Objectives. The Owner's basic objective is to construct the Project in accordance with the approved Construction Documents, but in no event in excess of the GMP (as set forth in Paragraph 10 of the Contract).

1.1.1.3 Project Team. To accomplish Owner's objectives, Owner intends to employ a team concept in connection with the development of Construction Documents and construction of the Project. The basic roles and general responsibilities of team members are set forth in general terms below but are more fully set forth in the Design Professional Contract with respect to the Design Professional and in this Contract with respect to the CM/GC.

1.1.1.3.1 Relationship of Parties. The Owner and the CM/GC agree to proceed with the Project on the basis of trust, good faith, and fair dealing, to cooperate fully with each other and shall do all things reasonably necessary to perform this Contract in an economical and timely manner, including without limitation, consideration of design modifications and alternative materials or equipment, if considered necessary or convenient by the Owner. The CM/GC agrees to procure or furnish, as permitted by the laws of Georgia, all preconstruction phase services and construction phase services as set forth herein. The Owner shall endeavor to promote harmony and cooperation among the Owner, Design Professional, CM/GC, and other persons or entities employed by the Owner for the Project.

1.1.1.3.2 Design Professional. The Design Professional is retained in accordance with the Design Professional Contract (i) for the design and preparation of Construction Documents that are necessary to implement the Program governing the construction of the Project or Components thereof, and the design and preparation of any necessary documents antecedent to preparation of such Construction Documents, or (ii) for contract administration of the Work under Contract Documents, or (iii) for both. The term "*Design Professional"* includes engineers, surveyors, designers and the other consultants retained by the Design Professional. The CM/GC acknowledges and agrees that the Contract Documents are addressed to skilled tradesmen in the construction profession who shall be required to use their special skills and experience, through submittals and shop drawings, to translate the Design Professional's design intent as expressed in the Contract Documents into a completed structure. The Contract Documents shall specify when shop drawings or submittals require the seal of a specialty consultant.

1.1.1.3.2.1 The basis of the Owner's engagement of the Design Professional is the "Design Professional Contract." The CM/GC acknowledges that both the Owner and the Design Professional have on file, at their respective places of business, copies of that executed agreement, and that both the Owner and the Design Professional will make available for review by CM/GC those copies at the CM/GC's request. The Design Professional is not the agent of the Owner, except to the extent so specified in writing, but is employed as a consultant to the Owner to assist the Owner in determining if the conditions of the Contract have been met.

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1.1.1.3.2.2 The CM/GC hereby represents that the CM/GC reviewed a copy of the Design Professional Contract prior to the commencement of preconstruction services and is familiar with the respective services, authorities, obligations, and responsibilities of the parties therein. CM/GC agrees to coordinate, assist, and develop a working relationship with the Design Professional to effect the purposes of the Project in accordance with the terms of this Contract and the Design Professional Contract.

1.1.1.3.2.3 The CM/GC also acknowledges that the Design Professional will consult with and assist the Owner in developing and implementing the Owner's objectives, including budgeting and time criteria, space requirements and relationships, flexibility and expandability requirements, special equipment and systems, and site requirements. Furthermore, the CM/GC acknowledges that the Owner and the Design Professional are proceeding with the Project on the basis of trust, good faith, and fair dealing, and they will take all actions reasonably necessary to ensure the Project proceeds to completion within the Owner's time and budgeting constraints. The CM/GC further acknowledges that in order for the Design Professional to perform its obligations under the Design Professional Contract, the Design Professional requires certain materials, information or other submissions as per the Contract Documents, from the CM/GC. The CM/GC agrees to provide the Design Professional with the submittals required by the Construction Documents. The CM/GC further agrees to cooperate with the Design Professional to ensure timely completion of all obligations under this Contract and the entire Project.

1.1.1.3.2.4 CM/GC agrees that the services provided by the Design Professional under the Design Professional Contract are intended to coordinate and complement, but not to diminish, alter or substitute for any of the services, authority, obligations, or responsibilities of the CM/GC under this Contract. CM/GC further agrees that the performance of services by the Design Professional in connection with the Project shall in no way relieve CM/GC from any of its services, authority, obligations, or responsibilities under this Contract, and shall not alter or diminish those services, authority, obligations, or responsibilities in any way whatsoever.

1.1.1.3.3 Owner's Representative. Owner shall from time to time in writing designate one person as Owner's Representative under this Contract.

1.1.1.3.4 CM/GC. The CM/GC shall participate in the review and development of the design of the Project and shall be responsible for the construction of the Project. Nothing herein shall be deemed to impose upon the CM/GC any responsibilities to provide any services constituting the practice of architecture, engineering, or any related design profession except as may be required to complete the design intent as expressed by performance specifications requiring the seal of a specialty consultant. CM/GC shall exercise the professional skill and judgment of a CM/GC in similar circumstances in Georgia in the performance of its construction management services.

1.1.1.3.5 Representatives. The designated representatives of the CM/GC and the Owner shall have full authority to act (other than for the receipt of notices that must be given as specified in Section 1.1.5) in matters relating to this Contract until notice is given that such authority has been revoked. CM/GC and the Owner may each rely upon the written certification of the other as to the appointment of a designated representative or the revocation of his authority. The CM/GC shall designate, in writing, a representative authorized to act on the CM/GC's behalf with respect to the Project. The CM/GC's initial authorized representative shall be the Project Manager identified in the CM/GC's proposal. CM/GC shall employ the Project Manager and necessary assistants who shall be in attendance at the Site and represent the CM/GC during the progress of the Work. All written communications given to the designated representatives of the CM/GC shall be binding upon the CM/GC.

1.1.1.3.6 Separate Contractor. Owner may select one or more Separate Contractors to perform work with respect to the Project or Components thereof. The CM/GC shall afford the Owner's Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities and shall coordinate the Separate Contractors' schedules with those of the CM/GC. The Owner's Separate Contractors shall adhere to the CM/GC's work rules, schedule, laydown areas, and safety requirements.

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1.1.2 Project Team, Cooperation, Partnering.

1.1.2.1 Concept. It is the Owner's expectation that the Design Professional, Owner, CM/GC, and any Separate Contractor, shall work as a Project Team to effect the commencement of and completion of construction in accordance with the Project Schedule, and to achieve scheduled Material Completion and Final Completion of the Project. Each team member shall communicate with all other team members to assure overall coordination, cooperation, and efficiency. Each team member shall cooperate fully with and coordinate fully with each other team member in order to achieve Project completion in an expeditious and economical manner. The CM/GC shall schedule regular meetings of the key principals of the Project Team in an effort to solve problems in a partnering atmosphere to facilitate the ability of each team member to meet its business objectives, so long as its business objectives are consistent with the successful completion of the Project. It is the Owner's intent that all consensus decisions of the Project Team, where differing from the Contract Documents, be expeditiously resolved and, if Owner agrees, an appropriate Change Order will be issued.

1.1.2.2 Conference. Promptly after the execution of this Contract, CM/GC shall confer with the Owner and the Design Professional to identify personnel and relevant organizational charts of each team member, and to establish working relationships with each team member.

1.1.2.3 Authority of CM/GC. CM/GC is, and at all times during the term of this Contract shall be, an independent CM/GC in the performance of its duties and obligations under this Contract. CM/GC shall have no authority to bind or otherwise obligate Owner, orally, in writing or by any acts, unless specifically authorized by Owner in writing. Nothing contained in this Contract shall constitute or be deemed or construed to create a partnership or joint venture, or any agency relationship, between Owner and CM/GC.

1.1.3 Constitutional Principles Applicable to Public Works Projects.

1.1.3.1 Title to Project Site**.** Title to the Site is vested in Lumpkin County, a political subdivision of the State of Georgia, as public property of the County, and is not subject to levy or lien.

1.1.3.2 Title to Improvements and Delivered Materials. Title to all improvements constructed at the Site vests *instanter* in Lumpkin County. Title to all materials vests in Lumpkin County upon their delivery without rejection by the CM/GC at the Site, regardless of the status of payment or nonpayment of the costs thereto. Protection of laborers and Suppliers (regarding payment for services and materials) is effected through the provision of payment and performance bonds.

1.1.3.3 Limited Waiver of Sovereign Immunity *Ex Contractu*. CM/GC acknowledges and agrees that Owner is a political subdivision of the State of Georgia, and as such is entitled to the protection of sovereign immunity. As set forth in Article I, Section II, Paragraph IX of the 1983 Georgia Constitution, sovereign immunity is waived "as to any action *ex contractu* for the breach of any written contract." CM/GC specifically acknowledges the constitutional and contractual requirements that written changes, modifications, and waivers to this Contract must be specifically executed by the Owner as set forth in the Contract Documents. Accordingly, CM/GC specifically acknowledges the constitutional prohibitions against claims against Owner based solely upon oral statement, course of conduct, customs of the trade, quasi-contract, *quantum meruit*, or O.C.G.A § 13-4-4 (mutual departure from contract terms).

1.1.3.4 Limitations upon Authority of Agents. CM/GC further acknowledges that Owner is a political subdivision of the State of Georgia, and as such acts through specific public officials. The legal concepts of agency applicable to the Owner are solely as set forth in O.C.G.A. §45-6-5 and as further specified in the Contract Documents. CM/GC specifically acknowledges the statutory and contractual requirements that written changes, modifications, and waivers to this contract must be executed only by the identified representatives of Owner as set forth in the Contract Documents. Accordingly, CM/GC specifically acknowledges that any claims against Owner based upon the act of any non-authorized employee or official are invalid.

1.1.3.5 U.C.C. Not Generally Applicable. CM/GC further acknowledges and agrees that Owner, as set forth in Section 1.1.3.3, has granted only a limited waiver of sovereign immunity, such that the provisions of the Uniform Commercial Code (O.C.G.A §11-1-101 through §11-2-725) governing sales of goods do not apply to this Contract. CM/GC specifically acknowledges the contractual requirements that written changes, modifications, and waivers to this contract must be specifically executed by the Owner as set

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forth in the Contract Documents. Accordingly, CM/GC specifically waives and covenants not to make against Owner any claims based upon the Uniform Commercial Code. CM/GC understands, however, that CM/GC's subcontracts with Suppliers and Subcontractors may in fact include sales of goods and therefore be properly governed by the Uniform Commercial Code; nonetheless CM/GC covenants that any such application shall in no way be construed to have any legal effect upon this contract between Owner and CM/GC.

1.1.4 Third Party Beneficiary. CM/GC acknowledges, stipulates, and agrees that the Owner is a political subdivision of the State of Georgia performing an essential public and governmental function by means of the Contract. There are no individual or personal third-party beneficiaries of this Contract.

1.1.5 Notice.

1.1.5.1 General Requirement. Any official notice, election, demand, consent, approval, change order, amendment, or other material communication required or permitted to be given under this Contract shall be in writing signed by an officer or duly authorized representative of the party making same and shall be delivered personally or shall be sent by certified mail, postage prepaid, return receipt requested, shall be effective as of the date on which it is received or would have been received but for the refusal of the addressee to accept delivery, and shall be addressed as shown in the Contract. The persons and addresses to which notices should be given may be changed by notice given in accordance with this Section.

1.1.5.2 Copies of Notices to Owner. Wherever the Contract Documents provide that a copy of any notice, request, or demand filed with the Design Professional by the CM/GC shall be furnished to the Owner, such notice, request, or demand shall not become effective until the Owner has received his copy. No notice in writing or given orally to the Design Professional is notice to the Owner unless copy of the aforesaid notice in writing shall have been properly served upon the Owner at the address shown in the Contract.

1.1.6 Liquidated Damages.

1.1.6.1 Time of the Essence. Time being of the essence of this Contract, and a material consideration thereof, it is mutually agreed by the parties hereto in case of the CM/GC's failure to complete the construction within the time specified, the Owner will be damaged thereby. The CM/GC shall commence performance of its activities under this Contract as of the Proceed Order Date(s). The CM/GC shall complete construction, except for Minor Items and Permitted Incomplete Work, not later than the Material Completion Date, as amended by Change Orders.

1.1.6.2 Liquidated Damages. Because it is difficult to definitely ascertain and prove the amount of said damages, inclusive of, but not limited to, expenses for inspection, superintendence, loss of use, and necessary traveling expenses, the Owner, and CM/GC hereby agree that the amount of such damages shall be the daily rate specified in the Contract, beginning upon the contractually required Material Completion Date and ending on the date that the Certificate of Material Completion is issued. The parties agree that the specified Liquidated Damages are not established as a penalty but are calculated and agreed upon in advance as a fair and equitable amount reasonably estimated in advance to cover losses to be incurred by the Owner for such delay or interruption in view of the uncertainty and impossibility of ascertaining actual damages that would be incurred.

1.1.6.2.1 CM/GC Agrees to Pay. The CM/GC agrees to pay the amount, computed by multiplying the Liquidated Damages set forth in the Contract by the number of days between the contractually required Material Completion Date and the date that the Certificate of Material Completion is issued.

1.1.6.2.2 Deducted as They Accrue. Liquidated Damages shall be deducted from Applications for Payment as they accrue and such deduction shall be in addition to the retainage provided for in the Contract. The remaining balance of any Liquidated Damages shall be deducted from the Payment for Material Completion to the CM/GC and its Surety. If the unpaid balance of the GMP is less than the total amount to be deducted for Liquidated Damages as herein above provided, the CM/GC shall promptly pay to the Owner, upon the Owner's demand, the amount by which such

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sum exceeds the unpaid balance of the GMP.

1.1.6.3 Limitation on Owner's Damages. Except as otherwise set forth in the Contract Documents, damages of the Owner for delay shall be limited to the Liquidated Damages as defined herein. Nothing in this Section 1.1.6 shall be construed to limit Owner's right to pursue damages or remedies for claims against the CM/GC for reasons other than delay.

1.1.7 Documents.

1.1.7.1 Order of Precedence of Contract Documents and Changes. The Contract Documents are to be taken as a whole and are intended to be complementary with one another. It is also intended that they include all items necessary for the proper execution and completion of the Work. If a conflict exists between or within the Contract Documents, or if they are inconsistent, the provisions of any Change Order added hereto after the date of this Contract shall control over any contrary terms contained in the Contract Documents existing at the time of this Contract. In the event of conflict amongst the Contract Documents, a Change Order shall control over any previous Change Orders.

The Design Professional has no authority to amend the Contract Documents, orally or in writing, either expressly or by implication.

1.1.7.2 Marked-Up ("As-Built") Documents. Prior to Material Completion, the CM/GC shall provide one complete set of Marked-Up Documents to the Design Professional. The Marked-Up Documents shall consist of the Contract Documents annotated and changed to reflect the as-built condition of the Project, including all Change Orders, field instructions, answers to RFI's, clarifications, sketches, delegated CM/GC design drawings (e.g., Performance Specifications requiring the seal of a Specialty Consultant) and locations of utilities and other hidden elements.

1.1.7.3 Copies to the Owner. Upon Owner's request, the CM/GC shall furnish the Owner with copies of Project related correspondence, letters of transmittal, etc.

1.1.8. Defined Terms. Wherever used in the Contract Documents, the terms defined in this Contract will have the meanings indicated that are applicable to both the singular and plural, and to the masculine and feminine thereof. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents may include references to identified Sections and paragraphs, and the titles of other documents or forms.

1.1.8.1 Meaning of Words and Phrases. Unless the context or the Contract Documents taken as a whole indicate to the contrary, words used in the Contract Documents that have usual and common meanings shall be given their usual and common meanings; words having technical or trade meanings shall be given their customary meaning in the subject business, trade, or profession. Materials or work described in words that, so applied, have a well-known technical or trade meaning shall be held to refer to such recognized meaning.

1.1.8.2 Cross-References, Headings, and Citations to the Contract. Cross-references, headings, and citations to the Contract, if any, are for the convenience of the CM/GC and the Owner and are not intended to be plenary or exhaustive nor are they to be considered in interpreting the Contract Documents or any part of the Contract Documents.

1.1.8.3 Install, Deliver, Furnish, Supply, Provide and Other Such Words. Install, deliver, furnish, supply, provide, and other such words mean that the Work in question shall be put in place by the CM/GC ready for use unless expressly provided to the contrary.

1.1.8.4 Sections Not Plenary. This Section and Section 1.1.9 are not entire, plenary, or exhaustive of all terms used in the Contract and General Conditions that require definition. There may be definitions of other terms under Sections to which the terms are related. Terms defined in the Design Professional Contract shall have the meanings set forth in those documents.

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1.1.9 Basic Definitions.

1.1.9.1 *Addenda*. Written or graphic instruments issued by the Design Professional that clarify, correct, or change any of the component parts of the Contract Documents.

1.1.9.2 *Affiliate*. With respect to CM/GC, any firm, partnership, corporation or other legal entity that is owned by, under common ownership or control with, or having a common principal or shareholder with, the CM/GC, whether such relationship is direct or indirect. In addition, unless the consequences of such relationship for the purposes of this Contract are expressly waived in writing by the Owner after full disclosure by the CM/GC, the term "Affiliate" also includes any entity currently affiliated with CM/GC as a partner or joint venturer with respect to any commercial venture, whether or not such venture includes the Project. *See* O.C.G.A. §13-10-23.

1.1.9.3 *Affiliated Contract*. Any agreement concerning the Project between the CM/GC and an Affiliate, including all modifications and amendments thereto.

1.1.9.4 *Application for Payment*. The form, as acceptable to Owner, that is to be used by the CM/GC during the course of the Work in requesting payment from the Owner and that is to be accompanied by such supporting documentation as is required by the Contract Documents.

1.1.9.5 *Asbestos*. Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.

1.1.9.6 *Basic Services.* The preconstruction, consultation, construction and related services required to be provided by the CM/GC for the construction and completion of the Project in accordance with the Contract Documents. Basic Services does not include the term "Work."

1.1.9.7 *Bulletin.* Written or graphic material issued after the award of the contract that clarifies, corrects, or proposes a change in any of the component parts of the Contract Documents.

1.1.9.8 *Business Day.* A business day is each calendar day other than Saturday, Sunday, and any holiday observed by Owner.

1.1.9.9 *Certificate of Material Completion.* The Notice from the Design Professional to the Owner certifying achievement of Material Completion of the Project.

1.1.9.10 *Change Order.* A document issued on or after the Effective Date of the Contract, signed by the CM/GC and the Owner, which authorizes a change or changes to the GMP, the Contract Time and/or the Contract Documents.

1.1.9.11 *Claim.* A demand or assertion by the Owner or the CM/GC seeking an adjustment of the GMP or Contract Time, or both, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and the CM/GC arising out of or relating to the Contract. The responsibility to substantiate a Claim shall rest with the party making the Claim. A demand for money or services by a third party, including a Trade Contractor, Supplier, or subcontractor to the CM/GC, is ipso facto not a Claim against the Owner.

1.1.9.12 Reserved

1.1.9.13 *Construction Documents.* The architectural and engineering documents setting forth the design for the Project prepared by the Design Professional. Construction Documents also include, but are not limited to, the Specifications, the Drawings, the General Requirements, and all Addenda.

1.1.9.14 *Construction Progress Schedule*. A schedule prepared by the CM/GC, indicating proposed activity sequences and durations, milestone dates for receipt and approval of pertinent information, preparation, submittal, and processing of Shop Drawings and Samples, delivery of materials or equipment requiring long-lead time procurement, and proposed date(s) of Material Completion, Occupancy and Final Completion.

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1.1.9.15 Contract. The written document that is the evidence of the construction agreement between the Owner and the CM/GC for the CM/GC to complete the Work.

1.1.9.16 Contract Documents. The Contract Documents include the executed Contract, the Construction Documents that have been incorporated into the Contract, and all Change Orders.

1.1.9.17 *Contract Time.* The period of time established for completion of the Project by the Contract Documents.

1.1.9.18 *CM/GC.* The person or entity responsible for the proper completion of the activities described in the Contract Documents and who executes the Contract.

1.1.9.19 *Cost of the Work.* The sum of all allowable costs necessarily incurred and paid by CM/GC in the proper performance of the Work.

1.1.9.20 Day. Unless otherwise stated, reference to the terms "day," "days," "month," or "months" mean calendar day, calendar days, calendar month, and calendar months, respectively.

1.1.9.21 *Defective Work.* Work that, for any reason, is not in compliance with the Contract Documents. Defective Work is usually identified in a Notice of Non-Compliant Work.

1.1.9.22 *Reserved.*

1.1.9.23 *Design Professional Contract.* The Contract between the Owner and the Design Professional for the design of the Project.

1.1.9.24 *Design Professional.* The architect or engineer or architectural or engineering firm selected by Owner (i) for the design and preparation of Contract Documents governing the construction of a Project, or (ii) for construction contract administration under the Contract Documents, or (iii) for both, all such services and the scope thereof to be set forth in the Design Professional Contract. The Design Professional is not an employee of the Owner but is engaged or retained by it for the purpose of performing design and construction administration services for the project. The term "Design Professional" includes architects, engineers, surveyors, designers, and other consultants retained by the Design Professional.

1.1.9.25 *Drawings*. That part of the Contract Documents prepared or approved by the Design Professional that graphically show the scope, extent, and character of the Work to be performed by CM/GC. Shop Drawings and other CM/GC submittals are not Drawings as so defined.

1.1.9.26 *Effective Date of the Contract*. The date indicated on the Contract or as otherwise specified therein.

1.1.9.27 *Final Certificate, Design Professional's Certificate of Final Completion*. The Certificate issued by the Design Professional stating that all work has been completed in accordance with the terms of the Contract Documents. *See* Section 6, Project Completion.

1.1.9.28 *Final Completion*. The full and final completion of all Work in accordance with the Contract Documents.

1.1.9.29 *Final Notice of Non-Compliant Work*. The Final Notice of Non-Compliant Work issued as a result of the Inspection for Material Completion, also known as the Final Punch List. Upon the completion or correction of this Non-Compliant Work ("punch list" work) the Design Professional will issue a Report of Interim Inspection (for punchlist completion).

1.1.9.30 *Guaranteed Maximum Price (GMP)*. The maximum amount that Owner is obligated to pay CM/GC for construction of the Project and includes all costs and fees to be paid to CM/GC in connection with the Work and the Project. The Guaranteed Maximum Price is inclusive of (i) the CM/GC's Estimated

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Cost of the Work, (ii) the Construction Contingency, (iii) the CM/GC's Fees for Construction services, and (iv) the CM/GC's Estimated Overhead costs for Construction services, (v) the sum of all approved Change Orders, and to achieve Material Completion of the Project by the Material Completion Date.

1.1.9.31 *Hazardous Substances*. *See* Section 1, Part 6.

1.1.9.32 *Material Completion*. *See* Section 6.

1.1.9.33 *Milestone*. A principal event specified in the Overall Project Schedule relating to an intermediate completion date or time. Milestone events will be project-specific, but generally may include, but are not limited to: construction start, site work, completion of clearing and grubbing, grading, foundation preparation, subsurface utilities, utility completion, structural top out, dry-in, rough-in completion, metal stud and drywall completion, equipment installation, systems operational, inspections for Material Completion, Material Completion Date, etc.

1.1.9.34 *Notice*. Written notice. *See* Section 1.1.5.

1.1.9.35 *Notice of Non-Compliant Work*. A Notice of Non-Compliant Work shall be in writing, shall be dated, shall be initiated and signed by the Design Professional, and shall be addressed to the CM/GC with a copy to the Owner, as set forth in Section 3, Part 6 (Correcting the Work) and Section 6, Part 5 (Correcting the Work after Material Completion).

1.1.9.36 *Owner*. The Board of Commissioners of Lumpkin County, Georgia, identified as such in this Contract with whom CM/GC has entered into the Contract and for whom the Work is to be completed.

1.1.9.37 *Owner's Representative*. Owner may from time to time in writing designate one individual as Owner's Representative under this Contract. Owner's Representative so designated in writing shall serve as Owner's Representative unless and until Owner gives notice in writing of the appointment of his successor. All requests for consents and approvals required of Owner in connection with the Project, whether by the Design Professional or CM/GC or Separate Contractor, shall be submitted to Owner's Representative. The CM/GC may rely upon written consents and approvals signed by the Owner's Representative, as the consent and approval of Owner.

1.1.9.38 *Overall Project Schedule or OPS*. The final detailed Construction Progress Schedule created by the CM/GC, that is recommended by the Design Professional, and is approved by the Owner.

1.1.9.39 *Proceed Order*. A Proceed Order is a written notice from the Owner that includes a specified date (i.e. the *Proceed Order Date*) upon which the CM/GC is authorized to commence Work. A Proceed Order is a condition precedent to the execution of any Work on the site by the CM/GC. The Proceed Order may also be referred to as a "Notice to Proceed."

1.1.9.40 *Project*. The total and complete undertaking for the Lumpkin County Aquatic Facility to be constructed under this Contract.

1.1.9.41 *Project Manual*. A bound manual prepared by the Design Professional. It includes the Specifications, the General Requirements, and Addenda.

1.1.9.42 *Reasonable Termination Expenses*. *See* Section 5, Part 3.

1.1.9.43 *Samples*. Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged. The CM/GC shall furnish for approval all samples required by the Contract Documents. The Work shall be in accordance with approved samples.

1.1.9.44 *Separate Contractor*. Any person or entity other than CM/GC that enters into an agreement with Owner to perform the construction of all or any portion of the construction on a Project.

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1.1.9.45 *Site*. Lands or areas indicated in the Contract Documents as being furnished by the Owner upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by the Owner that are designated for the use of the CM/GC. Also referred to as Project Site, Job Site and Premises.

1.1.9.46 *Specifications*. That part of the Contract Documents consisting of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable thereto. The term "Specifications" shall also include all written matter in the Project Manual or on the drawings and any Addenda or Change Orders thereto.

1.1.9.47 *Subcontractor*. The generic term Subcontractor as employed herein includes only those subordinate contractors having a direct contract with the CM/GC or with any Trade Contractor to the CM/GC performing work specified pursuant to this Contract.

1.1.9.48 *Submittals*. Shop Drawings, schedules, data, catalogue cuts, manufacturers' published recommendations, charts, bulletins, brochures, illustrations, circulars, roughing drawings or formulae, etc., that are specifically prepared, distributed, or assembled by or for CM/GC or by Subcontractors, manufacturers, or Suppliers and submitted by CM/GC to illustrate some portion of the Work or for use in installing the Work. The Contract Documents shall specify when shop drawings or submittals require the seal of a specialty consultant.

1.1.9.49 *Supplier*. A manufacturer, fabricator, distributor, supplier, or vendor of goods or equipment in connection with the Work, or any other party having a Contract or Purchase Order with the CM/GC or with a Subcontractor to furnish materials or equipment to be incorporated in the Work by the CM/GC or a Subcontractor.

1.1.9.50 *Trade Contractor*. A Subcontractor in a direct contractual relationship with the CM/GC, who furnishes and installs materials according to the plans and specifications of this Project but does not include one who merely furnishes materials.

1.1.9.51 *Underground Facilities*. All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including without limitation those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.

1.1.9.52 *Unit Price Work*. Work to be paid for on the basis of unit prices as defined and described in the Contract Documents. A percentage markup for overhead or profit shall be included in all unit prices.

1.1.9.53 *Work*. All labor, materials, and services necessary to produce the construction of the Project in accordance with the Contract Documents, including the entire construction or the various separately identifiable parts thereof. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all equipment, fixtures, and supplies into such construction, all as required by the Contract Documents.

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PART 2 – CM/GC'S GENERAL RESPONSIBILITIES AND DUTIES

1.2.1 General Responsibilities.

1.2.1.1 Representations of CM/GC.

1.2.1.1.1 Independent Contractor; Fiduciary Role. The CM/GC represents that it is an independent contractor, competent, knowledgeable, and familiar with the type of work contemplated by this Contract. The CM/GC agrees and understands that neither it nor any of its agents or employees may act in the name of the Owner except and unless specifically authorized in writing by the Owner to do so. The CM/GC further represents that it accepts a fiduciary role and responsibility with respect to the Owner and that it owes the Owner the duties of good faith, trust, confidence, and candor, and that it must exercise a high standard of care in managing money and property. The CM/GC will, to its best abilities, act in the best interests of the Owner and the timely completion of the Work. The CM/GC shall furnish design review, construction administration and management services and use the CM/GC's best efforts to construct the Project in an expeditious and economical manner consistent with the interests of the Owner.

1.2.1.1.2 Familiarity with Project. CM/GC represents that it has: (a) visited the Project Site(s), (b) taken such other steps as may be necessary to ascertain the nature and location of the Project work and the general and local conditions that affect the Project work or the cost thereof, (c) investigated the labor situation as regards to the Project, (d) examined the Property(ies), the obstacles that may be encountered and all other conditions having a bearing upon the performance of the Project work, the superintendence of the Project work, the time of completion and all other relevant matters, and (e) reported to Owner the results of all of the foregoing.

1.2.1.2 Responsibility to Coordinate. CM/GC acknowledges its responsibility to coordinate the Project work with that of Separate Contractors to be selected for the installation of other work within the Project, or in the proximity of the Project. CM/GC expressly agrees to schedule and, with the assistance of Owner, coordinate the Project work with such Separate Contractors in order to assist them and permit each phase of the Project to be completed on schedule.

1.2.1.3 Definition of Project Criteria. Owner shall be responsible for defining Project criteria as to expectations for program design, cost, and construction schedule. CM/GC shall be responsible for delivering all construction services necessary to complete improvements that satisfy the Project criteria promulgated by Owner. Additionally, CM/GC shall be responsible for providing timely feedback to Owner relating to Project design, budget, and schedule to allow Owner to make value-based judgments throughout the development and construction process.

1.2.1.4 Project Delivery. The CMGC shall commence the Basic Services within the time frame specified in the Proceed Order. CM/GC shall construct the Project in accordance with the Contract Documents, and shall diligently perform all the Work required by the Contract Documents or reasonably inferable from industry standards and code requirements. CM/GC shall deliver the Project completed in accordance with the Contract Documents, free from defects, and within the Contract Time.

1.2.1.5 CM/GC's Consultation concerning Replacement of Work. The CM/GC shall provide consultation concerning replacement of Work damaged by fire or other cause during construction, and furnish all Basic Services required in connection with the replacement of such Work. Such consultation will be considered an additional service and will be provided pursuant to a Change Order unless the fire or other damage was caused as a result of the negligence of the CM/GC or its subcontractors. If the cost of the replacement or repair of the damage is reimbursable under the terms of any insurance policy, the full amount of any such insurance recovery shall be applied to the Project for the benefit of the Owner.

1.2.2 General Duties. The CM/GC accepts the relationship of trust and confidence established between it and the Owner by this Contract. The CM/GC agrees to furnish all services that are necessary or appropriate

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to complete fully all required Basic Services as defined in the Contract Documents. The CM/GC also agrees to furnish efficient business administration and superintendence to complete fully all required Basic Services and Work.

1.2.2.1 Provision and Payment for Basic Services and the Work. Unless otherwise provided in the Contract Documents, the CM/GC shall provide and pay for all labor, materials, equipment, transportation, construction, resources, work, and services necessary or incidental to completing the Work for the Project in a proper and timely manner in accordance with the Contract Documents and applicable laws, whether temporary or permanent and whether or not incorporated or to be incorporated in the Project.

1.2.2.2 Supervision and Direction. CM/GC shall supervise and direct the Work using diligent skill and attention. CM/GC shall be responsible for and shall coordinate all construction means, methods, techniques, sequences, and procedures.

1.2.2.3 Enforce Discipline. CM/GC shall at all times enforce strict discipline and good order among its employees, Subcontractors, and others performing the Work, and shall not employ or permit the employment of unfit persons or persons not skilled in the task assigned to them. CM/GC shall at all times enforce strict rules of employee behavior prohibiting the use of vulgar, demeaning or harassing statements or gestures toward Owner's staff.

1.2.2.4 Maintain Records. CM/GC shall keep Owner informed of the progress of the Work. CM/GC shall maintain records of the cost for the Work pursuant to and in compliance with GASB 34 accounting requirements and such other methods as Owner may require, including complete backup documentation for all pay applications.

1.2.2.5 Answer Questions. CM/GC, with reasonable promptness and in accordance with time limits set by Owner, shall answer Owner's questions and provide Owner with requested Project information.

1.2.2.6 Acts and Omissions. Employees of or Subcontractors to the CM/GC shall perform the Work required by this Contract. The CM/GC is responsible to the Owner for acts and omissions of the CM/GC's employees, Subcontractors and their agents and employees, and other persons.

1.2.3 General Consultation Services. As a part of Basic Services, CM/GC shall provide the following consultation services to Owner:

1.2.3.1 Construction Progress Meetings. CM/GC shall schedule and conduct meetings with the Owner, Design Professional, Separate Contractors, and appropriate Subcontractors, not less than biweekly, for the purpose of discussing the status and progress of the Work. Such meetings shall be held as often as Owner determines.

1.2.3.2 Advice Concerning Revisions. Advise the Owner and Design Professional regarding revisions in connection with Site use and improvements, selection of materials, building systems and equipment, construction feasibility, availability of materials and labor, time requirements for installation and construction, other factors related to costs (including costs of alternative designs or materials, preliminary budgets and possible economies), and scheduling of design and construction services and perform and provide life-cycle costs and value engineering analyses and other studies for such purposes.

1.2.3.3 Advice and Assistance with Utilities. CM/GC shall advise and assist the Owner with the preparation of all applications for water, sewer, electrical, gas, telephone, and other utility services necessary for the completion and operation of the Project.

1.2.3.4 Advice on Market Conditions. The CM/GC shall consult with the Owner and Design Professional and provide advice as to construction market conditions and scheduling factors.

1.2.3.5 Tests, Studies, etc. The CM/GC shall notify the Design Professional and the Owner of any tests, analyses, studies, or reports that may be required.

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1.2.3.6 Easements, etc. If the CM/GC knows or learns of the need to obtain easements, or legal authorizations regarding site utilization, the CM/GC shall promptly notify the Owner where essential to the execution of the Owner's program.

1.2.4 Other Actions. CM/GC shall perform all other actions required in the supervision of the Work and the completion of the construction of the Project. Owner and CM/GC acknowledge that the Contract Documents supersede all prior negotiations, discussion, statements, and agreements between Owner and CM/GC and constitute the full, complete, and entire agreement between Owner and CM/GC.

1.2.5 Duty to Give Notice to Owner. If the Owner, the Design Professional, or any other person with whom the Owner or Design Professional respectively has a direct contractual relationship shall, in the judgment of the CM/GC, acts or fails to act in such a manner as to (i) delay the progress of the construction of the Project or (ii) increase the cost of the Project, CM/GC shall give prompt notice to Owner so as to permit Owner to take corrective action.

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PART 3 – OWNER'S RESPONSIBILITIES AND RIGHTS

1.3.1 Owner's Representative.

1.3.1.1 Written Designation. The Owner shall designate, in writing, a representative authorized to act on the Owner's behalf with respect to the Project and reserves the right to designate additional or replacement representatives by written notice to the CM/GC.

1.3.1.2 Accessibility. The Owner's Representative shall be readily accessible (either on site or by computer, phone or fax or otherwise) shall be fully acquainted with the Project, and shall have authority promptly to render decisions, approve Construction Documents, Budgets, Schedules and Change Orders and to furnish information required of or to be provided by the Owner hereunder.

1.3.1.3 Independent Review and Inspection. The Owner may obtain independent review of the Contract Documents by a separate architect, engineer, contractor, or cost estimator under contract to or employed by the Owner. Such independent review shall be undertaken at the Owner's expense in a timely manner and shall not delay the orderly progress of the Work. The Owner may undertake independent inspection of the installation of the construction.

1.3.2 Design Professional.

1.3.2.1 Design Professional to Design Work. The Design Professional Contract requires the Design Professional to design and to prepare the Contract Documents, a copy of which shall be furnished to the CM/GC upon request.

1.3.2.2 Reserved

1.3.2.3 Contract Administration. The Design Professional shall provide periodic review of the Work to assess compliance with the Contract Documents. The Design Professional shall not review any Work in respect to safety. The Design Professional is not the agent of the Owner, but is engaged as a consultant to the Owner to assist the Owner in determining if the conditions of the contract have been met. He is the agent of the Owner only when in special instances he is authorized in writing by the Owner so to act, and in such instances he shall, upon request, show the Contract written authority. He has authority to stop the Work whenever such stoppage may be necessary to enforce the proper execution of the Contract.

1.3.2.4 Impartial Decisions. The Design Professional is the interpreter of the conditions of the CM/GC Contract and the judge of its performance, in the first instance. The Design Professional shall side neither with the Owner nor with the CM/GC, but shall use its powers to enforce performance by both.

1.3.2.5 Design Professional Decisions. Design Professional's decisions must be in writing and signed by the Design Professional of Record.

1.3.2.5.1 Promptness. The Design Professional shall make decisions within fourteen calendar days after proper presentation of evidence on (1) any issue, claim, or dispute of the CM/GC, or (2) a demand of the Owner or CM/GC for a decision on any matter relating to the execution or progress of the Work.

1.3.2.5.2 Additional Time. If because of events beyond the Design Professional's reasonable control, it is not able to meet the specified time period, then it should be entitled to ask the Owner for additional time, which request shall not be unreasonably denied.

1.3.2.5.3 Protests of Design Professional's Decisions. All decisions of the Design Professional on any claim, dispute, or demand shall be final and binding on the Contract in the absence of written notice of protest from the CM/GC received by the Owner within fourteen calendar days of the date the decision of the Design Professional is received by the CM/GC. *See* Section 5 Part 2.

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1.3.2.6 Succession. In case of the termination of the employment of the Design Professional, the Owner shall appoint a capable and reputable Design Professional against whom the CM/GC makes no reasonable objection and whose status under the Contract shall be that of the former Design Professional.

1.3.3 Permits, Licenses, and Inspections. The Owner shall cooperate with the CM/GC as the CM/GC secures building and other permits, licenses and inspections.

1.3.4 Testing. The Owner shall provide and pay for initial and subsequent independent construction testing if required by the Contract Documents. Laboratories for testing services shall be pre-qualified by the Owner (where applicable), selected by, engaged by, and responsible to the Design Professional and the Owner. In the case of tests (a) prescribed in the Contract Documents or any part thereof, or (b) requested by the Owner or Design Professional, the CM/GC must give notice to the selected testing agency stating the date and the hour when he will be ready for the test to be made. In the event the test fails or the CM/GC is not ready for the test, the expense of the services of the testing laboratory shall be deducted from the GMP, upon notice to the CM/GC by the Owner accompanied by a copy of the invoice for the testing services for the test that failed or for which the CM/GC was not ready. The notice and readiness provisions of this Section do not apply to verification of design mix on concrete.

1.3.5 Owner's Independent Consultants. In the event the Owner, it its sole discretion, shall either itself perform or retain one or more independent consultants to provide peer review, expert opinion, or other analysis of design, the Construction Documents, or construction as performed in the field, the CM/GC agrees that any such review or analysis shall not constitute any admission concerning the adequacy, fitness, or completeness of the design, the Construction Documents, or the adequacy or compliance of the construction to the specifications. Such consultant reports are expert opinion rendered solely to the Owner and shall not be used in connection with any claim or legal action arising out of or related to the Project without the express written consent of the Owner, unless required by the provisions of the Civil Practice Act governing the designation and use of expert witnesses.

1.3.6 Owner's Right to Perform Work. The Owner reserves the right to perform construction or operations related to the Project with Separate Contractors on the Site. If the CM/GC claims that delay or additional cost is because of such action by the Owner, the CM/GC shall assert such claims as provided in Section 5, Part 2 of the General Requirements.

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PART 4 – PROTECTION OF PERSONS AND PROPERTY

1.4.1 Reasonable Precautions. The CM/GC shall take reasonable precautions for the safety of, and shall provide reasonable protection to prevent damage, injury or loss to: (a) employees performing the Work and other persons, including without limitation the General Public, who may be affected thereby; (b) the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site, under care, custody, or control of the CM/GC or the CM/GC's Subcontractors; or (c) other property at or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation, replacement or other rearrangement in the course of construction.

1.4.2 Duty to Protect Property. The CM/GC shall continuously maintain adequate protection of the Work from damage and shall protect all other property on the Site from damage, injury, or loss regardless of who may be the owner of said property. He shall make good any such damage, injury, or loss.

1.4.3 Safety Precautions. The CM/GC shall comply with the rules and regulations of OSHA and the Department of Labor (O.C.G.A. Section §34-2-6), and, where not inconsistent with the foregoing, the "Manual of Accident Prevention in Construction" issued by the Associated General CM/GCs of America, Inc., for safety and prevention of accidents, and shall maintain an accurate record of all cases of death, occupational disease, and injury requiring medical attention or causing loss of time from work arising out of and in the course of employment on work under the Contract. The CM/GC alone shall be responsible for the safety, efficiency, and adequacy of his plant, appliances, and methods, and for any damage that may result from their improper construction, maintenance, or operations. He shall erect and properly maintain at all times, as required by the conditions and progress of the Work, proper safeguards for the protection of workers and the public and shall post danger warnings against any hazards created by the construction operations. The CM/GC shall designate a responsible member of his organization, normally the superintendent, whose duty shall be the prevention of accidents.

1.4.4 Emergencies. In an emergency affecting the safety of persons or property or the Work or of adjoining property, the CM/GC shall take reasonable precautions to prevent imminent damage, injury, or loss.

1.4.5 Fire Protection. CM/GC shall take adequate and reasonable precautions to protect the Work against damage by fire and smoke. For example, without limitation, CM/GC shall do the following:

(a) Provide fire extinguishers or fire hoses in readily accessible locations;
(b) Periodically inspect fire extinguishers, remove discharged extinguishers immediately, and replace with new or recharged extinguishers;
(c) Keep fire extinguishers or fire hoses within five (5) feet of any welding or open flame operations;
(d) Remove oil-soaked and paint-soaked materials, including paper and rags, from the Site daily, and more frequently as necessary, to eliminate danger of fire.
(e) Prohibit workers from smoking during operations involving combustible adhesives, solvents, mastics, or other fire hazard materials.

1.4.6 Remedy Damages. The CM/GC shall promptly remedy damages and loss to property at the Site caused by the CM/GC, by any Subcontractor, by anyone directly or indirectly employed by the CM/GC or any such Subcontractor, or by anyone for whose acts the CM/GC or any such Subcontractor may be liable. Should the CM/GC cause damage to any Separate Contractor's work, the CM/GC agrees, upon due notice, to settle with the Separate Contractor.

1.4.7 Written Programs. CM/GC shall have in place the plans proscribed in Section 2.1.2, as well as appoint a designated (qualified) coordinator as the point of contact during the Project. Such plans shall be on the Site and the superintendent and the project management team shall be familiar with and utilize such programs.

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PART 5 – BONDS, INDEMNITY AND INSURANCE

1.5.1 Bonds

1.5.1.1 Performance Bond and Payment Bond. The CM/GC shall furnish both a performance bond and a payment bond in a form acceptable to the Owner.

1.5.1.2 Required Qualifications for Surety. The Contract provides that the surety and insurance companies must be acceptable to the Owner. Only those sureties listed in the Department of Treasury's Listing of Approved Sureties (Department Circular 570) are acceptable to the Owner. All bonds at the time of issuance must be issued by a company authorized by the Insurance Commissioner to transact the business of suretyship in the State of Georgia, and shall have a Best Policyholders Rating of "A-" or better and with a financial size rating of Class V or larger.

1.5.1.3 Penal Amount of Bonds, State Law. The CM/GC acknowledges and agrees that, pursuant to O.C.G.A.
§§13-10-2, 13-10-20, 13-10-40 and 13-10-60, the performance bond and the payment bond must be in a penal amount equal to at least 100% of the sum of the GMP. Accordingly, the CM/GC warrants and agrees that, for any subsequent Change Order increasing the GMP by five percent or more or when the total Cost of the Work has increased by five percent or more, it shall obtain a written amendment to the payment bond and the performance bond increasing the penal amounts of both bonds to 100% of the GMP, effective as of the date of the Change Order. The premium increase, if any, may be properly included in the cost of the Change Order.

1.5.2 Liability and Indemnification.

1.5.2.1 General Liability. The CM/GC shall be responsible to the Owner from the time of the signing of the agreement or the beginning of the first work, whichever shall be earlier, for all injury or damage of any kind resulting from any negligent act or omission or breach, failure or other default regarding the Work by the CM/GC, or any of its Subcontractors, its agents, employees or others working at the direction of the CM/GC or on its behalf, regardless of who may be the owner of the property.

1.5.2.2 Indemnification Agreement. CM/GC hereby agrees to indemnify and hold harmless the Owner and its departments, agencies and instrumentalities and all of their respective officers, members, employees and directors (hereinafter collectively referred to as the "Indemnitees") from and against any and all claims, demands, liabilities, losses, costs or expenses, including attorneys' fees, due to liability to a third party or parties, for any loss due to bodily injury (including death), personal injury, and property damage arising out of or resulting from the performance of this Contract or any act or omission on the part of the CM/GC, its agents, employees or others working at the direction of CM/GC or on its behalf, or due to any breach of this Contract by the CM/GC, or due to the application or violation of any pertinent Federal, State or local law, rule or regulation. This indemnification extends to the successors and assigns of the CM/GC. This indemnification obligation survives the termination of the Contract and the dissolution or, to the extent allowed by law, the bankruptcy of the CM/GC.

1.5.2.2.1 This indemnification does not extend beyond the scope of this Contract and the work undertaken thereunder. Nor does this indemnification extend to claims for losses or injuries or damages incurred due to the negligence, in whole or in part, of the Indemnitees.

1.5.2.2.2 This indemnification does not extend to claims for loses or injuries or damages incurred by the Indemnitees due to any act, error, or omission of a design professional in the performance of professional services that fails to meet the applicable professional standard of care, skill and ability as employed by others in their profession.

1.5.2.3 Suits or Claims for Infringement. The CM/GC shall indemnify and hold the Owner harmless from any suits or claims of infringement of any patent rights or copyrights arising out of any patented or copyrighted materials, methods, or systems used by the CM/GC.

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1.5.3 Insurance Requirements.

1.5.3.1 Insurance Certificates and Required Endorsements.

1.5.3.1.1 Insurance Certificates. The CM/GC shall procure the insurance coverages identified below at the CM/GC's expense (i.e. within GMP). The CM/GC shall furnish the Owner an insurance certificate and endorsements listing the Owner as the certificate holder and as an additional insured. One original certificate of insurance with all endorsements attached must be deposited with Owner for each insurance policy required. The Certificate of Insurance shall be on a form that has been approved by the Georgia Insurance Commissioner and shall provide the following information:

(a) Name and address of authorized agent
(b) Name and address of insured
(c) Name of insurance company(ies)
(d) Description of policies
(e) Policy Number(s)
(f) Policy Period(s)
(g) Limits of liability
(h) Name and address of Owner as certificate holder
(i) Project Name and Number
(j) Signature of authorized agent
(k) Telephone number of authorized agent
(l) Mandatory thirty-day notice of cancellation or non-renewal (except ten days for non-payment of premium).

1.5.3.2 Insurer Qualifications, Insurance Requirements. Each of the insurance coverages required below (i) shall be issued by a company licensed by the Insurance Commissioner to transact the business of insurance in the State of Georgia for the applicable line of insurance, and (ii) shall be an insurer (or, for qualified self-insureds or group self- insureds, a specific excess insurer providing statutory limits) with a Best Policyholders Rating of "A" or better and with a financial size rating of Class V or larger. Each such policy or endorsement shall contain the following provisions:

1.5.3.2.1 The insurance company agrees that the policy shall not be canceled, changed, allowed to lapse or allowed to expire until thirty days after the Owner has received written notice thereof, as evidenced by return receipt of certified mail, or until such time as other insurance coverage providing protection equal to protection called for in this Contract shall have been received, accepted and acknowledged by the Owner. Such notice shall be valid only as to the Project as shall have been designed by Project Number and Name in said notice.

1.5.3.2.2 The policy shall not be subject to invalidation as to any insured by reason of any act or omission of another insured or any of its officers, employees, agents or other representatives ("Separation of Insureds").

1.5.3.2.3 Each Insurer is hereby notified that the statutory requirement that the Attorney General of Georgia shall represent and defend the Indemnities remains in full force and effect and is not waived by issuance of any policy of insurance. In the event of litigation, any settlement on behalf of the indemnities must be expressly approved by the Attorney General. The CM/GC and its insurance carrier may retain, but are not obligated to retain, counsel to assist with the defense of the Indemnities, in which case there will be mutual cooperation between the Attorney General and such counsel. *See* O.C.G.A. § 45-15-12.

1.5.3.2.4 All deductibles shall be paid for by the CM/GC.

1.5.3.3 Required Insurance Coverages. The CM/GC also agrees to purchase insurance and have the authorized agent state on the insurance certificate that the CM/GC has purchased the following types of insurance coverages. The minimum required coverages and liability limits are as follows:

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1.5.3.3.1 Workers' Compensation Insurance. The CM/GC agrees to provide at a minimum Workers' Compensation coverage in accordance with the statutory limits as established by the General Assembly of the State of Georgia. A group insurer must submit a certificate of authority from the Insurance Commissioner approving the group insurance plan. A self-insurer must submit a certificate from the Georgia Board of Workers' Compensation stating the CM/GC qualifies to pay its own workers' compensation claims. The CM/GC shall require all Subcontractors performing work under this Contract to obtain an insurance certificate showing proof of Workers' Compensation Coverage and shall submit as new Subcontractors are engaged a certificate on the letterhead of the CM/GC in the following language:

"This is to certify that all subcontractors performing work on this Project are covered by their own workers' compensation insurance or are covered by the CM/GC's workers' compensation insurance."

1.5.3.3.2 Employers' Liability Insurance. The CM/GC shall also maintain Employer's Liability Insurance Coverage with limits of at least:

(i) Bodily Injury by Accident - $1,000,000 each accident; and
(ii) Bodily Injury by Disease - $1,000,000 each employee.

The CM/GC shall require all Subcontractors performing work under this Contract to obtain an insurance certificate showing proof of Employers Liability Insurance Coverage and shall as new Subcontractors are engaged a certificate on the letterhead of the CM/GC in the following language:

"This is to certify that all subcontractors performing work on this Project are covered by their own Employers Liability Insurance Coverage or are covered by the CM/GC's Employers Liability Insurance Coverage."

1.5.3.3.3 Commercial General Liability Insurance. The CM/GC shall provide Commercial General Liability Insurance (2004 ISO Occurrence Form or equivalent) that shall include, but need not be limited to, coverage for bodily injury and property damage arising from premises and operations liability, products and completed operations liability, blasting and explosion, collapse of structures, underground damage, personal injury liability and contractual liability. The CGL policy must include separate aggregate limits per Project and shall provide at a minimum the following limits:

	Coverage	*Limit*
1.	Premises and Operations	$ 1,000,000.00 per Occurrence
2.	Products and Completed Operations	$ 1,000,000.00 per Occurrence
3.	Personal Injury	$ 1,000,000.00 per Occurrence
4.	Contractual	$ 1,000,000.00 per Occurrence
5.	General Aggregate	$ 2,000,000.00 per Project

Additional Requirements for Commercial General Liability Insurance are shown below at Section 1.5.3.3.6.

1.5.3.3.4 Commercial Business Automobile Liability Insurance. The CM/GC shall provide Commercial Business Automobile Liability Insurance that shall include coverage for bodily injury and property damage arising from the operation of any owned, non-owned, or hired automobile. The Commercial Business Automobile Liability Insurance Policy shall provide not less than $1,000,000 Combined Single Limits for each occurrence. Additional Requirements for Commercial Business Automobile Liability Insurance are shown below at Section 1.5.3.3.6.

1.5.3.3.5 Commercial Umbrella Liability Insurance. The CM/GC shall provide a Commercial Umbrella Liability Insurance to provide excess coverage above the Commercial General Liability, Commercial Business Automobile Liability and the Workers' Compensation and Employers' Liability to satisfy the minimum limits set forth herein. The umbrella coverage shall follow form with the Umbrella limits required as follows:

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For Contract Sums Less Than $5,000,000.00:	*For Contract Sums Equal to or Greater than $5,000,000:*
$ 2,000,000 per Occurrence	$2,000,000 per Occurrence
$ 4,000,000 Aggregate	$10,000,000 Aggregate

Additional Requirements for Commercial Umbrella Liability Insurance are shown below at Section 1.5.3.3.6.

1.5.3.3.6 Additional Requirements for Commercial Policies in Sections 1.5.3.3.3 through 1.5.3.3.5

(i) The CM/GC shall cause its insurer to issue an additional insured Endorsement naming the officers, members and employees of the Owner as additional insureds.

(ii) The policy must be on an "occurrence" basis.

1.5.3.3.7 Builders Risk Insurance. CM/GC shall provide a Builder's Risk Policy to be made payable to the Owner and CM/GC, as their interests may appear. The policy amount should be equal to 100% of the GMP, written on a Builder's Risk "All Risk", or its equivalent. The policy shall be endorsed as follows:

The following may occur without diminishing, changing, altering or otherwise affecting the coverage and protection afforded the insured under this policy:

(i) Furniture and equipment may be delivered to the insured premises and installed in place ready for use; and
(ii) Partial or complete occupancy by Owner; and
(iii) Performance of work in connection with construction operations insured by the Owner, by agents or lessees or other CM/GCs of the Owner.

1.5.3.4 Termination of Obligation to Insure. Unless otherwise expressly provided to the contrary, the obligation to insure as provided herein shall not terminate until the Design Professional shall have executed the Certificate of Material Completion.

1.5.3.5 Failure of Insurers. The CM/GC is responsible for any delay resulting from the failure of his insurance carriers to furnish proof of proper coverage in the prescribed form.

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Part 6 - Hazardous Conditions and Materials

1.6.1 Hazardous Materials.

1.6.1.1 Definition.

1.6.1.1.1 The term "Hazardous Materials" shall mean any material or substance within the meaning and definition for "Hazardous Substance" and/or "Hazardous Waste" as those terms are employed and set forth in the Georgia Hazardous Site Response Act and the Comprehensive Environmental Response Compensation and Liability Act as amended, 42 USC § 6901 et seq., and regulations promulgated thereunder (collectively "CERCLA") and any corresponding state or local law or regulation, and shall also include: (a) any Pollutant or Contaminant as those terms are defined in CERCLA; (b) any Solid Waste or Hazardous Constituent as those terms are defined by, or are otherwise identified by, the Resource Conservation and Recovery Act as amended, 42 USC § 6901 et seq., and regulations promulgated thereunder (collectively "RCRA") and any corresponding state or local law or regulation; (c) crude oil, petroleum and fractions of distillates thereof and petroleum releases; (d) any other material, substance or chemical defined, characterized or regulated as toxic or hazardous under any applicable law, regulation, ordinance, directive or ruling, including, but not limited to, asbestos or polychlorinated biphenyl (PCB),and, (e) any infectious or medical waste or environmental contamination as defined by any applicable federal or state laws or regulations.

1.6.1.1.2 The term "Hazardous Materials" does not include those materials that are expressly and specifically required to be installed under the Contract Documents.

1.6.1.1.3 The term "Hazardous Materials" does not include products or materials that are commonly used in construction or industrial practice so long as they are used in accordance with the manufacturer's instructions or Material Safety Data Sheets issued for the product or materials.

1.6.1.2 Obligation to Notify Owner of Existing Hazardous Materials. In addition to applicable regulatory and emergency response agencies as applicable, the CM/GC shall immediately notify the Owner and the Design Professional, both orally and in writing, of the presence and location of any physical evidence of, or information regarding the presence of Hazardous Materials at the Project Site that were not anticipated or contemplated under the scope of work (i.e. "unanticipated Hazardous Materials"). If the CM/GC encounters unanticipated Hazardous Materials on the Project Site the CM/GC shall (i) immediately stop performance of Work or that portion of the Work affected by or affecting such unanticipated Hazardous Materials; (ii) secure the contaminated area against intrusion; (iii) not disturb or remove the unanticipated Hazardous Materials; (iv) not proceed, or allow any subcontractor or supplier to proceed, with any Work or other activities in the area affected by such unanticipated Hazardous Materials until such materials have been properly remediated and until directed in writing to do so by the Owner; and, (v) take any other steps necessary to protect life and health and the surrounding environment. The CM/GC shall be entitled to adjustment of the Contract Time and the GMP pursuant to the General Requirements in order to compensate for the impact of any required demolition, re-work, shutdown, delay, protection of work, disruption, and start-up resulting from the encountering of such unanticipated Hazardous Materials on the Project site for which the CM/GC is not responsible.

1.6.1.3 Prohibition Against Selecting and Installing Products Containing Hazardous Materials. The CM/GC shall not select, install or otherwise incorporate any products or materials containing Hazardous Materials within the boundaries of the Project Site unless the products and materials are specifically required in the Contract Documents. Should the CM/GC or his subcontractors or material suppliers have knowledge that, or believe that, an item, component, material, substance, or accessory within a product or assembly selected by the CM/GC may contain Hazardous Materials, not in accordance with the definition set forth 1.6.1.1 above, it is the CM/GC's responsibility to secure a written certification from the manufacturer of any suspected material which identifies the specific Hazardous Material(s) contained, together with the Material Safety Data Sheets (MSDS) for such materials. A copy of the written certification shall be submitted to the Owner and Design Professional.

1.6.1.4 Fill, Backfill and Landscaping. No soil found on site, or transported to the site from remote locations, which contains debris or waste or Hazardous Materials shall be used for fill, backfill or landscaping topsoil.

1.6.2 Responsibility and Warranty of Trade Contractors, Trade Suppliers, and Subcontractors. Products that are specified by reference standards or in descriptive manner without a manufacturer's name, model number or trade name, to be selected by the CM/GC, shall not contain Hazardous Materials in any form, except as and to the extent permitted in 1.6.1, above, and 1.6.3, below. The CM/GC shall require that each of his subcontractors and material suppliers warrants to the Owner and Design Professional that all materials, products and assemblies, other than those which specifically and

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expressly required by the Contract Documents, incorporated, or submitted for incorporation into this Project, are free of Hazardous Materials. This warranty shall also include all materials, components, and accessories not specifically enumerated or detailed in the Contract Documents but which are required by performance specifications or recommended by manufacturers for complete installation of materials, products and assemblies.

1.6.3 Hazardous Materials and Substances Used On the Job Site. Products containing Hazardous Materials may be employed in the performance of work by the CM/GC and its subcontractors, as allowed by Section 1.6.1.1.3 above, as a means and methods application or as part of its performance of the Work, such as chemicals used on the job site, but only provided that: (i) such products are used In accordance with the manufacturer's instructions and Material Safety Data Sheets; (ii) such products are rendered harmless upon completion of the affected Work; (iii) reasonable precautions can be and are taken to prevent foreseeable bodily injury or death to persons involved in the Work or in its proximity, including the ultimate users of the completed Work; (iv) the CM/GC shall make available to the Owner and the Design Professional copies of Material Safety Data Sheets (MSDS) for any such products used on the job site, and (v), the CM/GC shall immediately notify Owner, Design Professional and appropriate regulatory agencies if there is a spill or release or misuse of any such product used on the job site that exceeds State or Federal reportable limits.

1.6.4 Hazardous Conditions. The CM/GC and Owner acknowledge that previously unknown hazardous conditions may be uncovered at any job site, and in particular where existing structures are being demolished and/or remodeled to accommodate new construction or to reutilize existing facilities. Should a hazardous condition not involving Hazardous Materials as set forth above be encountered on the project site, and should reasonable safety precautions be deemed by the CM/GC in good faith to be inadequate to prevent foreseeable personal injury to persons encountering the hazardous condition, the CM/GC shall, upon recognizing the hazardous condition, stop Work in the affected area and immediately report the hazardous condition to the Design Professional and Owner in writing. The Owner shall undertake, or shall contract (by Change Order) with the CM/GC or contract with a Separate Contractor, to resolve the condition. So long as the hazardous condition did not result from activities or substances brought on the site by the CM/GC, the CM/GC is entitled to adjustments in the Contract Time and the GMP as set forth in Section 1.6.1.2 above.

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PART 7 – MISCELLANEOUS PROVISIONS.

1.7.1 Legal Compliance.

1.7.1.1 General. This Contract shall be governed by the laws of Georgia. The CM/GC shall comply with all laws, rules, regulations, ordinances, and orders of any government agency having jurisdiction in the performance of the work and shall ensure the compliance of its Subcontractors.

1.7.1.2 Specific Laws. Without limiting the generality of the foregoing Paragraph, the following laws are specifically referenced:

1.7.1.2.1	The Drug-Free Workplace Act, O.C.G.A. *§* 50-24-1, *et seq.*
1.7.1.2.2	Standards and Requirements for Construction, Alterations, etc., O.C.G.A. *§* 8-2-1 *et seq.*
1.7.1.2.3	Control of Soil Erosion and Sedimentation, O.C.G.A. *§* 12-7.1, *et seq.*
1.7.1.2.4	Regulation of Fire and other Hazards, O.C.G.A. *§* 25-2-1 *et seq.*
1.7.1.2.5	Regulation of Blasting Operations, O.C.G.A. *§§* 25-2-1 *et seq.* and 25-9-1 *et seq.*
1.7.1.2.6	Providing Safe Workplace, O.C.G.A. *§§* 34-2-10 and 34-7-20
1.7.1.2.7	Georgia Facility Protection Act, O.C.G.A. *§* 25-9-1 *et seq.*
1.7.1.2.8	High Voltage Safety Act, O.C.G.A. *§* 46-3-30 *et seq.*
1.7.1.2.9	Access and Use by Physically Handicapped Persons, O.C.G.A. *§* 30-3-1 *et seq.*
1.7.1.2.10	Title VII of the Civil Rights Act, 42 U.S.C. *§§* 2000a through 2000h-6
1.7.1.2.11	Age Discrimination in Employment Act, 29 U.S.C. *§* 621 *et seq.*; 42 U.S.C. *§* 6101 *et seq.*
1.7.1.2.12	Americans with Disabilities Act, 42 U.S.C. *§* 12101 *et seq.*
1.7.1.2.13	Federal Occupational Safety and Health Act, 29 U. S. C. *§* 651 *et seq.*
1.7.1.2.14	Georgia Open Records Act, O.C.G.A. § 50-18-70 *et seq.*
1.7.1.2.15	Georgia Blasting Standards Act, O.C.G.A. *§* 25-8-1 *et seq.* and Blasting, Excavating Nearby Underground Gas Pipes and Utilities, 25-9-1 *et. seq.*
1.7.1.2.16	Scaffolding and Staging Statute, O.C.G.A. §34-1-1 *et seq.*
1.7.1.2.17	Department of Labor Rules and Regulations, O.C.G.A. *§* 34-2-6 *et seq.*
1.7.1.2.18	Retainage on Public Works Contracts, O.C.G.A. § 13-10-80 *et seq.*

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1.7.1.2.19 Compliance with "federal work authorization programs" and federal Immigration Reform and Control Act of 1986 by Georgia Public Employers, contractors and subcontractors, 0.C.G.A. §13-10-90 *et seq.*

1.7.1.3 Building Codes. The following Building Codes, as approved by the Georgia Department of Community Affairs, shall be used. (*See* O.C.G.A. §8-2-20.).

- International Building Code, with Georgia Amendments
- International Fire Code, with Georgia Amendments
- International Plumbing Code, with Georgia Amendments
- International Mechanical Code, with Georgia Amendments
- International Fuel Gas Code, with Georgia Amendments
- National Electrical Code, with Georgia Amendments
- International Energy Conservation Code, with Georgia Supplements and Amendments

1.7.1.4 Fire, Life Safety, and Accessibility Codes. The following codes, in the versions approved by the Georgia State Fire Marshal/Fire Safety Commissioner and Department of Human Resources, shall be used.

- Georgia State Life Safety Code (NFPA 101)
- State Accessibility Codes (*See* O.C.G.A. §30-3-3)
- Rules and Regulations of the Georgia Safety Fire Commissioner (*See* O.C.G.A. §§25-2-4, 12.)

1.7.1.5 Latest Edition. The latest edition approved by the implementing agency of the regulations, rules, and codes listed in Sections 1.7.1.3 and 1.7.1.4 above, with all amendments as of the date of permitting for construction, shall govern the installation of all Work and is adopted and incorporated into the Contract Documents and made a part thereof by reference. However, the drawings and specifications shall be adhered to in all cases where they call for quality of materials, quality of workmanship, or quality of construction which is equal to or in excess of the quality required by the above-stated codes. It is also provided that there may be no variances from the drawings and specifications except to the extent that the said variances shall be necessary in order to comply with the above-stated codes. It shall be the responsibility of the CM/GC to familiarize himself with the requirements of the above-stated codes. If there are any express requirements in the drawings or specifications that are at variance to the above- stated codes, all changes in the Work necessary to eliminate or add to the said requirements and make the Work conform to the above-stated codes shall be adjusted as provided in the Contract for changes in the Work.

1.7.1.6 Compliance with Federal and State Work Authorization and Immigration Laws. The CM/GC and all Trade Contractors, Subcontractors and consultants must comply with all federal and state work authorization and immigration laws, and must, as a material condition of this Contract, certify compliance with O.C.G.A. §13-10-91 in strict accordance with Paragraph 21 of the Contract. The required Contractor's affidavit must be filed with the Owner prior to contract execution and shall become a part of this Contract. Required subcontractor affidavits must be obtained and maintained by the CM/GC as of the beginning date of this contract and the beginning date of each subcontract or consultant contract. A copy of each such verification shall be provided to the Owner at the time the subcontractor or consultant is retained. State officials, including officials of the Owner, retain the right to inspect and audit the Project Site and employment records of the CM/GC, its Trade Contractors, Subcontractors and consultants without notice during normal working hours until Final Completion, and as otherwise specified by law and by Chapter 300-10-1 *et seq.* of the Rules and Regulations of the Georgia Department of Labor.

1.7.2 Surveys, Permits, and Regulations. The Owner shall furnish all surveys unless otherwise specified. Permits and licenses of a temporary nature necessary for the prosecution of the Work shall be obtained and paid for by the CM/GC. Permits, licenses, and easements for permanent structures or permanent changes in existing facilities shall be obtained and paid for by the Owner unless otherwise specified. The CM/GC and its

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Subcontractors must pay any municipal or county occupational licenses, taxes, or fees, if any. The CM/GC shall give all notices and comply with all laws, ordinances, rules, and regulations bearing on the conduct of the Work. If the CM/GC observes that the drawings or specifications are at variance with any such laws, ordinances, rules or regulations, he shall promptly notify the Owner in writing, and any necessary changes shall be adjusted as provided in the Contract for changes in the Work. If the CM/GC performs any Work knowing it to be contrary to such laws, ordinances, rules or regulations without such notice to the Owner, he shall bear all costs arising therefrom. Nothing in this paragraph shall be construed to impose design responsibility on the CM/GC except as noted in the Contract Documents.

1.7.3 Open Records Act. CM/GC acknowledges and agrees that all records of the project and the Work, including records of Subcontractors, are subject to the Georgia Open Records Act, O.C.G.A. §50-18-70 et seq.

1.7.4 Use of Site. The CM/GC has a revocable license until the date of Material Completion to enter and perform Work upon the Premises, shall confine thereto his plant, his apparatus, the staging and storage of materials, the operations of his forces and the Work to limits indicated by law, ordinances, permits, or the Contract Documents, and shall not unreasonably encumber the Premises with his materials. The CM/GC shall not load or permit any part of the Work to be loaded with weight that will endanger its safety. The CM/GC shall enforce Contract requirements regarding signs, advertisements, fires, and smoking and shall remove from the Premises and properly dispose all trash and debris.

1.7.5 Utilities. Pending the extension and connection of permanent water, permanent gas, permanent sewer taps, and permanent electric power, the CM/GC shall obtain temporary water, temporary gas, temporary electric power, and provide sewage disposal at his own expense. In the absence of provisions to the contrary, the CM/GC shall pay for all utilities services until Material Completion has been achieved.

1.7.6 Royalties and Patents. The CM/GC shall pay all royalties and license fees.

1.7.7 Separate Contracts. The Owner reserves the right at any time and from time to time upon seven (7) days written notice to CM/GC to perform, or cause to be performed by other CM/GCs, other work at the Site in connection with the development of the Project that is not contemplated hereby or that is contemplated hereby if the CM/GC and the Owner shall be unable to agree upon a Change Order incorporating such work as Work of the CM/GC under this Contract. In either case, the Owner shall assure that such personnel or CM/GCs do not cause any conflict with the Work of CM/GC. CM/GC shall afford the Owner and other CM/GCs reasonable opportunity for the introduction, protection, and storage of material and equipment at the Site and the execution of work, and shall properly connect, if required by Contract Documents, and coordinate its work with theirs. If any work by the Owner or its other CM/GCs increases CM/GC's costs or extends the time of performance, CM/GC shall be entitled upon timely claim to a Change Order for payment by Owner of any reasonable costs actually incurred by CM/GC as a result thereof and to an extension of time. CM/GC has no responsibility hereunder to certify the suitability or correctness of any work performed by Owner's own personnel or other CM/GCs under direct contract with the Owner. This Section also applies to installation of loose equipment and fixtures by the Owner, or a Separate Contractor.

1.7.8 Interpretation of Contract Documents. The Contract Documents shall be construed neither against nor in favor of either party, but shall be construed in a neutral manner.

1.7.9 Counterparts. This Contract may be executed in multiple counterparts. All counterparts shall constitute one and the same instrument. One (1) counterpart of this Contract shall be delivered to the Owner and one (1) counterpart to the CM/GC.

1.7.10 Forms and Specimens. The forms and specimens in Section 7 are incorporated by reference herein and shall be executed in substantial conformance as required or convenient in describing obligations under the Contract Documents.

1.7.11 Entire Contract. The Contract Documents referenced herein constitute the entire Contract between the Owner and the CM/GC with respect to the Project and supersedes all prior negotiations, representations, and agreements. Except as set forth herein, there are no other promises, understandings, agreements, representations or warranties, oral or written, expressed or implied between the parties. This Contract may not be changed, modified, or terminated, in whole or in part, nor any provision waived except by Change Order.

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SECTION 2 – PRECONSTRUCTION REQUIREMENTS

2.1.1 Construction Preparation Period.

2.1.1.1 Requirement for Project Planning. No physical work will begin on the construction site until a Proceed Order is issued by the Owner. The Contract assumes Proceed Orders will be issued in conjunction with the award of the Contract. Failure of the CM/GC to provide the necessary documentation for the issuance of a Proceed Order shall not entitle the CM/GC to any extension of time.

2.1.1.2 Timing of Submission of Documents. No Proceed Order shall be issued until the Owner has received, in good and proper order, including approval of Design Professional where required, the following documents. The documents shall be submitted in accordance with the following schedule:

2.1.1.2.1 At contract execution and prior to commencement of Construction Services:

(a) Proof of Insurance as required by the Contract Documents
(b) Payment and Performance Bonds in accordance with the Contract Documents
(c) Proof of Insurance
(d) Construction Management Plan as required in Section 2.1.2 including Security Program and Safety Program
(e) Documentation necessary for receiving all land disturbance permits
(f) CM/GC's Quality Control Program as required in Section 2.1.3
(g) Construction Progress Schedule as required by Section 2.1.4
(h) CM/GC's Staffing Plan, Wage and Salary Schedule
(i) List of intended Trade Contractors, Subcontractors and Trade Suppliers
(j) Submittal and Shop Drawing Schedule
(k) CM/GC's Certificate of Subcontractors' Workers' Compensation and Employer's Liability Insurance as required in Sections 1.5.3.3.1 and 1.5.3.3.2
(l) Subcontractors' Affidavit for Georgia Security and Immigration Compliance as required Section 1.7.1.6

2.1.2 **Construction Management Plan.** CM/GC shall prepare and furnish to the Owner and Design Professional a thorough and complete plan for the management of the Project from issuance of the Proceed Order through the issuance of the Design Professional's Certificate of Material Completion. Such plan shall include, without limitation, the CM/GC's staffing plan, an estimate of the manpower requirements for each trade and the anticipated availability of such manpower, a schedule prepared using the critical path method that will amplify and support the schedule required in Section 2.1.4 below. The CM/GC shall include in his plan the names and resumés of the Project Superintendent and Project Manager. The plan shall include, without limitation, the following:

2.1.2.1 Security Program. Develop and implement an effective security program for the Project Site, which program shall require the CM/GC and the Trade Contractors to take measures for the protection of their tools, materials, equipment, and structures. As between CM/GC and Owner, CM/GC shall be solely responsible for security against theft of and damage to all tools and equipment of every kind and nature used in connection with the Work, regardless of by whom owned.

2.1.2.2 Safety Program. The CM/GC shall design and submit to the Owner a specific safety program for the Work for the site(s). The CM/GC shall establish and require all Trade Contractors or Trade Suppliers to establish reasonable safety programs. The CM/GC shall also submit its standard monthly safety reports to the Owner and Design Professional. No imposition of responsibility on the CM/GC for safety under this Contract shall relieve any Trade Contractor of its responsibility for

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safety of persons or property on or near the Project Site. The CM/GC shall include in his plan the names of the person in charge of Safety.

2.1.2.3 Certificate of Competency. Fire Protection Trade Contractor. If a fire protection sprinkler system is required, the CM/GC shall submit to the Owner and Design Professional the certificate of competency of the fire protection sprinkler system Trade Contractor as required by State of Georgia Fire Protection and Safety Code. The certificate of competency shall be provided prior to any work being performed on the fire protection sprinkler system.

2.1.3 Quality Control Program.

2.1.3.1 Responsibility for Quality of Materials and Installation. CM/GC acknowledges that he has full, total, and complete responsibility for providing materials, labor, and all other items necessary for providing the level of quality specified in the Contract Documents. He agrees that this responsibility is indivisible, non-delegable, non- transferable, and not diminished by any inspections provided by the Design Professional or his consulting engineers, nor by any inspections provided by the Owner. In recognition of this, CM/GC will prepare for submission and review by the Owner and Design Professional, a written program describing the efforts that will be taken to insure the proper quality level is achieved.

2.1.3.2 Written Program. CM/GC's written Quality Control Program shall be submitted to the Owner and Design Professional and describe in detail the steps the CM/GC will take to ensure quality and will include, without limitation, those personnel, in addition to the Project Manager and Superintendent, who will provide review and verification of the proper installation of the Work. Each Subcontractor having responsibility for more than $100,000 of the contract cost shall be addressed in the plan. The written program shall include affidavits from each of the involved Subcontractors acknowledging their responsibilities under the Contract in general and the Quality Control Program specifically.

2.1.4 Scheduling Requirements.

2.1.4.1 Construction Progress Schedule; Overall Project Schedule. The CM/GC shall submit within sixty days after the Effective Date of the Contract for review by the Design Professional and approval by the Owner a Construction Progress Schedule. The Construction Progress Schedule shall be prepared using a CPM (Critical Path Method) process, showing milestone dates for preparation and processing of shop drawings and samples, and delivery of materials or equipment requiring long lead-time procurement, Owner's occupancy requirements, and proposed date of Material Completion. It should also include the dates for commencement and completion of the Work required by the Contract Documents, including coordination of mechanical, plumbing, and electrical disciplines, as well as coordination of the various subdivisions of the Work within the Contract. Milestones must be clearly indicated and sequentially organized to identify the critical path of the Project. Upon recommendation by the Design Professional and approval by the Owner, the Construction Progress Schedule shall become the Overall Project Schedule, which shall be utilized by the Design Professional, Owner and CM/GC. The CM/GC must provide the Design Professional and the Owner with monthly updates of the Overall Project Schedule indicating completed activities and any changes in sequencing or activity durations. However, no changes in milestone dates are to be made without consent of the Owner and Design Professional which includes approved change orders.

2.1.4.2 Progress Reports and Information. When required, the CM/GC shall submit to the Design Professional and Owner such schedule of quantities and costs, payrolls, bills, vouchers, correct copies of all subcontracts, statements, reports, correct copies of all agreements, correspondence, and written transactions with the surety on the performance bond that have any relevance to the Work, estimates, records, and other data as the Owner may request that concerns the Work performed or to be performed under this Contract. When requested by the Owner, the CM/GC shall give the Owner access to its records relating to the foregoing. The above reports shall include, but are not limited to, (a) written notice of dates by which specified Work will have been completed, (b) written notice of dates by which Non-Compliant Work will be made good, (c) written notice that Non-Compliant Work has been made good, (d) written notice as to the date or dates by which Work that has not been performed with equal steps and at the same rate required by the Overall Project Schedule shall have been brought into conformity with the Overall Project Schedule, (e) date by which any undisputed claim of a Subcontractor supplier, or laborer

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shall have been paid, (f) written advice regarding the nature and amount of any disputed claim of a Subcontractor, supplier, or laborer, and (g) information regarding Work performed under Change Orders.

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SECTION 3 – CONSTRUCTION PHASE
PART 1 – CONSTRUCTION SERVICES

3.1.1 Basic Construction Services.

3.1.1.1 Requirement to Commence Work. The CM/GC shall under all circumstances commence work under this Contract no later than ten days after the Proceed Order Date.

3.1.1.2 Payment for Services and Work. Unless otherwise stipulated, the CM/GC shall provide and pay for all materials, supplies, labor, services, water, tools, equipment, light, power, transportation, and other utilities and facilities necessary for the proper execution and completion of the Work.

3.1.1.2.1 No Obligation of Owner. CM/GC shall not enter into, execute, or deliver any agreement, document, or undertaking, or incur any obligation with any Trade Contractor, Supplier or Subcontractor in the name of the Owner.

3.1.1.2.2 No Conditional Sales Agreements. CM/GC shall not make, cause to be made, or permit, any contract for materials or equipment of any kind or nature whatsoever to be used in connection with the Work on a conditional sales or any other basis whereby the title to the equipment or materials does not pass to the Owner upon delivery to the Site or incorporation in the Project, free and clear of any lien, financing arrangement, or other impediment to title.

3.1.1.2.3 Separate, Distinct, and Independent Covenants. The covenants of this Section are separate, distinct, and independent covenants and no default by the Owner under the terms of this Contract shall relieve or release CM/GC of and from the covenants set forth in this Section.

3.1.1.3 Quality of Materials and Workmanship. Unless otherwise specified, all materials shall be new, and both workmanship and materials shall be of good quality. The CM/GC shall, if required, furnish satisfactory evidence as to the kind and quality of materials and work. The burden of proof is on the CM/GC.

3.1.1.4 Manufacturer's Recommendations. All work or materials shall be installed in accordance with the Contract Documents and the manufacturer's recommendations, requirements and reference standards. The CM/GC shall obtain the manufacturer's recommendations, requirements and reference standards for its use at the Site in executing the Work. Manufacturer's recommendations shall include copies of bulletins, circulars, catalogues, or other publications bearing the manufacturer's titles, numbers, editions, dates, etc. Reference standards include standards promulgated by the agency of the standard as referenced in the plans, specifications and applicable building codes. If the manufacturer's recommendations or reference standards are not available, the CM/GC shall request instructions from the Design Professional.

3.1.1.5 Quality and Discipline of Employees. The CM/GC shall at all times enforce strict discipline and good order among his employees and shall not employ on the work any unfit person or anyone not skilled in the work assigned to him.

3.1.1.6 Failure of the CM/GC to Supply Workmen. A Notice of Non-Compliant Work may be issued for failure of the CM/GC to supply enough workers or enough materials or proper materials.

3.1.1.7 Superintendence and Supervision by CM/GC.

3.1.1.7.1 Supervision by CM/GC. The CM/GC shall give efficient supervision to the work, using his best skill and attention. The CM/GC shall coordinate the prosecution of the Work with the activities and responsibilities of the Owner and the Design Professional so as to complete the Project in accordance with the Owner's objectives of quality, cost, and time for completion as set forth in the Construction Documents. He shall carefully study and compare all drawings, specifications, and

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instructions and shall at once report to the Design Professional any error, inconsistency, or omission that he may discover.

3.1.1.7.2 Supervision of CM/GC. The CM/GC shall ensure that a competent Project Manager and/or Project Superintendent, and any necessary assistants, remain on the Project, on a full-time basis, until Material Completion and correction of all Minor Items (Interim Inspection for Punchlist Completion – Section 6.4.6), has been satisfactorily achieved under this Contract. The Project Manager and/or Project Superintendent shall not be changed except with the consent of the Owner and the Design Professional unless the Project Manager and/or Project Superintendent proves to be unsatisfactory to the CM/GC and ceases to be in his employ. The Project Manager and/or Superintendent represents the CM/GC and all directions given to the manager and/or superintendent shall be as binding as if given to the CM/GC.

3.1.1.7.3 Replacement Project Manager and/or Project Superintendent. If the CM/GC terminates the Project Manager and/or Project Superintendent or, if the CM/GC, for any reason, engages a Project Manager and/or Project Superintendent different from the one originally assigned to the Project, CM/GC must ensure that the replacement Project Manager and/or Project Superintendent has similar qualifications and experience as the originally identified Project Manager and/or Project Superintendent. Furthermore, the CM/GC must obtain the Owner's prior written approval before engaging a permanent replacement Project Manager and/or Project Superintendent.

3.1.1.7.4 Competent Full-Time Staff. The CM/GC shall maintain at the Site a competent, full-time staff with appropriate expertise to coordinate and provide general direction of the Work in order to (i) Conduct adequate control of the Work as to quality and compliance with the Contract Documents, and (ii) Maintain satisfactory progress by the Trade Contractors involved in the performance of the Work.

3.1.1.7.5 Coordination. Establish with the Design Professional procedures for coordination among the Owner, the Design Professional, and the CM/GC. Establish similar procedures for coordination between CM/GC and its Trade Contractors and Suppliers with respect to all aspects of the Project, and implement such procedures.

3.1.1.7.6 Qualified Workforce and Sufficient Staff. CM/GC shall require all Trade Contractors, Subcontractors, and Suppliers to employ only skilled workmen properly qualified by experience and ability to perform the task assigned to them. In addition, Trade Contractors and Subcontractors shall employ and assign to the Work, at all times, sufficient staff and personnel to perform their subcontracted services in a skilled, professional, and satisfactory manner so as not to delay the progress of the Work. The CM/GC shall immediately replace or cause to be replaced all Workmen whose Work, as determined by the CM/GC, does not meet such requirements.

3.1.2 Meetings and Schedule Updates.

3.1.2.1 Meetings. CM/GC shall conduct scheduled meetings on a regular basis at which the Owner, the Design Professional, the CM/GC, and Trade Contractors may discuss jointly such matters as procedures, progress, problems, and scheduling. Provide and distribute minutes of such meetings, including therein a list of the action items, responsible parties, and action dates to maintain schedules.

3.1.2.2 Updating Schedules. CM/GC shall update and revise the Overall Project Schedule, except for modification of Milestones. Milestones shall not be altered without the prior express approval of Owner and Design Professional. CM/GC shall furnish the Owner with updates to the Overall Project Schedule, which shall be revised as required by the conditions of the Work and Project, showing complete preconstruction, procurement, and construction schedules. Such schedules shall set forth the following:

3.1.2.2.1 Major Elements and Components. Listing of all major elements and Components of the Work, as well as major equipment items to be purchased, with adequate information as to those items requiring long lead-time;

3.1.2.2.2 Analysis. An analysis of the types, quantity, and availability of labor required to perform all of the Work;

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3.1.2.2.3 Separate Phases. A report of the separate phases of the Work to be performed by the CM/GC and Trade Contractors, along with a flow chart of the activity sequences, coordination, and duration of each;

3.1.2.2.4 Financial Requirements. A report of monthly and cumulative financial requirements; and

3.1.2.2.5 Status. The status of construction and completion.

3.1.2.3 Joint Development of Procedures. Develop jointly with the Design Professional and Owner procedures for the following items:

3.1.2.3.1 Document Transmittal. Preparation, review and execution of forms, transmittals, change orders, applications for payments and other construction administration documents.

3.1.2.3.2 Progress Reports. Monitoring of construction progress and completion of construction documents, interpretation of the Construction Progress Schedule for determination of percentage completion and other progress measurements;

3.1.2.3.3 Cost Control. Monitoring the budget, construction cost control and reporting;

3.1.2.3.4 Lines of Authority. Lines of authority and personnel assignments of CM/GC's organization;

3.1.2.3.5 Field Construction Procedures. Field construction procedures including, without limitation, safety, construction quality control, logistics, and handling of material and equipment at the Site;

3.1.2.3.6 Storage of Materials. Inventory control and security of stored materials, attic stock and equipment;

3.1.2.3.7 Accounting. Accounting and auditing;

3.1.2.3.8 Other. Such other procedures as may be reasonably required by the Owner and Design Professional.

3.1.2.4 Monitoring. Provide regular monitoring of the Overall Project Schedule as construction progresses; identify potential variances between scheduled and probable completion dates; review the schedule for Work not started or incomplete, and recommend to the Owner and Trade Contractors adjustment in the Construction Progress Schedule to meet the Material Completion Date; provide written summary reports of each monitoring to all appropriate parties and document accordingly.

3.1.2.5 Record Progress. Record the progress of the Work; submit written progress reports monthly to the Owner and the Design Professional, including information on the percentage of completion, in a format as may be approved by Owner. Maintain a daily log, approved as to form and type of entries by the Design Professional, which log shall be accessible to the Owner and the Design Professional.

3.1.2.6 Determine Adequacy. Determine the adequacy of the CM/GC's, Trade Contractors', and Suppliers' personnel and equipment, as well as the availability of materials and supplies to meet the Construction Progress Schedule; take appropriate action when requirements of the Trade Contracts are not being met.

3.1.2.7 Provide and Pay For. Provide and pay for all supervision, labor, materials, equipment, utility services (including water, gas, electricity, sewage, or waste water), tools, supplies, transportation, and other items or facilities necessary for the execution and completion of the Work in accordance with the Contract Documents.

3.1.3 Construction Budget.

3.1.3.1 Provide Budget. Prior to the commencement of the Work, the CM/GC shall provide or update the Construction Budget to the Owner and Design Professional, including therein as a line item the estimated

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cost for each discrete cost of the Work within the Guaranteed Maximum Price. The CM/GC shall revise and refine the Construction Budget at appropriate intervals as required by the conditions of the Work and present the revisions to the Owner. As the projected cost of the Work becomes more determinable; the CM/GC shall incorporate approved changes as they occur; shall develop cash flow reports and forecasts; shall identify variances between actual and budgeted costs and shall advise the Owner and Design Professional promptly whenever projected costs exceed or may exceed the budgeted cost. The Construction Budget, as revised thereafter, is regularly updated and provided by the CM/GC to the Owner and Design Professional for the purpose of permitting the Owner to monitor the progress of the Work and to establish the bases on which claims or requests by the CM/GC, or other matters, may be evaluated. The CM/GC does not guarantee any line item cost stated in the Construction Budget and shall not be bound by the estimated line item amounts stated in the Construction Budget, but shall be bound by the GMP.

3.1.3.2 Cost Control System.

3.1.3.2.1 Develop System. The CM/GC shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes.

3.1.3.2.2 Implement System. The CM/GC shall monitor costs and implement the system of cost control for the Work, revise from time to time the Construction Budget with approved changes, and develop cash flow reports and forecasts as requested by the Owner. The CM/GC shall identify variances between actual and estimated costs and report the variances to the Owner and Design Professional at regular intervals.

3.1.3.3 Cost Accounting Records. Maintain cost accounting records on items of Actual Cost and Contingency Costs, including authorized Work performed under unit costs, Actual Costs and Contingency Costs for labor and materials, and other bases requiring accounting records. The CM/GC shall maintain at the Project Site accounting records for Trade Contracts, this Contract, and other Contracts related to the Project.

3.1.3.4 Payment Procedures. Develop procedures for reviewing, processing, recording, and paying Trade Contractors and Suppliers upon their application for payment, and implement same consistent with the Contract Documents. Develop and implement a procedure for the review, processing, and payment of applications by Trade Contractors and Suppliers for progress and final payments, including a retainage release method. Such procedure shall be submitted to the Owner for approval.

3.1.4 Coordination of the Work.

3.1.4.1 Coordination. Establish with Trade Contractors, Suppliers and Subcontractors the on-Site organization and lines of authority in order to carry out the overall progress of the Work. Coordinate the Work of the CM/GC under the Contract Documents with professional consultants retained by the Owner or the Design Professional.

3.1.4.2 Construction Means and Methods. The CM/GC shall be responsible for coordinating all portions of the Work under this Contract. He shall be responsible for construction means, methods, techniques, sequences, and procedures, as well as for safety precautions and programs in connection with the Work. He shall ensure that the foregoing activities are performed in compliance with the Contract Documents. Notwithstanding the foregoing, no Trade Contractor is relieved of its responsibility for taking all reasonable and necessary steps to perform all Work consistent with the Contract Documents.

3.1.4.3 Quality Control. Review the Work of Trade Contractors and Suppliers for defects and deficiencies. Develop and implement a system, including appropriate quality control documentation, for ensuring that all such defects and deficiencies are corrected.

3.1.4.4 Procedures for Change Orders. Coordinate and develop for Trade Contractors and Subcontractors procedures for (i) preparation, review, and processing of Change Orders; (ii) recommending necessary or desirable changes to the Owner and the Design Professional; (iii) reviewing

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requests for changes by the Owner, Trade Contractors, or Suppliers; (iv) submitting recommendations to the Owner and the Design Professional with respect to proposed Change Orders; and (v) implementing Change Orders as approved by the Owner.

3.1.4.5 Procedures for Approval of Materials. Develop procedures to ensure that no materials shall be purchased unless and until Construction Documents, defining or affecting such materials have been approved by the Owner.

3.1.5 Mobilization. CM/GC shall mobilize, transport and assemble its equipment, materials, and supplies, as well as construct such temporary systems as are necessary and required at the Site, all in adequate time for satisfactory performance of the Work.

3.1.6 Duty to Commence.

3.1.6.1 Time for Commencement. Within ten (10) days after the Proceed Order Date, the CM/GC shall commence to procure such services, labor, and materials necessary to perform the Work.

3.1.6.2 No Direct Performance. The CM/GC shall not directly perform any Work or provide any materials, equipment, or supplies but shall contract for performance of Work or procurement of materials, equipment, or supplies through Trade Contracts and Subcontracts, except as otherwise permitted by the Contract Documents. No fee shall be payable by Owner to CM/GC for self-provided Work or materials except by lump sum as provided in Section 3.7.8.

3.1.6.3 Responsibility for Proper Performance. Notwithstanding CM/GC's execution of contracts with Trade Contractors, Subcontractors or Suppliers incident to the performance of the whole or any part of the Work, the CM/GC shall be responsible to the Owner for the proper performance of the Work in compliance with the Contract Documents unless the Contract Documents expressly provide to the contrary. Unless caused by the Owner, inefficiency, non-performance, improper performance, or other default by any Trade Contractor or Trade Supplier under contract with CM/GC or employee thereof shall not excuse the CM/GC from its obligation to assure timely performance in compliance with the Contract Documents.

3.1.6.4 Acts and Omissions. The CM/GC shall be fully responsible for the acts and omissions of its officers, employees, agents, licensees, Trade Contractors, Subcontractors, Suppliers, invitees and guests, as well as their respective officers, employees, agents, licensees, suppliers, guests, materialmen, and all other persons performing any of the Work or supplying labor, services, materials, or equipment for or under the Trade Contracts entered into by the CM/GC. The failure of a Trade Contractor, Subcontractor or Supplier under contract with CM/GC or employees thereof to properly perform shall not excuse the CM/GC for any omission from or non-compliance with the requirements of the Contract Documents, nor shall the CM/GC be entitled to an extension of time because of the failure of a Trade Contractor, Subcontractor or unless such failure was a direct result of some delay to the Trade Contractor or Trade Supplier of the kind and character for which the CM/GC is entitled to receive an extension of time.

3.1.6.5 Responsibility for Completion. CM/GC shall complete the Work and shall achieve Material Completion of the Project not later than the Material Completion Date.

3.1.7 Notice of Commencement. The CM/GC shall record and post a Notice of Commencement for the construction portion of the Work, and shall promptly deliver a stamped-recorded copy of such Notice of Commencement to the Owner and Design Professional.

3.1.8 Measurements and Dimensions. Before ordering material or doing work that is dependent upon coordination with building conditions, the CM/GC shall verify all dimensions, elevations, grades, and pitch by taking measurements at the building and shall be responsible for the correctness of same. Any discrepancies between the drawings and/or specifications and the existing conditions shall be referred to the Design Professional for additional instructions before any work affected thereby is begun.

3.1.9 Rain Water, Surface Water, and Back-up. The CM/GC shall protect all Work, including but not limited to, excavations and trenches, from rainwater, surface water, and back up of drains and sewers. The CM/GC

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shall furnish all labor, pumps, shoring, enclosures, and equipment necessary to protect and to keep the Work free of water.

3.1.10 Dust Control. Dust-proof enclosures or partitions for protection wherever dusty or dirty work is performed and dampening of debris to avoid dusting when removed shall be provided and included as a cost of the work.

3.1.11 Cutting, Patching, and Fitting. The CM/GC shall do all cutting, patching, and fitting of the Work that may be required to make its several parts come together properly and fit.

3.1.12 Space Conditions. All pipes passing through floors, walls, and ceilings shall be installed with sufficient space between them to permit installation of pipe insulation and floor, wall, and ceiling plates without cutting of insulation or plates. Roughed-in dimensions shall be prepared by the CM/GC to accomplish this requirement. The CM/GC shall locate all equipment that must be serviced, operated, or maintained in fully accessible positions. This provision includes but is not limited to valves, traps, cleanouts, motors, controllers, switchgear, drain points, filter, access doors, and fire dampers. If spaces, dimensions, or other design conditions do not permit compliance with this requirement, the CM/GC shall file a request in writing with the Design Professional for additional instructions, furnishing a copy to the Owner.

3.1.13 Cleaning.

3.1.13.1 During Construction. At all times, the CM/GC shall keep the premises free from accumulations of waste material or rubbish caused by his employees, Trade Contractors, or work. Periodically during the course of the Work, the CM/GC shall remove all his rubbish from and about the building and all his tools, scaffolding, and surplus materials and shall leave his work "broom-clean" or its equivalent, unless more exactly specified. Prior to completion of any Trade Contract, CM/GC shall require the Trade Contractor to remove from the Work and Site all temporary systems, tools, equipment, machinery, and surplus materials not required for the continued performance of any Work under the Trade Contract or this Contract.

3.1.13.2 Prior to Material Completion. Prior to the inspection for Material Completion of the Project, CM/GC shall remove from the Site all wastes and rubbish, clean all tile and glass surfaces, replace broken glass, remove stains, paint spots, and clean and polish all plumbing fixtures and equipment, leave the Work "*vacuum clean"* or its substantial equivalent, all hard surface floors swept and mopped, all carpeted floors vacuumed, all surfaces other than floors dusted, blower dusted, or wiped (depending on type of surface) and any surface blemishes cleaned, all glazing washed [both sides], and all electrical and mechanical equipment and fixtures cleaned, with all ductwork cleaned and filters replaced, if such are dirty before other cleaning is started, and re-cleaned if any dust or dirt has gotten into the ductwork during the cleaning process. The CM/GC shall restore existing facilities such as roads, other paved surfaces, fencing, curbing and the like at the Site to at least their preconstruction conditions; provided, however, the CM/GC may, in an orderly fashion, leave such equipment and supplies at the Site as necessary to achieve Final Completion of the Project. This cleaning must be completed before the CM/GC can expect the Design Professional to commence the inspection for Material Completion. To achieve Material Completion, the CM/GC shall have fully cleaned the Site – all debris must have been removed from the site and all paved surfaces must have been broom swept and thoroughly hosed down.

3.1.14 Duty of CM/GC to Report Defects. If any part of the CM/GC's work depends for proper execution or results upon the work of any Separate Contractor to the Owner, the CM/GC shall inspect and promptly report to the Owner and Design Professional any apparent defects in such work that render it unsuitable for such proper execution and results.

3.1.15 Duty of CM/GC to Report Conflicts. To ensure the proper execution of his subsequent work, the CM/GC shall measure work already in place and shall at once report to the Design Professional any discrepancy between the executed Work and the drawings or specifications.

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PART 2 - RESERVED

PART 3 - RESERVED

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PART 4 – CHANGES TO THE WORK

3.4.1 Acknowledgement of Existing Physical Conditions. In undertaking the work under this Contract, the CM/GC acknowledges that he has visited the premises and has taken into consideration all open and apparent conditions that might affect his work. No claim based on lack of knowledge of existing conditions shall be allowed unless the existing physical conditions cannot be discovered by a reasonably observant person. Any claims relating to conditions that are materially different from the Contract Documents that were not open and apparent may be adjusted as provided in this Part.

3.4.2 Owner's Right to Make Changes. Without invalidating the Contract, the Owner, by Change Order and without notice to the sureties, may authorize or order extra work or changes by altering, adding to, or deducting from the Work or the Contract Time, the GMP being adjusted accordingly. All Change Orders shall be performed under the conditions of the original Contract except that any claim for extension of time caused thereby shall be adjusted at the time of signing of the Change Order. Prior to the issuance of the initial Proceed Order, the CM/GC and the Owner shall advise each other in writing of their designees authorized to accept and approve changes to the GMP and the limits to each designee's authority. Should any designee or limits of authority change during the time this Contract is in effect, the CM/GC or Owner shall give written notice to the other as provided in Section 1.1.5. There is no legal limitation on the Owner's right to make changes such as may be, in the Owner's sole discretion, useful or desirable to the Project.

3.4.3 Changes Forbidden without Consent of Owner. Neither the Design Professional nor the CM/GC shall make any change whatsoever in the work without an approved Change Order. In the absence of an approved Change Order, the CM/GC shall have no claim for payment, repayment, reimbursement, remittance, remuneration, compensation, profit, cost, overhead, expense, loss, expenditure, allowance, charge, demand, hire, wages, salary, tax, cash, assessment, price, money, bill, statement, dues, recovery, restitution, benefit, recoupment, exaction, injury, damages, or time based upon or resulting from any change. The provisions of this Section do not apply to emergencies as described in Section 1.4.4.

3.4.4 Form and Execution of Change Orders.

3.4.4.1 The Change Order. The Change Order is the instrument by which adjustments in the GMP and the Contract Time are effected. The Change Order shall be accompanied by a cost breakdown as set forth in Section 3.4.7.4. The breakdown is for the purpose of enabling the Design Professional to make a judgment on the dollar amount of the adjustment in the GMP and is not a part of the Change Order. No condition, term, qualification, limitation, exception, exemption, modification, or proviso, except as set forth in this Part, shall appear in the breakdown. Only such conditions, terms, qualifications, limitations, exceptions, exemptions, modifications, and provisos as are permitted under this Part are valid. The Design Professional shall certify to the dollar amount and description of the adjustments permitted by the Change Order.

3.4.4.2 Execution of Change Orders. Change Orders shall be signed by the CM/GC, ordinarily certified by the Design Professional, and approved by the Owner in accordance with the form of Change Order prescribed by the Owner. No request for payment by the CM/GC for a Change Order shall be due, nor shall any such request appear on an Application for Payment, until the Change Order is executed by the Owner. In the event of emergency (see Section 1.4.4) or significant impact to the Overall Project Schedule, the Owner shall direct the proposed Change Order to proceed under a Force Account authorization until the cost and time is resolved in the manner set forth in Section 3.4.7.3 below.

3.4.4.3 Disagreement between Design Professional and CM/GC.

3.4.4.3.1 As to GMP. Should the Design Professional disagree with the CM/GC as to the amount of the adjustment to the Contract Sum and such disagreement is not resolved between them within seven days, the Owner, if it desires the Change Order work to proceed, may direct the Work to commence on a proposed Change Order by Force Account authorization.

3.4.4.3.2 As to Contract Time. Should the Design Professional disagree with the CM/GC as to the amount of proposed adjustment to the Contract Time and such disagreement not be resolved between them within seven days, the dispute shall be resolved by the Owner as set forth in Section 5, Part 2.

3.4.4.3.3 As to Other Disagreements. Should the Design Professional disagree with the CM/GC as to matters other than GMP or Contract Time, the dispute shall be resolved by the Owner as set forth in Section 5, Part 2.

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3.4.4.4 Change Order Conditions. All Change Orders are issued under the following conditions:

3.4.4.4.1 For Lump Sum Change Order: The payment and extension of time (if any) provided by this Change Order constitutes compensation in full to the CM/GC and its Subcontractors and Suppliers for all costs and markups (except application of CM/GC Construction Fee) directly and indirectly attributable to the Change Order herein, for all delays related thereto and for performance of changes within the time stated.

3.4.4.4.2 For Force Account Authorizations (In-part Change Order): If the CM/GC requests payment on account of the Force Account authorization before the work has been completed, the Owner will issue an in-part Change Order. The payment and extension of time (if any) provided by this Change Order constitutes interim compensation to the CM/GC and its Subcontractors and Suppliers for actual costs and markups directly and indirectly attributable to the Force Account authorization, for all delays related thereto and for performance of changes within the time stated.

3.4.5 All Cost and Time Impacts to be Included. Each Change Order shall include all time and monetary impacts of the change. Failure to include a change in Contract Time or in GMP in Change Orders shall be considered a zero price/zero time Change Order and shall waive any change in Contract Time and GMP. Commencement of Work upon a Change Order is conclusive proof that the CM/GC accepts the Change Order.

3.4.6 Changes in Contract Time. All Change Orders must state that the Contract Time and the Material Completion Date are not changed or are increased or decreased by a specific number of Days. The CM/GC must provide written justification for the extension to the Design Professional and to the Owner. The written justification must demonstrate an anticipated actual increase in the time required to complete the Work beyond that allowed by the Contract as adjusted by prior Change Orders to the Contract. No extension to the Contract Time shall be allowed unless the additional or changed Work increases the length of the critical path beyond the Material Completion Date. If approved, the increase in time required to complete the Work shall be added to the Contract Time. The Owner may decrease, by Change Order, the Contract Time when an Owner-requested deletion from the Work results in a decrease in the actual time required to complete the Work as demonstrable on the critical path of the Construction Progress Schedule.

3.4.7 Determining the Cost to Owner for Changes. The cost to the Owner of any change shall be determined in one or more of the following ways:

3.4.7.1 Lump Sum. The Change Order cost is determined by mutual agreement as a lump sum amount changing the GMP allowed for completion of the Work. The Change Order shall be substantiated by documentation itemizing the estimated quantities and costs of all labor, materials and equipment required as well as any mark-up used. The price change shall include the cost percent allowed for the CM/GC's, Subcontractor's and second tier subcontractor's overhead and profit as allowable (*See* Section 3.4.8).

3.4.7.2 Unit Price Work. The Change Order cost is calculated by using unit prices and calculating the number of net units of Work in each part of the Work that is changed, either as the Work progresses or before Work on the change commences, and by then multiplying the calculated number of units by the applicable unit price set forth in the Contract or multiplying by a mutually agreed unit price if none was provided in the Contract. No additional percentage markup for overhead or profit shall be added to the unit prices as this markup is included within the unit prices subject to the limitations of Section 3.4.8.

3.4.7.3 Force Account. The Change Order work is accomplished by Force Account in the event the quantity of the Work or cost cannot be reasonably determined or agreed prior to beginning the Work.

3.4.7.3.1 A Force Account is authorized by the establishment of an Owner's Incumbrance Record which includes (a) the Design Professional's description of the scope of work, (b) the maximum dollar amount (Stipulated Maximum Sum) beyond which no changed work may be undertaken, subject to amendment, for funding all costs of the Force Account authorization and subsequent Change Order and (c) the Authorization to commence Work. As the authorized Work progresses, the CM/GC must maintain accounting of actual costs incurred in accomplishing the Work. The accounting must include an annotated copy of the Overall Project Schedule to accurately show the status of the Work.

3.4.7.3.2 Actual costs, except as otherwise agreed to in writing by the Owner, shall not exceed those prevailing for the trades or crafts, materials, and equipment in the locality of the Project, may include only those items listed as allowable in Section 3.4.9, and shall not include any of the costs listed as not allowable in Section 3.4.10. The

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Owner shall be permitted, on a daily basis, to verify such records and may require such additional records as are necessary to determine the cost of the change to the Work.

3.4.7.3.3 The Stipulated Maximum Sum shall be based on the estimated cost of the Work and the CM/GC's allowance for overhead and profit as set forth in Section 3.4.8 below, including any time extension and a reasonable contingency. It shall be the sole responsibility of the CM/GC to apply in writing to the Owner, NOT to the Design Professional, for an increase in the Stipulated Maximum Sum if the total value of the Work is approaching and might exceed the Stipulated Maximum Sum.

3.4.7.3.4 Within fourteen days of the conclusion of such Work ordered by Force Account, the CM/GC and the Owner shall arrive at the total lump sum cost for the confirming Change Order. Such lump sum cost shall be incorporated into and finalize the Change Order, and shall reference and close the Incumbrance Record establishing the Force Account.

3.4.7.3.5 In-part Change Order. If the Work performed under a Force Account Authorization extends beyond monthly Applications for Payment, the CM/GC may request interim payment for Work performed. In such case, the Owner will issue an in-part lump sum Change Order as described in this Section. A lump sum Change Order must be executed before, including Force Account Work on an Application for Payment.

3.4.7.4 Breakdown of Expenditures. The CM/GC shall review any Owner requested or directed change and shall respond in writing within fourteen calendar days after receipt of the proposed change (or such other reasonable time as the Owner may direct), stating the effect of the proposed change upon his Work, including any increase or decrease in the Contract Time and Sum. The CM/GC shall furnish to the Owner and the Design Professional an itemized breakdown of the quantities and prices and expenditures for labor and materials used in computing the proposed change in GMP. The pricing breakdown shall contain the following elements:

(a) Restatement of the scope of work of the proposed Change Order.
(b) Itemized breakdown of items, quantities, unit costs and total costs; application of overhead and profit amounts, and grand total.
(c) The CM/GC shall verify pricing breakdown by including and signing the following statement:

> *"I do solemnly swear to the best of my knowledge, information, and belief, that the costs shown hereinabove do not exceed current costs for like services or materials in the locality of the Project and, in the case of a Force Account, the costs represented do not exceed the actual costs to the CM/GC; and that the quantities shown do not exceed actual requirements."*

The CM/GC shall obtain and furnish as back up to the CM/GC's breakdown a separate breakdown for each subcontractor's charges prepared by each subcontractor on the letterhead of the subcontractor and properly signed by the subcontractor. The Owner shall review the CM/GC's proposal and respond to the CM/GC within fourteen days of receipt.

3.4.8 Overhead and Profit for Change Orders.

3.4.8.1 Overhead and Profit. Subject to the limitations described herein, the percentage for overhead and profit to be used in calculating the Change Order Sum (*See* Section 3.4.7.2 regarding unit prices) shall not exceed the percentages for each category listed below. Said percentages for overhead and profit shall be applied only on the net cost of the changed Work, (i.e., the difference in cost between original and revised Work).

3.4.8.1.1 Work Performed Directly by CM/GC. If the CM/GC does all or part of the changed Work with employees that work directly for the CM/GC (self-performs), his markup for overhead and profit on such changed Work shall not exceed twenty (20%) of the of the net Allowable Costs, if any. CM/GC shall not be allowed any additional markup including but not limited to the markup contemplated in Section 3.4.8.1.2 below.

3.4.8.1.2 Work Performed by Subcontractor(s). If a Subcontractor does all or part of the changed Work with employees that work directly for the Subcontractor, the Subcontractor's markup for overhead and profit shall not exceed twenty percent (20%) of his net Allowable Costs. Under this contract, the forces of a subcontractor of a subcontractor are deemed to be and are the forces of the subcontractor and the total management markup for overhead and profit for all tiers of subcontractors shall not exceed in the aggregate twenty (20%) of the net Allowable Costs of the subcontractor who performs the work. The CM/GC's allowable management markup for overhead and profit shall not exceed a total of seven- and one-half percent (7.5%) of the amount due to the Subcontractor (including Subcontractor's overhead and profit).

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3.4.8.2 The above percentages shall be applied to the net Allowable Costs, if any, as limited and defined in this Part. If the net difference between Allowable Costs and credits to the Owner results in a decrease in the Owner's cost, the amount of credit allowed the Owner shall be the net decrease without any allowance for profit and overhead. All costs that are not Allowable Costs in Section 3.4.9 or are disallowed in Section 3.4.10 shall be considered as overhead and shall be exclusively compensated in the allowances provided for in Section 3.4.8.1 above.

3.4.8.3 Limitation of Overhead and Profit to CM/GC. In reference to Paragraphs 5 and 6 of the Agreement and Section 3.4.8.1 and Section 3.4.7.2 above, the CM/GC shall be allowed to charge 10% for overhead and profit on any Change Order. The Change Order Sum of approved Change Orders and payments shall be identified and accounted for separately on Schedule of Values, Applications for Payment, and other project documentation.

3.4.9 Allowable Costs for Changes in the Work. Allowable cost for changes to the Work are limited to the following:

3.4.9.1 Labor costs for employees directly employed in the change in the Work, including salaries and wages plus the cost of payroll charges and fringe benefits and overtime premiums, if such premiums are explicitly authorized by the Owner.

3.4.9.2 Materials incorporated into the change to the Work, including costs of transportation, handling, fuel, and on-site storage, if applicable.

3.4.9.3 Equipment incorporated in the changed Work or equipment used directly in accomplishing the Work. If the equipment is rented expressly for accomplishing the change in the Work, that cost shall be the rental rate according to the terms of the rental agreement, which the Owner shall have the right to approve. The decision of the Owner shall be final, binding, and conclusive on all parties.

3.4.9.4 Costs of increases in premiums for the CM/GC's Payment Bond and Performance Bond or for bond premiums for its Subcontractors, to the extent that such increased costs are a result of coverage adjustments for changes in Work approved by the Owner. Prior to requesting payment for the Change Order work, the CM/GC shall provide proof of its notification to the Surety of the change in the Work and of the Surety's agreement to include such change in its coverage. The cost of the increase in premium shall be an allowable cost but shall not be marked up. In no event shall a cost in excess of two percent of the cost of the change be allowable.

3.4.9.5 Sales, consumer, use, and other applicable taxes that are legally in effect at the time the change order is approved.

3.4.9.6 Any other costs directly attributable to the change in the Work, such as professional engineering costs, except those set forth in Sections 3.4.8 and 3.4.10.

3.4.9.7 For Change Order Work directed by the Owner, where the headquarters of the Subcontractor actually performing the work is more than 100 miles from the Project Site, the Subcontractor may include in the cost of the Change Order a stipend of fifty dollars per day for each worker performing work at the Site if that worker is receiving a per diem under present company policy, not to exceed the number of workers and number of days determined by Design Professional's decision to be attributable to the new work so ordered, so long as the number of workers and number of days attributable to any deleted work is deducted there from. No allowance for overhead or profit as set forth in Section 3.4.8 may be added to the Change Order cost on account of the stipend amount, and the full amount of the stipend must be actually paid to the eligible worker or it shall be forfeited by the CM/GC and Subcontractor(s).

3.4.9.8 The Owner may require any or all of the following documentation to be provided by the CM/GC to support the Allowable Costs:

(a) certified payroll records showing the name, classification, date, daily hours, total hours, rate, and extension for each laborer, foreman, supervisor or other worker;
(b) equipment type & model, dates, daily hours, total hours, rental rate or other specified rate, and extension for each unit of equipment;
(c) invoices for materials showing quantities, prices, and extensions;
(d) daily records of waste materials removed from the Site and/or fill materials imported to the Site;
(e) certified measurements of over excavations, piling installed and similar work; and/or
(f) transportation records for materials, including prices, loads, and extensions.

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3.4.10 Costs Not Allowable for Changes in the Work. Costs not allowable under any circumstances are as follows:

3.4.10.1 Costs due to the negligence of the CM/GC, Subcontractors, or other persons for whom the CM/GC is responsible, including but not limited to costs of delay, costs for the correction of Non-Compliant Work, costs for improper disposal of material, costs for equipment wrongly supplied, costs for the CM/GC's delay in performing the Work, or costs for delay in ordering and obtaining normally available materials or equipment.

3.4.10.2 Home office expenses, including payroll costs for the CM/GC's or any Subcontractors' officers, executives, administrators, accountants, counsel, engineers, timekeepers, estimators, clerks, and other similar administrative personnel employed by the CM/GC, whether at the Site or in the CM/GC's or a Subcontractor's principal or branch office for general administration of the Work (including those referred to as "Eichleay costs"). These costs are deemed overhead included in the percentage markups allowable in Section 3.4.8 above.

3.4.10.3 Home and branch office expenses that include, but are not limited to, expenses of CM/GC's home and branch offices, CM/GC's capital expenses, interest on CM/GC's capital used for the Work, charges for delinquent payments, small tools, incidental costs, rent, utilities, telephone and office equipment, and other general overhead expenses of the home and branch office (including those referred to as "Eichleay costs").

3.4.10.4 Where Work is deleted from the Contract (by Bulletin, Change Order, or otherwise) prior to commencement of that Work without substitution of other similar Work, one hundred percent of the GMP attributable to that Work shall be deducted from the GMP. However, in the event that material submittals have been approved and orders placed for said materials, a lesser amount as justified by proper documentation shall be deducted from the GMP. The credit if any to the Owner for reduced premiums on payment bonds and performance bonds shall be in all cases one hundred percent of the credit. If the deductive Change Order affects the critical path or the schedule and it causes an overall reduction in the Contract Time, jobsite time dependent expenses shall be included in the deduction at a mutually agreeable amount or rate.

3.4.10.5 Wages of a foreman, if the foreman is concurrently supervising other Work at the Site.

3.4.11 Reserved.

3.4.12 Changes due to Subsurface or Other Unforeseen Conditions.

3.4.12.1 Subsurface Conditions. Unless the Contract Documents stipulate specific quantities and units of rock or unsuitable soils, the CM/GC shall assume material below the surface of the Earth to be earth and other material that can be removed by power shovel or similar equipment. Should conditions encountered below the surface of the ground be at variance to the number of unit requirements as indicated by drawings or specifications, the GMP and/or time shall be adjusted as provided in the Contract Documents for changes in the work.

3.4.12.2 Other Unforeseen Conditions. If unknown physical conditions are encountered at the Site that differ materially from those indicated in the Contract Documents, then the CM/GC shall give notice to the Design Professional promptly before conditions are further disturbed, but in no event later than two business days after the first observance of the conditions. The Design Professional shall promptly investigate such conditions and, if they differ materially and cause an increase or decrease in the CM/GC's cost or time required for performance of any part of the Work, the Design Professional may recommend an adjustment by Change Order to the GMP or Contract Time, or both. If the Design Professional determines that the conditions at the Site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Design Professional shall so notify the Owner and the CM/GC in writing, stating the reasons. Protest by either party of the Design Professional's decision shall be in accordance with Section 5, Part 2.

3.4.13 Compensable Rock. CAUTION: No rock for which extra compensation is expected to be received shall be removed except pursuant to and in conformity with a written authorization or order of the Owner. Unless otherwise provided in the Bid Documents, no removal of rock as defined herein shall be included in the Bid. Shale, rottenstone, or stratified rock that can be loosened with a pick or removed by a hydraulic excavator equivalent to a Caterpillar Model 215, a single engine pan (Caterpillar 621 or equivalent) that is pushed by a crawler tractor (Caterpillar D-8K or equivalent), or similar equipment shall not be classified as rock.

3.4.13.1 Definitions of Compensable Rock. Rock, for the purposes of pricing its removal, is defined as follows:

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3.4.13.1.1 Rippable Rock. Rippable rock is defined as any material that can be ripped with a single-tooth hydraulic ripper drawn by a crawler tractor having a minimum draw bar pull rated at not less than 56,000 pounds (Caterpillar D-8K or equivalent) and occupies an original volume of at least one cubic yard.

3.4.13.1.2 Mass Rock. Mass rock is defined as any material that cannot be ripped with a single-tooth hydraulic ripper drawn by a crawler tractor having a minimum draw bar pull rated at not less than 56,000 pounds (Caterpillar D-8K or equivalent) and occupies an original volume of at least one cubic yard.

3.4.13.1.3 Trench Rock. Trench rock is defined as any material that must be removed from a trench that cannot be excavated with a hydraulic excavator having a bucket curling force rated at not less than 18,300 pounds (Caterpillar Model 215 or equivalent) and occupies an original volume of at least one-half cubic yard.

3.4.13.1.4 Caisson Rock. Caisson Rock is defined as material that must be removed from a shaft which cannot be penetrated faster than two feet per hour (fifteen minute minimum) using a rock auger with bullet-shaped hardened steel teeth (Kennametal bits or equivalent), and the drilling equipment should have the capacity to produce a continuous torque of at least 1,000,000 inch pounds and a downward force of at least 50,000 pounds (a Hughes LLDH in good working condition) for piers up to seventy two inches in diameter. Use of equipment with greater torque or downward force modifies the definition of refusal to be the point at which the equipment cannot penetrate faster than two feet per hour (fifteen minute minimum). In rare cases, refusal may occur on a rock seam or boulder above the general massive rock surface. The compensation for Caisson Rock should include only material that cannot be penetrated by the rock auger at the specified rate.

3.4.13.2 Pricing for Compensable Rock. All compensable rock shall be priced by unit prices based upon estimated volume prior to removal and shall be calculated by survey and engineering calculations. No rock shall be priced by truckload, bucket load, or other similar pricing methods. Unit prices shall be determined prior to removal, either in the Contract Documents or by Change Order. Unit prices shall be inclusive of all profit and overhead. Unit prices shall include the following:

(a) Excavation and removal of all rubble;
(b) Addition and removal of overburden for blasting;
(c) Excavation of all blast rubble;
(d) Replacement of suitable soils in areas of overblasting or over removal; and

(e) All costs of labor, equipment, supplies, blasting materials, safety requirements, drayage, haulage, and disposal, including offsite disposal costs.

3.4.14 RESERVED.

3.4.15 Release of Claims. The execution by the CM/GC of a Change Order shall be and operate as a release to the Owner of all claims by the CM/GC and of all liability owing to the CM/GC for all things done or furnished in connection with the Work described in the Change Order, except for the application of the CM/GC Construction Fee. The execution of any Change Order by the Owner shall not be an acceptance of any Work or materials not in accordance with the Contract Documents, nor shall it relieve the CM/GC of responsibility for faulty materials or workmanship or operate to release the CM/GC or his surety from any obligation arising under the Contract or the Performance Bond or Payment Bond.

3.4.16 Sole Source Designation for Change Order Work.

3.4.16.1 Definition of Sole Source. As used in this Section 3.4.16, "Sole Source" means a Trade Contractor or Supplier or Subcontractor specified by name in a Bulletin as the exclusive source from which conforming goods or services may be obtained. Designation of goods or services by reference to a named source accompanied by the qualification "or equal" or similar language is not a designation of a Sole Source as that term is defined herein.

3.4.16.2 Limitations. This Section 3.4.16 applies only to Bulletins referenced in a proposed Change Order that designates a Sole Source that was not designated in the Construction Documents. Except as stated in this Section, the CM/GC's inability to obtain payment and performance bonds from Sole Source Subcontractors or warranties from Subcontractors, as required under the Construction Documents for this Contract, shall not otherwise excuse the CM/GC from its bonding and warranty obligations under this Contract.

3.4.16.3 Sole Source as Grounds for Rejection of a Change Order. If a Change Order is submitted to CM/GC for the purposes of adding a Bulletin to this Contract and said Bulletin designates a Sole Source from which CM/GC is required to procure goods or services necessary to perform the Work, which Sole Source has not been designated previously,

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CM/GC shall be entitled to reject the proposed Change Order if the designated Sole Source refuses to provide to CM/GC the warranties, bonds, terms or schedule required under the Contract Documents, including any warranty or terms or schedule required by Bulletins referenced in the proposed Change Order. In such event, CM/GC shall give written notice to the Owner rejecting the proposed Change Order and, if possible, shall accompany said written notice with a proposal from CM/GC for changes or modifications to the Bulletin so as to eliminate the Sole Source designation but to achieve goods or services equal in quality or function. The Owner may then require the Design Professional to revise the subject Bulletin so as to eliminate the designation of the Sole Source by incorporation of CM/GC's proposal or otherwise. Upon revision of the Bulletin by the Design Professional and approval thereof by the Owner, the Owner shall again submit to the CM/GC a proposed Change Order for the purpose of adding the revised Bulletin to this Contract. If the Owner decides to retain the Sole Source in the Change Order and CM/GC cannot acquire the full contractually required warranties from the Sole Source, CM/GC shall be held only to the warranty terms and schedule obtainable from the Sole Source.

3.4.16.4 No Excuse Without Notice. If CM/GC accepts a proposed Change Order adding a Bulletin to this Contract that designates a Sole Source without invoking this Section and putting the Owner on notice, CM/GC shall not be excused from its obligations with respect to the described Work by reason of the refusal of a designated Sole Source to provide warranties as required under this Contract.

3.4.17 Effect of Change Order. A Change Order takes precedence over any inconsistent terms of the Contract Documents preexistent to the Change Order.

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PART 5 – TIME.

3.5.1 Time is of the Essence. Time is of the essence of this Contract and all obligations hereunder.

3.5.2 Competent Management of Time. The CM/GC has represented to the Owner, in order to be awarded this Contract that the CM/GC is experienced in managing construction in accordance with contract requirements and in a timely manner and that the CM/GC has included in his proposal sufficient sums to carefully and competently manage this project for completion by the Material Completion Date.

3.5.3 Contract Time.

3.5.3.1 Fair and Reasonable. The CM/GC has carefully examined and analyzed the Site, the Contract Documents, and all known factors related to his ability to achieve Material Completion by the Material Completion Date. By submitting his proposal for this project, the CM/GC agrees that the stipulated Contract Time is fair and reasonable.

3.5.3.2 Delays. The parties recognize there may be delays to perform Change Order work in the event that conditions encountered at the Site are different from those indicated in the Contract Documents, or to perform Change Order work to correct errors in the plans and specifications. Execution of any change must be authorized. In such event, there shall be an adjustment in the GMP as provided in the Contract Documents for changes in the Work. The parties agree that such delays are not a ground for claiming extraordinary remunerations except as set forth in this Contract in Section 3.5.8 below.

3.5.4 Commencement, Prosecution, and Completion.

3.5.4.1 Commencement, Prosecution, and Completion of Work. The CM/GC will be required (a) to commence work under this Contract as of the Effective Date of the Contract and, (b) to prosecute the work with faithfulness and energy (c) to install the various parts of the work with equal steps shown on the Overall Project Schedule and at the same rate (or better) shown on the Overall Project Schedule and (d) to complete the work within the Contract Time, as adjusted. Commencement of work shall mean beginning the Basic Services. Unless otherwise agreed, and subject to Change Orders, Material Completion of the Project must be achieved on or before the date established as the Material Completion Date.

3.5.4.2 CM/GC's Acceleration for failure to meet Schedule Requirements. In the event the CM/GC shall be delinquent in respect to achieving the Milestone dates established in the Overall Project Schedule, CM/GC shall, within seven days after receipt of written demand of the Owner, cause its employees and Subcontractors to perform work at an accelerated pace with hours and days in addition to the normal working hours and working days, as necessary to promptly bring the Work into compliance with the Overall Project Schedule. Fulfillment of this requirement as to overtime work shall not relieve the CM/GC from liability for breach of the covenant as to time. For account of recovery of lost time required of the CM/GC for its breach of covenant as to time, the CM/GC shall be entitled to no claim against the Owner for any payment, repayment, reimbursement, remittance, remuneration, compensation, profit, cost, overhead, expense, loss expenditure, allowance, charge, demand, hire, wages, salary, tax, cash, assessment, price, money, bill, statement, dues, recovery, restitution, benefit, recoupment, exaction, injury or damages.

3.5.5 Construction Progress Schedule and Overall Project Schedule. (*See* Sections 2.1.4.1)

3.5.6 Material Completion Date. The Work under this Contract shall achieve Material Completion by 11:59 PM Eastern Prevailing Time of the date required in the Contract as the Material Completion Date unless extended by approved Change Order.

3.5.7 General Rule – No Damages for Delay, Extension of Time Sole Remedy. Extension of time is the CM/GC's sole remedy for any delays not the fault of the CM/GC. CM/GC shall not be entitled to any damages for delay or to any other reimbursement as a Cost of the Work, or to an increase in the GMP, or to payment, damages, monies, or compensation of any kind from Owner for direct, indirect, impact, or disruption damages (including but not limited to costs of acceleration of Work or any Phase thereof) arising because of delay or other hindrance of any kind whatsoever; except as specifically permitted by Section 3.5.8.

3.5.8 Exception to General Rule – Compensable Delay. The extension of the Contract Time and/or the adjustment to the GMP specifically provided for in this Section shall be CM/GC's sole and exclusive remedy for delays, hindrances, interferences or resulting inefficiencies and re-sequencing.

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3.5.8.1 Compensable Delay – Unavoidable Delay.

3.5.8.1.1 Delay by Owner or Design Professional. If the CM/GC is delayed in the progress of the Work by an act or neglect of the Owner, Owner's employees, Design Professional or Separate Contractors employed by the Owner, or by other causes beyond the CM/GC's control which the Owner determines are the fault of the Owner or the Design Professional and may justify delay, then the GMP may be adjusted and the Contract Time may be extended by Change Order for such reasonable time as the Owner may determine; provided, however, that (i) such delays extend the Overall Project Schedule's critical path; (ii) the CM/GC has taken all reasonable actions to mitigate the effects of the delay on the Work; (iii) the fault or negligence of the CM/GC, the CM/GC's agents or employees did not materially contribute to such causes; and (iv) the CM/GC shall have notified Owner of the cause or causes of such delay within fourteen days from the date on which the CM/GC first becomes aware of such delay. Extension of time and compensation for compensable delay are to be processed as a Change Order pursuant to Sections 3.4.6 and 3.4.7.

3.5.8.1.2 Delay in Responses to Submittals. Any claim by CM/GC for a change in the Material Completion Date due to delay of responses to submittals that materially affect the completion of the Work by lengthening the critical path of the Construction Progress Schedule may be made during the time while the failure of the Design Professional to act or perform continues, or within seven days after such failure to act or perform has been cured. If no Submittal Schedule or agreement as required in Section 2.1.4.2 is agreed upon, then a claim for delay will be allowed only after the Design Professional has been allowed fourteen days to take action. Any claim for extension of time or adjustment of GMP must be reasonable and take into consideration the nature of the submittal.

3.5.8.1.3 To be Processed as a Part of the Change Order Process. Extensions of Time and adjustments to the GMP for compensable Unavoidable Delay are to be processed as a Change Order pursuant to Section 3, Part 4.

3.5.8.2 Compensable Delay – Certain Change Orders.

3.5.8.2.1 Owner-Requested Changes. If the Owner requests changes in the Contract Documents that would materially affect the completion of the Work by lengthening the critical path of the Overall Project Schedule, the Design Professional shall recommend the appropriate number of additional days to be considered in the Change Order. CM/GC agrees that any monetary remedy associated with such extensions of time shall be no greater than the actual direct costs incurred by the CM/GC.

3.5.8.2.2 Other Change Orders. For Change Orders involving the following situations that would materially affect the completion of the Work by lengthening the critical path of the Construction Progress Schedule, the Design Professional shall recommend the appropriate number of additional days to be considered in the Change Order. CM/GC agrees that any monetary remedy associated with such extensions of time shall be no greater than the actual direct costs incurred by the CM/GC.

(a) Changes due to Subsurface or Other Unforeseen Conditions, Section 3.4.12.
(b) Changes for Compensable Rock, Section 3.4.13.
(c) Changes deleting work, Section 3.4.10.4

3.5.8.2.3 To be Processed as a Part of the Change Order Process. Extensions of Time and adjustments to the GMP for any of the compensable change order delays set forth in this Section 3.5.8.2 are to be processed as a part of each Change Order pursuant to Section 3, Part 4.

3.5.8.3 Compensable Delay – *Force Majeure*. If, between the Proceed Order Date and the Material Completion Date, as amended, the CM/GC is unable to perform or is delayed in the performance of any of the terms and provisions of this Contract, that materially affects the completion of the Work by lengthening the critical path of the Construction Progress Schedule, as a result of (i) governmental preemption of materials in connection with a national emergency declared by the President of the United States; (ii) riot, insurrection, acts of terror or terrorism or other civil disorder affecting performance of the Work; (iii) labor strikes that could not be reasonably anticipated by the CM/GC, (iv) earthquakes, or unusual and extreme weather conditions constituting Acts of God, (v) epidemic or pandemic, (vi) declaration of a state of emergency or government mandated shutdown, (vii) disruption of supply chain or (viii) unavoidable casualties, then, and in any such event, such inability or delay shall be excused, and the time for completing the affected portions of the Project (and the entire Project, if applicable) shall be extended for such reasonable period of time as the delay has affected the critical path of the performance of the Work hereunder.

3.5.8.3.1 Mitigation of Delay. CM/GC shall take all reasonable actions to minimize the delay caused by any of the above factors, and shall notify Owner in writing with a copy to the Design Professional of any event allowing

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for excuse or delay not later than seven days after the CM/GC first becomes aware of the event, or should have become aware, of the event; otherwise CM/GC will be deemed to have waived the excuse or delay.

3.5.8.3.2 To be Processed as a Part of the Change Order Process. Extensions of Time and adjustments to the GMP for *Force Majeure* are to be processed as a Change Order pursuant to Section 3, Part 4.

3.5.9 Non-Compensable Delay. CM/GC understands, acknowledges and agrees that delays occasioned by the events and occurrences set forth below are not compensable delays and do not constitute reason for extending the Date for Material Completion. It is CM/GC's responsibility to make adequate provision for the following in scheduling the Work:

3.5.9.1 Delay in Delivery of Materials or Equipment. Delay in delivery of materials or equipment for any cause other than those specified in Section 3.5.8.3. No claim will be approved if materials or equipment are delayed due to CM/GC's tardy procurement or expediting.

3.5.9.2 All Other Delay. All delay not covered in Section 3.5.8.

3.5.10 Submission of Claims for Compensable Delay, Extending the Material Completion Date.

3.5.10.1 Time for Submission. Except as specified below, any claim by CM/GC for a change in the Contract Time or the Material Completion Date shall be made within fourteen days of the day on which the CM/GC becomes aware of the event on which the claim is based or, if the Contract Documents specify a shorter or longer period with respect to such event, within the period specified by the Contract Documents.

3.5.10.2 Delay Claim Must Be In Writing. Any claim to extend the Contract Time and Material Completion Date must be in writing, must set forth in detail the basis for the claim and the number of days of delay claimed, must be correlated with the approved Overall Project Schedule, must be executed by the CM/GC and delivered to the Design Professional and the Owner, and must be reviewed and an appropriate time assessed by the Design Professional.

3.5.10.3 When Delay Claim Deemed Waived. Any claim to extend the Contract Time and Material Completion Date not made in writing to Owner within the above time periods shall be deemed waived and shall not thereafter be valid. In the case of a continuing delay as a result of a single event, only one claim submission is necessary.

3.5.11 Recovery of Schedule Delays.

3.5.11.1 Recovery of Schedule Delays. If the Design Professional or Owner determines that the Project is one week or more behind schedule, per the approved Overall Project Schedule, the Design Professional shall so notify the CM/GC in writing. Within seven days of the date of such notice, the CM/GC shall deliver to the Design Professional and Owner a written plan explaining how the CM/GC intends to bring the Project back on schedule. The CM/GC's plan must provide sufficient detail to allow the Design Professional and Owner to determine the proposal's feasibility.

3.5.11.2 Recovery of Schedule Delays During Last Sixty Days of Contract Time. At any time during the last sixty days of the Contract Time that the Design Professional or Owner finds that the CM/GC is behind schedule per the Contract Time, as amended, the Design Professional or Owner shall notify the CM/GC in writing. Within seven days of the date of such notice, the CM/GC shall prepare and deliver to the Design Professional and Owner a written plan explaining how the CM/GC intends to bring the Project back on schedule. The CM/GC's plan must provide sufficient detail to allow the Design Professional and Owner to determine the proposal's feasibility.

3.5.11.3 Payment of Costs of Recovery of Schedule Delays. Costs attributable to recovery of schedule delays may be paid from the Construction Contingency.

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PART 6 – CORRECTING THE WORK, INSPECTIONS, COVERING AND UNCOVERING WORK

3.6.1 Duty to Promptly Correct Work. The CM/GC shall promptly correct Work rejected by the Design Professional or Owner or known by the CM/GC to be defective, damaged, or failing to conform to the requirements of the Contract Documents, whether observed before or after Material Completion and whether or not designed, fabricated, installed, or completed. The CM/GC shall bear costs of correcting such rejected Work, including without limitation additional testing and inspections.

3.6.1.1 Full and Complete Charge. Notwithstanding the provisions of this Contract, and until Material Completion, the CM/GC shall have full and complete charge and care of the Work or any portion thereof (including the Owner- furnished supplies, material, equipment, or other items to be utilized or incorporated in the Work). After Material Completion is achieved, the CM/GC shall remain in complete charge and care of the items remaining to be completed on the initial Punchlist and Permitted Incomplete Items until all are accepted by the Owner on or before Final Completion.

3.6.1.2 Make Good Losses. The CM/GC shall rebuild, repair, restore, and make good losses of, and injuries or damages to, the Work or any portion thereof (including the Owner-furnished supplies, material, equipment, or other items to be utilized with, or incorporated in, the Work and that are at the Site) before Material Completion of the Work. Such rebuilding, repair, or restoration may be paid from the Construction Contingency; provided, however, that the Owner will make available applicable proceeds from the Builders' Risk policy required by the Contract Documents.

3.6.1.3 No Limitation. Nothing contained in this Part shall be construed to establish a period of limitation with respect to the CM/GC's obligations to correct defective or non-conforming Work under this Contract, at law or in equity.

3.6.2 Correcting the Work.

3.6.2.1 Notice of Non-Compliant Work. A Notice of Non-Compliant Work shall be in writing, shall be dated, shall be signed by the Design Professional, shall be addressed to the CM/GC with a copy to the Owner, and shall contain three elements as follows:

3.6.2.1.1 Description of Work:

(a) that has been omitted; or
(b) that is unexecuted as planned in the Overall Project Schedule; or
(c) that has not been executed in accordance with the methods and materials designated in the Contract Documents.

3.6.2.1.2 Contract References: Citation of the provision or provisions of the Contract Documents which specify the Work to be executed.

3.6.2.1.3 Time for Compliance: Fixing of a reasonable space of time within which the CM/GC shall have made good the deficiency (which said space of time shall not be deemed to be an extension of Contract Time, nor shall it be deemed to be authorization for amendment to the Overall Project Schedule).

3.6.2.2 Failure to Supply Workmen or Materials or to Prosecute the Work. A Notice of Non-Compliant Work may be issued for failure of the CM/GC to supply enough workers or enough materials or proper materials to prosecute the Work. A Notice of Non-Compliant Work in such event may be based deficiencies in management of time.

3.6.2.3 Removal and Making Good of Non-Compliant Work. The CM/GC shall remove from the Site within the space of time designated in Notice of Non-Compliant Work all work determined by the Design Professional as failing to conform to the contract, whether incorporated in the work or not, and the CM/GC shall promptly replace and re-execute the work in accordance with the Contract and without expense to the Owner and shall bear the expense of making good all work of other contractors destroyed by such removal or replacement. The CM/GC shall supply any omitted work and perform all unexecuted work within the space of time fixed by the Design Professional in Notices of Non-Compliant Work.

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3.6.2.4 Remedy of the Owner for Breach of Notice of Non-Compliant Work.

3.6.2.4.1 Failure to Make Good a Deficiency. If the CM/GC does not make good a deficiency within a reasonable space of time fixed in a Notice of Non-Compliant Work, the Owner may do any of the following:

(a) Remove the Non-Compliant Work and store it at the expense of the CM/GC. If the CM/GC does not pay the expenses of such removal and storing within ten days after receipt of written demand of the Owner, the Owner may upon three days' notice in writing to the CM/GC sell such materials at private sale or at auction and shall account for the net proceeds thereof after deducting all proper costs incurred by the Owner.

(b) Supply omitted work, perform unexecuted work, or replace and re-execute work not done in accordance with the methods and materials designated in the Contract Documents, and deduct the cost thereof from any payment then or thereafter due the CM/GC. The Design Professional shall approve the amount charged to the CM/GC.

3.6.2.4.2 Other Remedies. The remedies stated in this section are in addition to the remedies otherwise available to the Owner, do not exclude such other remedies, and are without prejudice to any other remedies. Time limits stated in Notices of Non-Compliant Work are of the essence of the contract. Unless otherwise agreed to by the Owner in writing, the making good of Non-Compliant work shall physically commence at the Site in not more than seven days after receipt of the Notice of Non-Compliant Work, except that in case of emergency correction shall physically commence at the Site at once, and except that the CM/GC shall in any event physically commence the correction at the Site early enough to complete within the space of time allowed in the Notice of Non-Compliant Work. The Owner shall give prompt consideration to reasonable requests for delay in commencement of the making good of Notices of Non-Compliant Work. The making good of Non-Compliant work shall be completed within the space of time allowed in the Notice of Non-Compliant Work unless the CM/GC shall have requested from the Design Professional an increase in the amount of time allowed and the Design Professional shall have given notice to the CM/GC in writing, with copy to the Owner, stating the additional amount of time, if any, allowed.

3.6.2.5 Notice of Correction from CM/GC. The CM/GC shall give prompt notice in writing to the Design Professional, with copy to the Owner, upon completion of the correction of the Non-Compliant work. In the absence of such notice, it shall be and is presumed under this Contract that there has been no correction, supplying remedy, or performance of unexecuted work.

3.6.2.6 The Owner's Right to Correct Work. If the CM/GC should neglect to prosecute the Work properly or fail to correct Non-Compliant Work or fail to perform any provision of this Contract, the Owner, after three days' written notice to the CM/GC, may without prejudice to any other remedy he may have (including without limitation remedies against the CM/GC's surety), make good the deficiencies and may deduct the cost thereof from the payment then or thereafter due the CM/GC.

3.6.3 No Delay. Work requiring correction shall be corrected immediately and shall be carried out in such a way not to delay the completion of the Project. If it is not feasible to correct said work immediately, the corrective work shall be done on a schedule acceptable to the Owner.

3.6.4 Effect of Notice of Non-Compliant Work. Notwithstanding anything contained in the Contract Documents to the contrary, in order to minimize delays in the completion of the Project, the CM/GC shall continue working while responding to a Notice of Non-Compliant Work and shall continue working while protesting any decision by the Design Professional or the Owner.

3.6.5 Deductions for Uncorrected Work. If the Design Professional and Owner deem it inexpedient to correct work injured or done not in accordance with the contract, an equitable deduction from the contract price shall be made therefore and confirmed by execution of a lump sum Change Order. There is no duty on the part of the Owner, however, to accept any work injured or done not in accordance with the methods and materials designated in the contract documents, nor does the CM/GC have the right to demand that there shall be

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acceptance of work injured or done not in accordance with the methods and materials designated in the Contract Documents.

3.6.6 Inspection of Work.

3.6.6.1 Access to Work. At all times, the Design Professional and his representatives shall have access to the work wherever it is in preparation or progress, and the CM/GC shall provide proper facilities for such access and for inspection.

3.6.6.2 Notice to Design Professional from CM/GC Prior to Covering Work. If the specifications, the Design Professional's instructions (either in the specifications or issued later in writing), laws, ordinances, or any public authority require any work to be specially tested or approved, the CM/GC shall give the Design Professional timely notice in writing of its readiness for inspection and, if the inspection is by any authority other than the Design Professional, will tell the Design Professional the date fixed for such inspection. Inspections by the Design Professional shall be made promptly and, where practicable, at the source of supply. If any work should be covered without approval or consent of the Design Professional, said Work must, if required by the Design Professional, be uncovered for examination at the CM/GC's expense.

3.6.6.3 Fire Marshal Inspections.

3.6.6.3.1 General. The Fire Marshal may make inspections at any time. It shall be the responsibility of the CM/GC to request an inspection at eighty percent completion and at 100% completion and to give notice when all items on the 100% inspection report have been completed. Requests shall be in writing with a copy to the Owner and Design Professional.

3.6.6.3.2 Inspections Defined. The basic definitions for eighty percent and 100% inspections are as follows:

(a) Eighty Percent (80%) Inspection: The structural components are in place and open for review of the fire safety components. NOTE: Structural components include the following: fire walls, vertical shafts, stairways, smoke stops, hazardous area separation, roof and ceiling assemblies, corridor and door width, and HVAC system.

(b) One Hundred Percent (100%) Inspection: The CM/GC has completed all of the items on the eighty percent inspection report and has the certificate of occupancy in hand.

3.6.6.4 False Start. In the event the CM/GC shall have issued notice of readiness prematurely, his action shall be deemed to be a "false start." The CM/GC shall be liable for the damage resulting from the aforesaid false start, including, but not limited to, the salary, professional fees, and travel and living expenses of the person or parties inconvenienced by the aforesaid false start.

3.6.6.5 Certificate of Occupancy. The CM/GC's obligation under the Contract is to install the Work in accordance with the Contract Documents, obtain the Certificate of Occupancy from the Fire Marshal or his deputy, and forward it to the Design Professional as a part of the final close out procedures. The Design Professional's obligation is to design the Work to comply with the applicable codes and to qualify for a Certificate of Occupancy.

3.6.7 Covering and Uncovering Work.

3.6.7.1 Re-examination or Re-testing of Work Covered Pursuant to Consent of Design Professional. Re-examination or re-testing of questioned Work previously covered pursuant to consent of the Design Professional may be ordered by the Design Professional. If so ordered, the Work must be uncovered by the CM/GC. The Owner shall pay the cost of re-examination and replacement or of re-testing if such Work is found in accordance with the Contract Documents. The CM/GC shall pay such cost if such Work is found not in accordance with the Contract Documents unless the CM/GC can show that a Separate Contractor caused the defect in the Work. In that event, the Owner shall pay such cost. Re-examination or re-testing under the terms of this Section applies only to Work that has been covered with consent of

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the Design Professional. Work covered without consent of the Design Professional must be uncovered for examination as provided below.

3.6.7.2 Re-examination or Re-testing of Work Covered Without Consent of Design Professional. If any Work should be covered without approval or consent of the Design Professional or contrary to any provision of the Contract Documents, such Work may be subject to uncovering for examination by the Design Professional at the CM/GC's expense. The CM/GC shall be liable for the costs resulting from the aforesaid uncovering, including, but not limited to, the salary, professional fees, and travel and living expenses of the person or parties inconvenienced thereby.

3.6.8 Inspection Does Not Relieve CM/GC. Under the Contract Documents, the CM/GC acknowledges that it has the responsibility for furnishing all services, labor, supplies, and materials for the entire Work in accordance with such documents. No provisions of this Section nor any inspection of the Work by the Owner, representatives of the Owner, clerk-of-the-works, engineers employed by the Design Professional, representatives of the Design Professional, or the Design Professional shall in any way diminish, relieve, or alter said responsibility and undertaking of the CM/GC. Neither shall the omission of any of the foregoing to discover or to bring to the attention of the CM/GC the existence of any Work or materials injured or done not in accordance with said Contract Documents in any way diminish, relieve, or alter such obligation of the CM/GC nor shall the aforesaid omission diminish or alter the rights or remedies of the Owner as set forth in the Contract Documents.

3.6.9 Owner may Require Uncovering of Work. The Owner may require any Work to be uncovered, whether or not prior information was provided as to the schedule for covering. Should work so uncovered prove to be in noncompliance with the Contract Documents or the Construction Documents, the cost of uncovering, correction of the Work, recovering, and any schedule recovery costs shall be borne by the CM/GC and may be paid from the Construction Contingency. However, if the CM/GC complies with the notice requirements above, and the Owner fails to make its desired inspections, and the Owner then requires the CM/GC to uncover the Work, the Owner shall bear all additional costs of uncovering and recovering the Work unless the Work is found to be non-compliant with the Construction Documents, in which case the CM/GC shall bear all such uncovering and recovering costs, which may be paid from the Construction Contingency. Should the work be compliant, however, the Owner will pay for the uncovering and repair of the affected work, in addition to any delay that affects the critical path of the Project.

3.6.10 Owner may Pay for Uncovering Work. Should the Owner require work to be uncovered contrary to the Contract Documents and the Construction Documents, the Owner shall compensate the CM/GC for any extra cost caused the CM/GC, including any cost of schedule recovery.

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PART 7 – TRADE CONTRACTORS; SELF-PERFORMANCE

3.7.1 Parties. Trade Contracts shall be between the CM/GC and the Trade Contractor or Supplier selected by CM/GC, as CM/GC deems appropriate, subject to the requirements that such Trade Contract be awarded in accordance with the procedures set forth in this Part.

3.7.2 Selection.

3.7.2.1 Selection Process. All Trade Contracts between CM/GC and Trade Contractors or Suppliers shall be entered into only after the CM/GC's completion of the selection process required by this Section 3, Part 7. For each selection, CM/GC, in consultation with the Design Professional and the Owner, shall develop appropriate selection criteria for the advertisement, solicitation and selection of the Trade Contractor or Supplier. The cost of the work shall be a factor for consideration in every selection, but may not necessarily be the determining factor.

3.7.2.2 Information for Proposed Firms. CM/GC shall develop information for proposed firms for all of the Work. Such information shall describe the Work to be procured by the CM/GC through Trade Contractors or Suppliers, using CM/GC's own forms and procedures. Firms shall be required to submit a proposal encompassing the full contract price for the Work to be procured, except as provided in Section 3.7.11 below.

3.7.2.3 Alternative Prices. With the approval of the Owner, the CM/GC shall be entitled to take alternative prices as it deems necessary to advance the Work. The Owner shall not unreasonably withhold such approval.

3.7.3 Proposers Lists. Prior to each solicitation of proposals, the CM/GC shall prepare and submit to the Owner for review a list or sources of recommended proposers. CM/GC may require prospective proposer to undergo a pre- qualification process to permit CM/GC affirmatively to determine that a proposer who desires to submit a proposal is a responsible proposer as defined in Section 3.7.5.

3.7.4 CM/GC Proposal Review. Upon receipt of proposals and prior to CM/GC's acceptance of any proposal, CM/GC shall prepare and deliver to the Owner for its review a complete and thorough analysis of the proposals received. Such proposal analysis shall clearly indicate the apparent best proposal from the proposer or proposers determined by CM/GC to be responsible and responsive and shall be accompanied by a copy of each proposal received. Nothing herein requires CM/GC to select the lowest price proposal. The risk and cost of CM/GC's selection of a successful proposer lies exclusively with CM/GC.

3.7.5 Responsible Proposers. CM/GC shall affirmatively determine whether each proposer is or is not responsible and whether each proposal is or is not responsive. To be deemed a responsible proposer, the proposed Trade Contractors or Suppliers shall match the following criteria:

3.7.6.1 Qualified. Be reputable, skilled, reliable, competent, qualified in the trade or field in which they are to perform on the Project, and be thoroughly familiar with applicable codes.

3.7.6.2 Bonding. Have the ability to obtain bonding from a bonding company acceptable to CM/GC.

3.7.6.3 Insurance. Shall have or shall have the ability to obtain insurance required by the Contract Documents.

3.7.6 Owner Rights. The Owner reserves the right in its sole and absolute discretion to require CM/GC to reject any Supplier or Trade Contractor and any proposal. If the Owner exercises its right to require CM/GC to reject a Trade Contractor, a Supplier, or the lowest price proposal submitted by a responsible proposer, the acceptance of which CM/GC recommends, CM/GC shall recommend an acceptable substitute Trade Contractor, Supplier, or proposer, and if the substitute Trade Contractor, Supplier or proposer has submitted a higher proposal or price, the GMP and its Estimated Cost Component shall be adjusted to reflect the difference between the amount of the rejected proposal or price and the higher accepted proposal or price.

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3.7.7 CM/GC Award. Unless the Owner exercises its rights under Section 3.7.6, CM/GC shall award the Work to a responsible Trade Contractor or Supplier of CM/GC's choosing and proceed with the preparation of a purchase order or Trade Contract incorporating all necessary terms and conditions of the Contract Documents. Upon execution by CM/GC, and if requested by the Owner, CM/GC shall send a copy of the executed purchase order or Trade Contract to the Owner.

3.7.8 CM/GC Self-Performance.

3.7.8.1 Conditions. In the event the lowest responsible and responsive proposal received by CM/GC exceeds CM/GC's adjusted Construction Budget line item for such Work, or in the event that no proposal is received, and any permitted redesign does not eliminate the budget shortfall or result in the submission of an acceptable proposal, the CM/GC has the following options: (i) In the case where the lowest responsible and responsive proposal exceeds the line item budget, and with the prior approval of the Owner, the CM/GC may perform such Work with its own forces for the lump sum amount stated in its line item budget for such Work in its current Construction Budget; or (ii) In the case where no responsible and responsive proposal is received, the CM/GC shall perform such Work with its own forces within the Guaranteed Maximum Price for the lump sum amount stated in its line item budget for such Work in its current Construction Budget. CM/GC's line item budget for Work stated in its current Construction Budget shall be deemed to be a proposal submitted by the CM/GC for such Work. No action permitted under this Paragraph shall increase the Guaranteed Maximum Price.

3.7.8.2 Default of Trade Contractor. In addition, CM/GC may with its own forces perform Work encompassed within any Trade Contract between CM/GC and any Trade Contractor upon the termination of such Trade Contract by CM/GC by reason of the default or abandonment of the Work by the Trade Contractor but, the CM/GC shall perform such Work or the balance thereof remaining at the time of termination for an amount not exceeding the contract sum specified in the Trade Contract or the unexpended balance thereof remaining at the time of termination but CM/GC's Fee shall not be reduced, or increased on account of the Work performed.

3.7.8.3 Other Compelling Circumstances with Specific Approval of Owner. In certain compelling circumstances, upon the request of the CM/GC and the recommendation of the Design Professional, Owner may permit, in its sole and unfettered discretion where such approval is in the best interest of the Owner, CM/GC to perform specified work with its own forces. CM/GC's line item budget for such Work stated in its current Construction Budget, or less, shall be deemed to be a proposal submitted by the CM/GC for such Work for which, in accordance with this Paragraph and subject to approval by Owner, the CM/GC will undertake to perform on a lump sum basis. CM/GC shall be entitled to CM/GC Construction Fee calculated on such lump sum as a cost of the Work. No action permitted under this Paragraph shall increase the Guaranteed Maximum Price.

3.7.9 Duty to Continue Work. Notwithstanding any dispute between the Owner and CM/GC or between CM/GC and any Trade Contractors or between such Trade Contractors, it shall be the responsibility of CM/GC to continue to prosecute all of the Work and perform all of its services diligently in a good and Workmanlike manner in conformity with this Contract, and the CM/GC and/or Trade Contractors shall have no right to cease performance hereunder or to permit the prosecution of the Work to be delayed so long as Owner does not default hereunder. So long as the CM/GC continues performance under this Contract, the Owner shall continue to pay CM/GC in accordance with this Contract.

3.7.10 Alternative Price Terms. Notwithstanding the requirements of Sections 3.7.2 and 3.7.12, CM/GC shall be permitted, with Owner's advance approval and in Owner's sole discretion, to seek Trade Contractors or Trade Suppliers who meet the requirements of this Section, through a proposal process under which the proposed Trade Contractor or Trade Supplier offers to provide Construction Management services for designated subcomponents of the Project and, with the Owner's approval, CM/GC may enter such contracts for the furnishing of such systems on a guaranteed maximum price basis.

3.7.11 CM/GC Supplied Equipment or Supplies. With the prior approval of the Owner and in its sole discretion, CM/GC may supply for use by its Trade Contractors or Suppliers or for use by CM/GC for the performance of Work performed by CM/GC with its own forces, equipment and supplies necessary to the

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performance of the Work in addition to those items that the CM/GC is authorized to supply. However, the Actual Cost of such equipment or supplies reimbursable by the Owner to CM/GC shall not in any event exceed the least of (i) the amount that would be paid by CM/GC for the procurement of such equipment or supplies under a competitive proposal procurement, or (ii) the amount that would be reimbursable to CM/GC as an Actual Cost for such equipment or supplies had such equipment or supplies been procured from others under the terms of the Contract Documents, or (iii) the applicable amounts referenced in Section 4.4.3.8.

3.7.12 No Conflict of Interests. Without prior written approval from the Owner after full disclosure by CM/GC, the CM/GC shall not award any Trade Contract to any Affiliate of CM/GC.

3.7.13 Fair Opportunity for Trade Contractors – trade packages. All construction Work to be performed by Trade Contractors shall be performed pursuant to trade packages from qualified Trade Contractors. The CM/GC shall make reasonable efforts to ensure that Trade Contractors and Suppliers local to the Project site are given the fair opportunity to propose for, be considered for, and participate in the award of trade packages required for completion of the Project. The CM/GC shall, on behalf of Owner, advertise and solicit proposals from Trade Contractors and from suppliers of material or equipment fabricated to a special design for the work. All proposals will be delivered to the CM/GC. CM/GC will, on behalf of the Owner, analyze all such proposals to determine whether the proposals are responsive and the proposers are responsible. The CM/GC will recommend to the Owner, based on price and other factors, the Trade Contractor or Supplier. If the recommended Trade Contractor or Supplier is not the low price proposer, CM/GC will provide additional information justifying its recommendation. The trade package will be awarded upon receipt of approval from the Owner. If the Owner does not agree with the CM/GC's recommendation, the Owner will instruct the CM/GC to award the trade package to the lowest responsive and responsible price proposer, or to reissue the package for additional proposers.

3.7.14 Warranty of CM/GC. The CM/GC warrants that the Trade Contractors selected by him are reputable, skilled, reliable, competent, qualified in the trade or field in which they are to perform on the Project, and thoroughly familiar with applicable codes. The CM/GC will have primary responsibility for all Trade Packages. Trade Contractors are required to execute CM/GC's standard subcontract, as amended to be consistent with this Contract. The Trade Contractors shall be acting as Trade Contractors to the CM/GC. The CM/GC shall execute and administer all such Trade Package contracts and shall assume full responsibility for each and every item of Work performed thereunder and for the timely completion of all such Work in accordance herewith, including responsibility for all guarantees and warranties to be provided by each Trade Contractor.

3.7.15 CM/GC Responsible for Acts and Omissions of Trade Contractors, Materialmen, Suppliers, and Employees. The CM/GC agrees that he is as fully responsible for the acts and omissions of his Trade Contractors, materialmen, suppliers, and employees, and of persons either directly or indirectly employed by them, as he is responsible for the acts and omissions of persons directly employed by him. The failure of a Trade Contractor, materialman, supplier, or employee to perform shall not be asserted by the CM/GC as an excuse for any omission from or noncompliance with requirements of the contract; nor shall the CM/GC be entitled to an extension of time because of failure of a Trade Contractor, materialman, supplier, or employee to perform unless said failure was a direct result of some delay to the Trade Contractor, materialman, supplier, or employee of the kind and character described in the Contract for which the CM/GC shall have requested and received an extension of time under the terms of the General Requirements. The subcontracting of work does not relieve the CM/GC of the full responsibility for the execution of the work and for compliance with all requirements of the Contract Documents. The CM/GC shall not assert negligence, inefficiency, insolvency, bankruptcy, or incompetence of any Trade Contractor, materialman, supplier, or employee as excuse for the existence of any noncompliance with or omission to fulfill any obligation under the Contract either as to timely performance or as to compliance with methods and materials designated in the Contract Documents; nor shall the CM/GC assert nonperformance (unless an extension of time shall have been granted pursuant to the Contract requirements) of a Trade Contractor, materialman, supplier, or employee as excuse for the existence of any noncompliance with or omission to fulfill any obligation under the Contract either as to timely performance or as to compliance with methods and materials designated in the Contract Documents. Any provision in any contract between the CM/GC and any Trade Contractor which obligates the CM/GC to directly present to the Owner any claim of the Trade Contractor shall be invalid.

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3.7.16 Relationship of CM/GC and Trade Contractors.

3.7.16.1 Obligations of Each. The CM/GC agrees to bind every Subcontractor, Trade Contractor, Supplier (hereinafter collectively referred to as "Subordinate Contractor") to the terms of the Contract Documents insofar as they are applicable to its work, including the following provisions of this Section:

3.7.16.1.1 The CM/GC Agrees:

(a) To be bound to the Subordinate Contractor by all the obligations that the Owner owes to the CM/GC under the Contract Documents.

(b) To pay the Subordinate Contractor the amount allowed to the CM/GC on account of the Subordinate Contractor's work to the extent of the Subordinate Contractor's interest therein, within seven days of receipt of payment from the Owner.

(c) To pay the Subordinate Contractor upon receipt of payment from Owner such that the Subordinate Contractor's total payments shall be as large in proportion to the value of the work done by the Subordinate Contractor as the total amount certified and paid to the CM/GC is to the value of the work done by the Subordinate Contractor.

(d) To pay the Subordinate Contractor a just share of any property insurance money received by the CM/GC and due to Subordinate Contractor for work performed by Subordinate and paid for by insurance.

(e) That no claim for services rendered or materials supplied or other matters by the CM/GC against the Subordinate Contractor shall be valid unless written notice thereof is given by the CM/GC to the Subordinate Contractor prior to or during the first ten days of the calendar month following that in which the CM/GC determines that the claim is chargeable against that Subordinate Contractor.

(f) To give the Subordinate Contractor, upon its request, an opportunity to be present with CM/GC and to submit evidence in any dispute involving rights of the Subordinate Contractor.

3.7.16.1.2 The CM/GC Agrees to require its Subcontractors to do the following:

(a) To be bound to the CM/GC by the terms of the Contract Documents and to assume toward the CM/GC all the obligations and responsibilities that the CM/GC by the aforesaid documents assumes toward the Owner.

(b) To submit to the CM/GC applications for payment in such reasonable time as to enable the CM/GC to apply for payment under these General Requirements.

(c) To make all claims for extras, for extensions of time or for damages to the CM/GC in the manner provided in the General Requirements for like claims by the CM/GC upon the Owner, except that the time for making such claims to the CM/GC is within ten days after the initial event leading to the claim.

(d) To pay their Subordinate Contractors upon receipt of payments the amount allowed on account of such Subordinate Contractor's work to the extent of such Subordinate Contractor's interest therein within seven days of its receipt of payment.

(e) To pay their Subordinate Contractors upon Subcontractor's receipt of payment such that at all times their Subordinate Contractors' aggregate payments shall be in proportion to the Work performed by each of the Subordinate Contractors.

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3.7.16.2 Owner Not Obligated to Any Subcontractor, Subordinate Contractor, Trade Contractor, or Supplier. There is no obligation on the part of the Owner to pay to or to see to the payment of any sums to any Subcontractor, Subordinate Contractor, Trade Contractor, Supplier, laborer, employee, or person supplying labor, materials, machinery or equipment to the Project.

3.7.16.3 Term "Substantial Completion" Deleted. The term "substantial completion," if found, is hereby deleted and is of no force in all Subcontracts, Trade Contracts, and in the Trade Sections of the Contract Documents. In certain contexts, the term may be superseded by the term "Material Completion" as defined in this Contract.

3.7.16.4 Failure to Incorporate Terms in Subcontracts. The CM/GC agrees that failure on his part to incorporate this Section 3.5.5 in all Subcontracts, Trade Contracts, or Supplier contracts, is a material breach of an essential covenant of this Contract, and further agrees that in the event of such breach the CM/GC shall, within five days after demand of the Owner, furnish proof in writing that the deficiency has been remedied to the end that (i) the CM/GC may not maintain that it is beyond his competence to require performance of terms of the contract by a subcontractor and (ii) no subcontractor may maintain that he has not assumed toward the CM/GC all the obligations and responsibilities that the CM/GC has assumed toward the Owner. Failure on the part of the CM/GC to effect remedy as above within five days after receipt of written demand of the Owner shall be grounds for issuance of a declaration of default by the Owner.

3.7.17 Assignment of Trade Contracts, Subcontracts.

3.7.17.1 No Contractual Relationship. Nothing contained in this Contract creates a contractual relationship between the Owner and any person or entity other than the CM/GC. However, the Owner and CM/GC agree that the Owner is an intended and express third-party beneficiary of all contracts for construction services and all subcontracts, purchase orders, and other agreements between the CM/GC and third parties in connection with the Project or the Work.

3.7.17.2 Conditional Assignment. The CM/GC hereby conditionally assigns to the Owner all of its interest in any subcontracts (including, without limitation, purchase orders) entered into by the CM/GC for performance of any part of the Work. Such conditional assignment shall become effective only upon the termination of this Contract, whereupon the Owner shall succeed to the rights and obligations of the CM/GC under such subcontract. The CM/GC shall incorporate, into its respective subcontracts, supply agreements, purchase orders, and other agreements in connection with the Project or the Work, language that expressly names the Owner as an intended third-party beneficiary of such agreements.

3.7.17.3 Assignment Provisions. CM/GC shall also ensure that its subcontracts, supply agreements, purchase orders, and other agreements contain a provision that assigns to the Owner the CM/GC's interest in the respective agreement to the Owner immediately upon Trade Contractor's or supplier's receipt of Owner's notice to such effect. Furthermore, CM/GC shall ensure that its subcontracts, supply agreements, purchase orders, and other agreements contain a provision that allows the Owner to terminate that agreement solely for the Owner's convenience in accordance with the provisions set forth in this Contract. Owner further agrees to pay reasonable costs of cancellation charges or re-stocking costs for the Owner's termination for convenience of subcontracts, supply agreements, purchase orders, and other agreements.

3.7.17.4 Assignment of Warranties. Without limiting CM/GC's post-construction obligations pursuant to this Contract, CM/GC shall assign to Owner all post-construction warranties resulting from CM/GC's agreements with third parties, subject to CM/GC's reservation of rights under such warranties to the extent necessary to enable CM/GC to fulfill its obligations to Owner hereunder. Moreover, CM/GC shall protect Owner's interest in all such warranties and shall take no action nor commit an act or omission that renders such warranties void or voidable.

3.7.18 Trade Contractor/Supplier Procurement Schedule. The CM/GC shall maintain a schedule of proposed and awarded bid packages for Trade Contractors and Suppliers and shall submit a current copy to the Owner and Design Professional. The schedule shall be on a format acceptable to the Owner and shall include the following headings and data:

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(a) Description
(b) Bid Date
(c) Award Date
(d) Name of Trade Contractor or Supplier
(e) Contract Execution Date
(f) Award Amount
(g) CM/GC Estimate
(h) Variance

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SECTION 4 – COMPENSATION

PART 1 – GENERAL.

4.1.1 Authorized Compensation and Limitations.

4.1.1.1 CM/GC's Fee. CM/GC's Fee shall be the amount specified in Paragraph 4 of the Contract.

4.1.1.1.1 Basis of Fee. The CM/GC's fee is the amount, established by and agreed to by both parties, that is the full amount of compensation due to the CM/GC as gross profit, and for any and all expenses of the Project not included and identified as a Cost of the Work or the CM/GC's Overhead Cost, provided that the CM/GC performs all the requirements of the Contract Documents within the time limits established.

4.1.1.1.2 Adjustments in the CM/GC's Fees. The CM/GC's Fee can only be changed by a written Change Order executed by both parties. The Fee can only be adjusted for material changes in the scope of the Work, which includes without limitation the management of the replacement of an insured or uninsured loss.

4.1.1.2 CM/GC's Construction Overhead Costs and Expenses. The maximum allowable amount for construction overhead costs and expenses shall be not in excess of the amount specified in Paragraph 5 of the Contract. These costs and limitations consist of the following:

4.1.1.2.1 Construction Overhead Costs and Expenses. The Construction Overhead Costs and Expenses are inclusive of all direct and incidental expenses including but not limited to toll telephone calls, facsimile charges, postage and use of courier services, photocopying and reproduction expenses, travel costs, sustenance, reproduction, salaries, wages, and field office expenses, based upon Actual Cost not exceeding, in the aggregate, the amounts for construction overhead items shown in Paragraph 5 of the Contract. These items are referred to in the CM/GC's GMP Base Bid as General Conditions and Reimbursables.

4.1.1.3 Cost of the Work. The Actual Cost for the Cost of the Work shall be paid as set forth in Section 4, Part 4.

4.1.1.4 Guaranteed Maximum Price. The Owner will pay the CM/GC an amount established as the CM/GC's Fee, plus the actual Construction Overhead Costs and the actual Cost of the Work as described herein, but not to exceed, in any event or for any reason, the Guaranteed Maximum Price. All savings shall be passed on to the Owner.

4.1.1.5 Payment Schedule. The CM/GC's Fee shall be paid as described in Section 4 Part 3.

4.1.1.6 Payments Withheld. The Owner may withhold from the Cost of the Work or, on account of subsequently discovered evidence, nullify the whole or a part of any pay request or certificate to such extent as may be necessary to protect the Owner from loss on account of:

(a) Defective work not remedied
(b) Claims filed or reasonable evidence indicating probable filing of claims.
(c) Failure of the Contractor to make payments properly to subcontractor or for materials or labor.
(d) A reasonable doubt that the contract can be completed for the balance then unpaid.
(e) Damage to another contractor or to some third party.
(f) Failure to maintain a rate of progress in accordance with the construction progress schedule.
(g) Failure to supply enough skilled workmen or proper materials.

When the above grounds are removed, payment shall be made for amounts withheld because of them. With regard to cases (b) and (c) above, the Owner may agree to payment upon receipt of a satisfactory Bond to

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Discharge Claim in the amount of double the claim. At the option of the Owner, adherence to the construction progress schedule shall be a condition precedent to the right of the CM/GC to demand payment. No omission on the part of the Owner to exercise the aforesaid option shall be construed to be a waiver of breach of the construction progress schedule or acquiescence therein, and the Owner may exercise its option from time to time and as often as may be expedient.

4.1.1.7 Change in Tax Rates. If the rate of sales, use, payroll, or other similar direct taxes on materials, equipment, or labor required for the performance of the Work shall increase above the rate in force on the date of the Contract, then the Cost of Work Component (but not the Fee or Construction Overhead Component) shall be increased by the amount of additional taxes incurred by CM/GC as a result of such change in rate. A written claim shall be made promptly after CM/GC receives notice of such tax increase. If the tax rates decrease, the estimated amount of saved taxes due to the decrease as yet unexpended shall be moved into the Construction Contingency.

4.1.2 Audit. At the request of the Owner, the CM/GC shall allow the Owner the opportunity to select an auditor to examine and inspect the Project and the CM/GC's books, records, and any and all accounts and similar data related to the Project. The Owner shall bear the cost of such audit. The auditor may sign a confidentiality agreement before conducting any such audit. Notwithstanding such agreement, CM/GC understands and agrees that all project records are subject to the Georgia Open Records Act. Approval of an Application for Payment by the Owner, including Final Payment, shall not foreclose the right of the Owner to examine the books and records and their backup documents in accordance with the Contract Documents to determine the correctness and accuracy of any item.

4.1.3 Limitation of Owner Liability. The Owner shall not be liable to pay CM/GC any amount for Fees, Overhead, or Actual Cost of Work performed that, after the payment of such amount or any portion thereof, would cause the aggregate amount paid to CM/GC hereunder to exceed the Guaranteed Maximum Price.

4.1.4 Inclusion of Contingency Amounts in GMP.

4.1.4.1 A Part of the Cost of the Work. The estimated Cost of the Work shall include in the Construction Contingency sums established by the CM/GC for the CM/GC's use to cover costs arising under Sections 4.4.5 *et seq.*

4.1.4.2 CM/GC to Monitor. The Owner and the CM/GC agree that the amounts so established will be monitored by both parties and used by the CM/GC, with approvals as specified by the Owner, to provide for the cost of labor, materials, services, or equipment that are properly reimbursable as a Cost of the Work but that will not be the basis of a Change Order to adjust the GMP. The balances of all contingency funds will be returned to the Owner at the completion of the project. The CM/GC will provide a full accounting of the status of the contingency funds to the Owner on a quarterly basis until the Project is completed.

PART 2 - RESERVED

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PART 3 – PAYMENT FOR CONSTRUCTION PHASE SERVICES

4.3.1 Basis of Compensation.

4.3.1.1 Actual Costs. For its services the CM/GC will be reimbursed for its actual wages, salaries and costs as permitted in Section 4, Part 4, not to exceed the prevailing wage rate or reasonable salaries set forth in Staffing Plan, Wage and Salary Schedule.

4.3.1.2 Schedule of Values as a Comparison. Before the first Application for Payment, the CM/GC shall submit to the Owner through the Design Professional a Schedule of Values allocated to various portions of the Work. The Schedule of Values shall be supported by such data to substantiate its accuracy as the Owner may require. This Schedule of Values, unless objected to by the Owner, will be used as a basis for reviewing the CM/GC's Applications for Payment. Each Application for Payment will be reviewed for actual costs and also for consistency based on percentage completion of the Schedule of Values.

4.3.2 Submission of Applications for Payment. By the twenty-fifth day (25th) of each month, the CM/GC shall submit to the Owner itemized Applications for Payment. The CM/GC shall submit no more than one (1) Application for Payment during each month.

4.3.3 Timing of Payments. CM/GC's Fee shall be paid on a monthly basis and proportionate to the ratio the Actual Costs incurred for Work on the Project bear to the Estimated Cost Component of the GMP, less retainage.

4.3.4 Payments Withheld. The Owner may withhold or, on account of subsequently discovered evidence, nullify the whole or a part of any application for payment or certificate to such extent as may be necessary to protect the Owner from loss on account of:

(a) Defective work not remedied
(b) Claims filed or reasonable evidence indicating probable filing of claims.
(c) Failure of the Contractor to make payments properly to subcontractor or for materials or labor.
(d) A reasonable doubt that the contract can be completed for the balance then unpaid.
(e) Damage to another contractor or to some third party.
(f) Failure to maintain a rate of progress in accordance with the Overall Project Schedule.
(g) Failure to supply enough skilled workmen or proper materials.

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

4.3.5 Retainage.

4.3.5.1 Withholding of Retainage. Retainage shall be withheld from each Application for Payment to the CM/GC in the amount of ten percent of the sum of the total cost for original Contract Work, Change Order Work, materials stored on the Site and CM/GC Fee earned. After one-half of the GMP, including Change Orders, becomes due and the Work meets all of the following conditions:

(a) On or ahead of the Overall Project Schedule; and
(b) There are no unresolved breaches of Notices of Non-Compliant Work; and
(c) There is no delinquency in the completion of work and filing of the final breakdown and accounting pursuant to any Change Orders utilizing a Force Account; then, if the CM/GC requests and the Design Professional approves in writing, the sum being withheld as retainage will be converted to a lump sum and held by the Owner until Material Completion.

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4.3.5.2 Reinstatement of Retainage. The Owner will withhold no further retainage from payments to the CM/GC unless one or more of the following events occur:

(a) The percentage of work complete falls behind the percentage required by the Overall Project Schedule by as much as five percent; or
(b) The CM/GC breaches a Notice of Non-Compliant Work; or

(c) The CM/GC becomes delinquent in regard to the filing of the final breakdown and accounting pursuant to any Change Orders utilizing a Force Account;

in which event or events the Owner shall reinstate the ten percent retainage on all Applications for Payment due to be paid while one or more of the events continues to exist. The CM/GC will be given written notice of the reinstatement of the retainage.

4.3.6 **Subcontractor's Retainage Release.** Upon request by the CM/GC, Owner may, but is not required, to permit an amount equal to the subcontract retainage of a Subcontractor to be separately released from the retainage held by the Owner as he completes his work. An application in accordance with the Owner's form for release of a Subcontractor's retainage shall contain a release of all claims by the Subcontractor and shall bear the original certificates of the Subcontractor, the CM/GC, and the Design Professional that the Subcontractor's work has been fully performed and that the sum for which payment is requested is due by the CM/GC to the Subcontractor. Checks releasing a Subcontractor's retainage shall be made payable to the CM/GC, the CM/GC's surety, and the Subcontractor and shall be mailed to the CM/GC's surety. This section does not create any contractual relationship between the Owner and the Subcontractor or any duty of the Owner to any Subcontractor.

4.3.7 **Supplier's Retainage Release.** Upon request by the CM/GC, Owner may, but is not required, to permit an amount equal to the retainage of Supplier to be separately released from the retainage held by the Owner, if the Supplier has fully performed all delivery obligations under its Trade Contract or, in the alternative, to permit CM/GC to take advantage of discounts or for other reasons in the best interest of the Owner. The retainage release shall be processed in the same manner as for a Subcontractor as set forth in Section 4.3.6 above.

4.3.8 **CM/GC's Warranty on Applications for Payment.** The CM/GC hereby warrants to the Owner that, subject to Owner making payments to the CM/GC in accordance with the Contract Documents:

4.3.8.1 Title to Work. Title to Work, materials and equipment covered by an approved Application for Payment will pass to the Owner either by incorporation in construction or upon receipt of payment by the CM/GC, whichever shall occur first;

4.3.8.2 No Liens. Work, materials and equipment covered by any previously approved Applications for Payment are free and clear of liens, claims, security interests or encumbrances, hereinafter referred to as "liens";

4.3.8.3 No Encumbrance. No Work, materials or equipment covered by an approved Application for Payment will have been acquired by the CM/GC, or any other person performing work at the Site or furnishing materials or equipment for the Project, subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by the CM/GC or such other person.

4.3.9 Reserved.

4.3.10 Applications for Payment.

4.3.10.1 Form of Application. The CM/GC shall submit all payment applications on forms acceptable to the Owner and shall attach backup materials including, but not limited to, receipts or other vouchers, showing his payments for materials and labor, including payments previously made to Subcontractors.

4.3.10.2 Initial Breakdown and Periodic Payments. The CM/GC shall, before the first application, submit a Schedule of Values as required by Section 4.3.1.2 above of the various parts of the Work,

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including quantities, aggregating the total sum of the Contract, and if requested, supported by such evidence as to its correctness as the Design Professional and Owner may direct.

4.3.10.3 Materials Stored. If the Application for Payment includes materials delivered and suitably stored at the Site but not incorporated in the work, they shall, if required by the Owner or the Design Professional, be conditional upon submission by the CM/GC of bills of sale or such other procedure as will establish the Owner's title to such material or otherwise adequately protect the Owner's interest. The CM/GC is responsible for the existence, protection, and, if necessary, replacement of materials until execution of the Certificate of Material Completion by the Design Professional.

4.3.10.4 Action by Owner. The Owner may refuse to pay any item or items contained in any such Application for Payment until and unless documentation and details are submitted to the reasonable satisfaction of the Owner. While awaiting such documentation, the Owner may delete any item or items at issue, and elect to pay the items which are approved, indicating the revised total amount paid upon the invoice. The deleted items may be paid by an interim application for payment, or separately identified and included on a subsequent regular application for payment.

4.3.10.5 Accounting Format. Applications for Payment shall be broken down by CSI Category and, in certain situations, by CSI Description and capital asset category, as set forth in the form for Application for Payment. The purpose is to provide appropriate backup documents for the CM/GC's Final Certification of Costs in conformance with GASB 34 accounting standards.

4.3.11 Reserved.

4.3.12 Representations of CM/GC. The Application for Payment constitutes a representation by the CM/GC to the Owner that (i) the design and construction have progressed to the point indicated; (ii) the quality of the Work covered by the application is in accordance with the Contract Documents; and (iii) the CM/GC is entitled to payment in the amount requested.

4.3.13 Design Professional's Certificate Not Acceptance of Work. No certificate issued by the Design Professional, or partial or entire use or occupancy of the Work by the Owner shall be an acceptance of any work or materials not in accordance with the Contract Documents.

4.3.14 Payment Not Acceptance of Work. No payment nor any partial or entire use or occupancy of the Project by the Owner shall constitute an acceptance of Work not in accordance with the Contract Documents.

4.3.15 Payment for Change Order Work. Payments will not be made for any changes in the Work until a Change Order has been executed.

4.3.16 Payment Due. If approved by the Owner and to the extent approved by Owner, the amount of such invoice shall be paid within 15 days of CM/GC submission of a properly completed Application of Payment.

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PART 4 – COST OF THE WORK.

4.4.1 Definition. The term "Cost of the Work" is defined in Section 1.1.9.19, and includes costs necessarily incurred by CM/GC in the proper performance of the Work. Such costs shall include or be limited by the items set forth in this Part and otherwise in this Contract.

4.4.2 Reserved

4.4.3 Construction Phase Services. "*Actual Cost"* as used in this Contract shall consist of all costs, except those costs excluded by Section 4.4.4, necessarily incurred by the CM/GC in the proper performance of the Work or services described in the Contract Documents (including this Contract) for which records required by the Contract Documents are established contemporaneously with the incurring of such cost, and maintained and which are not otherwise reimbursed or recovered by CM/GC. Such Actual Costs shall be at rates not higher than the standard paid in the locality of the performance required by the Contract Documents except upon the prior written consent of the Owner. The Owner will pay the CM/GC for the following Actual Costs incurred during the Construction Phase of the Project, consistent with the approved GMP:

4.4.3.1 Wages.

4.4.3.1.2 Actual Wages. Actual wages paid for labor under applicable collective bargaining agreements, or under a wage schedule, not to exceed the prevailing wage rate in the area, agreed upon by the Owner and CM/GC and including such Owner-approved welfare or other benefits, if any, as may be payable with respect thereto.

4.4.3.2.2 No Changes. No change in such wage schedules shall be made by CM/GC without prior approval by Owner in advance. Employees of CM/GC who are engaged at shops or on the road in expediting the production or transportation of materials or equipment in connection with the performance of the Work shall be considered stationed at the Field Office and their wages paid for that portion of their time spent on such performance. The Owner shall be furnished with a list of employees whom the CM/GC assigns to the performance of Work or services under this Contract with an indication of the wages of each employee. The aforesaid employees shall be paid on the basis of time cards to which the Owner shall have ready access.

4.4.3.2 Salaries.

4.4.3.2.1 Actual Salaries. When approved in advance by Owner, the actual amount of reasonable salaries paid by CM/GC of CM/GC's employees when stationed at the Site Field Office for that portion of the time spent in performing the Work in whatever capacity employed, and CM/GC's employees in its main or branch offices for that portion of their time spent in performing estimating, scheduling, procuring, accounting and administrative functions essential for the proper performance of the Work, including project management functions performed at CM/GC's main offices prior to the establishment of the Field Office, to the extent such costs are consistent with the staffing plan and wage and salary schedule approved by Owner in advance.

4.4.3.2.2 No Changes. No change in such salary schedules shall be made by CM/GC without prior approval by Owner in advance. Employees of CM/GC who are engaged at shops or on the road in expediting the production or transportation of materials or equipment in connection with the performance of the Work shall be considered stationed at the Field Office and their salaries paid for that portion of their time spent on such performance. The Owner shall be furnished with a list of employees whom the CM/GC assigns to the performance of Work or services under this Contract with an indication of the salary of each employee. The aforesaid employees shall be paid on the basis of time cards to which the Owner shall have ready access.

4.4.3.3 Employee Taxes. Cost of contributions, assessments or taxes for such items as unemployment compensation and social security, insofar as such cost is based on wages, salaries, or other remuneration paid to employees of the CM/GC and included in the Actual Cost under Sections 4.4.3.1 and 4.4.3.2.

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4.4.3.4 Cost of Materials, *etc.* The cost of all materials, supplies, equipment, temporary facilities and hand tools not owned by the workers that are used or consumed in the performance of the Work, less the salvage or residual value on such items used, but not consumed on the Work that remain the property of the CM/GC, including without limitation the costs of inspection and testing not furnished by the Owner, storage and handling;

4.4.3.5 Sales Taxes. Sales, use or similar taxes for which CM/GC is liable and imposed by any governmental authority due to or in connection with the performance of the Work or services required hereunder.

4.4.3.6 Trade Contractors. The cost of all work performed by Trade Contractors or Suppliers for Work performed or materials procured pursuant to Trade Contracts entered into in accordance with this Contract and subject to the limitations stated in the Contract Documents.

4.4.3.7 Royalties. Royalties and license fees payable under any patents and the cost of defending any claim of infringement of any patent, and any liability under such claim, unless such claim arises out of CM/GC's failure to pay royalty and license fees.

4.4.3.8 Rental Charges. Rental charges of all necessary equipment used at the Site of the Project, exclusive of hand tools owned by workers or included in Section 4.4.3.4 above, whether rented from the CM/GC or others, including loading and unloading, installation, repairs and replacements, dismantling, removal, costs of lubrication, transportation, insurance and delivery costs thereof, at rental charges consistent with those prevailing in the area, during their use on the Work and wages of operating engineers for the operation of such equipment, subject to the limitations stated in Contract Documents and in Section 3.7.11.

4.4.3.9 Insurance Premiums. The costs of premiums for all bonds, the cost of insurance (including Workers' compensation insurance) covering risks related solely to the Project, and the *prorata* cost of insurance (including Workers' compensation insurance) covering such Project risks and other risks, which bonds and insurance the CM/GC is required by the Contract Documents to purchase and maintain.

4.4.3.10 Permits, Fees, *etc.* Permits, fees, licenses, tests, royalties, sales, use, or any other such taxes, tariffs or duties related to the Work for which the CM/GC is responsible, but not including any fines or interest due to CM/GC's failure to meet legal requirements associated with such items. Fees and assessments for the building permit and impact fees (as included in approved Guaranteed Maximum Price Proposal) and for other permits, licenses and inspections for which CM/GC is required by the Contract Documents to pay.

4.4.3.11 Field Office Costs. All costs associated with establishing, equipping, operating, maintaining and demobilizing the field office;

4.4.3.12 Utility Costs. The cost of utilities, such as water, power, fuel, sewer, *etc.*, (unless provided by Owner) required for CM/GC's operations at the Project Site and fuel consumed in the generation of electrical power or in the operation of equipment required in the CM/GC's operation at the Project Site, except to the extent such costs are included in the rental rates for such equipment in accordance with this Contract.

4.4.3.13 Demolition Costs. Cost of demolition, if any, and removal of non-hazardous materials, debris and waste materials;

4.4.3.14 Testing. Fees of testing laboratories for tests required by the Contract Documents not paid for by the Owner.

4.4.3.15 Reproduction Costs. Costs of reproduction of plans, specifications, and other documents required for the construction of the Project.

4.4.3.16 Telephones, *etc.* The cost of telephone service (including toll charges), office equipment, and office furnishings, and similar items incurred in the operation of the Project Field Office.

4.4.3.17 Safety Plan. Cost incurred in the implementation of Project Site safety and security plans.

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4.4.3.18 Deposits. Deposits lost for causes other than the CM/GC's negligence.

4.4.3.19 Transportation. The cost of transportation, meals, and lodging incurred in travel by CM/GC's employees, if approved in advance by the Owner. If approved, all costs will be reimbursed in accord with policies of the State Accounting Office regarding travel by employees of the State.

4.4.3.20 Final Clean-up. Costs of final clean-up of the Project.

4.4.3.21 Emergency Costs. Any and all costs incurred due to an emergency affecting the safety of persons or property and related to the performance of the Work.

4.4.3.22 Other. Other costs approved in advance by the Owner.

4.4.4 Limitations on the Cost of the Work. All costs not identified in Section 4.4.3 shall be considered a part of the CM/GC's Fee. Without limiting the effect of the foregoing, the following items are specifically excluded from the Cost of the Work:

4.4.4.1 RESERVED.

4.4.4.2 Salaries. Wages and salaries paid by CM/GC for officers, directors, and partners of CM/GC, whether or not stationed at the site Field Office, or for officers, directors, partners or employees of CM/GC performing Basic Services in the main or branch offices in any capacity whatsoever except as provided in Section 4.4.3.2. Salaries and other compensation of CM/GC's personnel stationed at CM/GC's principal office or offices other than the site unless agreed to by Owner or as noted in Section 4.4.3.2 above.

4.4.4.3 Employment Taxes. Costs of contributions, assessments, or taxes for such items as unemployment compensation and social security paid by CM/GC, insofar as such costs are based on wages, salaries, or other remuneration paid to officers, directors, partners, or employees of the CM/GC under Section 4.4.4.2.

4.4.4.4 Office Expenses. CM/GC's main office costs and offices other than the site office except as provided in Section 4.4.3.11.

4.4.4.5 Overhead Expenses. Overhead and general expenses, except as may be expressly included in Sections 4.4.2 and 4.4.3, above.

4.4.4.6 Capital Expenses. CM/GC's capital expenses, including interest on capital employed either in CM/GC's plant or for expenditures incurred in connection with the Work.

4.4.4.7 Transportation. Costs of transportation, traveling, and temporary accommodation expenses of employees, officers, or other staff of CM/GC, except as provided in Section 4.4.3.19.

4.4.4.8 Relocation Expenses. Relocation costs for any employees, officers, or other staff or CM/GC, except as provided in Section 4.4.3.19.

4.4.4.9 Profit Sharing. Profit sharing, bonuses, or other similar compensation of any kind paid by CM/GC to its employees.

4.4.4.10 Fines, Penalties, *etc.* The cost of all fines and penalties, including interest thereon, assessed against CM/GC by any federal, state or local government or quasi-governmental authorities.

4.4.4.11 Lost or Stolen Equipment. The cost of replacing lost or stolen equipment of any kind, tools, including hand and small tools, or materials of any kind.

4.4.4.12 Undocumented Costs. Costs for which records required by this Contract are not established or maintained.

4.4.4.13 Negligent Costs. Costs which arise as a result of the default, breach, delinquency, oversight, negligence, or lack of due care by CM/GC or any of its employees, servants, consultants, officers, Trade

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Contractors, Trade Suppliers or any other person or party which performs services for the CM/GC in connection with the Work, except as provided in Section 4.4.5.

4.4.4.14 Legal Fees. Legal fees.

4.4.4.15 Contingency Costs. Any contingency cost not covered by Section 4.4.5.

4.4.4.16 Other Costs. Any cost not specifically and expressly described in Sections 4.4.2 and 4.4.3 above.

4.4.4.17 Costs in Excess of GMP. Costs which would cause the Guaranteed Maximum Price, if any, to be exceeded.

4.4.5 Construction Contingency Costs. As provided in this Section, but only prior to the Design Professional's Certificate of Material Completion, the CM/GC shall be entitled to payment as a Construction Contingency Cost item, but not in the aggregate in excess of the Construction Contingency Component of the GMP, as adjusted pursuant to Sections 4.4.6 and 4.4.7, all reasonable costs actually incurred prior to such Certificate of Material Completion incident to the performance of Work under this Contract, which are not otherwise reimbursed or recovered by it, which are not attributable to CM/GC's gross negligence or willful misconduct, and for which records required hereunder are established contemporaneously with the incurring of such costs and are maintained, for the following Construction Contingency Costs:

4.4.5.1 Unanticipated Events. Costs arising from unanticipated events, including, for purposes of illustration, unanticipated local market labor or materials conditions;

4.4.5.2 Trade Proposer Defaults. Costs incurred as a result of defaults by proposers who submit proposals to CM/GC for Trade Contracts or as a result of defaults by Trade Contractors or Trade Suppliers.

4.4.5.3 Omissions and Oversight. Interfacing omissions between and from the various Work contingents of the CM/GC and oversight of Non-Compliant Work to the extent not recoverable from the Trade Contractor, its surety or insurance.

4.4.5.4 Legal Fees. Legal fees incurred by CM/GC in connection with the performance of its services under this Contract but in no event legal fees incurred in the negotiation of or any dispute arising out of the relationship between Owner and CM/GC.

4.4.5.5 Acceleration Costs. Subject to the limitations stated in this Paragraph, costs incurred or charged by CM/GC to accelerate the performance of Work by a Trade Contractor so as to achieve final completion of such work in advance of the time stated for same in the applicable Trade Contract. Costs incurred under this paragraph shall be within the discretion of the CM/GC. However, if significant acceleration is required, CM/GC will advise Owner prior to incurring significant acceleration costs.

4.4.5.6 Reexamination Costs. Costs for uncovering, reexamining, retesting and replacing any Work which the Design Professional demands be uncovered for its observation and which the Design Professional did not inspect within 72 hours of CM/GC's issuance of a notice of readiness for inspection under Contract Documents, so long as such Work, when uncovered, is found to be in accordance with the Contract Documents.

4.4.5.7 RESERVED.

4.4.5.8 Liens. Subject to prior approval of the Owner and the surety, costs of liens against subcontractors, pending recovery of costs from the subcontractor at fault.

4.4.6 Adjustments to Construction Contingency.

4.4.6.1 Basis of Adjustments. The contingency costs incurred by CM/GC under Section 4.4.5 shall be reimbursable to CM/GC from the Construction Contingency. The amount of the Construction Contingency shall be increased by the net amount of (i) the aggregate by which Trade Contracts entered by CM/GC are less than line item amounts stated in CM/GC's construction budget for each particular Trade Contract less (ii) the aggregate amount by which Trade Contracts entered by CM/GC exceeds the line item amount stated in CM/GC's construction budget for each particular Trade Contract. All net amounts saved, if any, shall be

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added to the existing Construction Contingency amount and shall be available for all purposes permitted under Section 4.4.5. Funds from the Construction Contingency may be encumbered by the CM/GC without written direction from the Owner, provided that Owner shall approve, on a quarterly basis, the accounting for the Construction Contingency, which approval shall not be unreasonably withheld.

4.4.6.2 Limitations on Adjustments. No claim shall be made for any Construction Contingency costs in excess of the established contingency account plus any adjustments as specified in Section 4.4.6.1 above by CM/GC for any reason, including a default by Owner, or payment of additional compensation to CM/GC, or any other circumstance which would otherwise permit an increase in the Guaranteed Maximum Price. The Design Professional shall not have any jurisdiction to decide any such claim other than to reject and thereby deny such a claim.

4.4.7 Release of Construction Contingency.

4.4.7.1 Periodic Review. The Owner and the CM/GC shall review for approval each transfer to and from the Construction Contingency on a periodic basis as requested by the CM/GC, but not less than quarterly. The Owner shall determine if the transfer is in compliance with the contract, and if so, the Owner shall not unreasonably withhold approval of the transfer. Additionally, the CM/GC shall periodically review its accrued and anticipated Construction Contingency Costs and shall promptly inform Owner of CM/GC's determination of the extent to which the remaining Construction Contingency exceeds CM/GC's reasonably anticipated Construction Contingency Costs expected to be incurred prior to the issuance of the Certificate of Material Completion. CM/GC shall in good faith negotiate with Owner for the release of any surplus of Construction Contingency over such anticipated Construction Contingency Costs so as to permit Owner to enhance the Project. Any such release shall be confirmed by Change Order. Release of Construction Contingency shall occur in a timely basis as to allow adequate decision-making time for the Owner.

4.4.7.2 Confirmation of Balance. The amount of any balance of Construction Contingency shall be confirmed by the written certification of the CM/GC to the Owner at each review.

4.4.7.3 Gross Negligence. In no event shall CM/GC be entitled to reimbursement of any cost attributable to CM/GC's gross negligence or willful misconduct.

4.4.8 Final Disposition of Construction Contingency. The amount of any funds remaining in Construction Contingency upon the issuance of a Certificate of Material Completion of the entire Project, or upon the earlier termination of this Contract, shall be confirmed by the written certification of the CM/GC to the Owner at the time of the issuance of the Material Certificate and any funds remaining in the Construction Contingency at the time of the issuance of the Material Certificate shall be returned to the Owner.

4.4.9 Owner Option. With respect to any furniture, equipment, or other capital items of a similar nature for which the Owner reimburses CM/GC its Actual Costs of acquisition, upon the termination or expiration of this Contract, and at the election of the Owner, CM/GC shall either deliver such furniture, equipment and other capital items to the Owner, or shall credit to the Owner the depreciated (normal wear and tear only) value of such items as to which the Owner elects not to obtain. The CM/GC shall protect all such items during the term of this Contract against loss or damage other than normal wear and tear.

4.4.10 Discounts, Rebates, *Etc.* The CM/GC shall provide the Owner an opportunity to provide funds to take advantage of discounts for prompt payment of materials, supplies, equipment, *etc.* Any trade or quantity discounts, rebates, refunds, and/or proceeds from the sale of surplus materials or equipment shall be credited to reduce the Cost of the Work.

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PART 5 - LIENS

4.5.1 Public Property Not Subject to Lien. The CM/GC acknowledges that, pursuant to law, the Site is public property of Lumpkin County and is not subject to lien or levy. The CM/GC will notify the Owner of any liens or levies against the Site of which it becomes aware. The CM/GC shall cooperate with the Owner and shall use its best efforts to assist in securing the release of any liens or levies of which it becomes aware.

4.5.2 Notice of Commencement. *See* Section 3.1.7.

4.5.3 Release of Liens. Neither any part of the retainage nor the Payment for Material Completion or Final Payment shall become due until the CM/GC, if required, shall deliver to the Owner a Statutory Affidavit providing a complete release of all liens or conditional release of lien upon payment or claims arising out of this contract, or receipts in full in place thereof and, if required in either case, an affidavit that so far as he has knowledge or information the releases and receipts include all labor and materials for which a lien or claim could be filed; but the CM/GC may, if any Subcontractor or claimant refuses to provide a release, furnish a bond satisfactory to the Owner to indemnify the Owner against any lien or claim. If any lien or claim remains unsatisfied after all payments are made, the CM/GC shall refund to the Owner all monies that the latter may be compelled to pay in discharging such lien or claim, including all costs and reasonable attorney's fees.

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SECTION 5 – CONTRACT ADJUSTMENTS, DISPUTES AND TERMINATION

PART 1 -Owner's Right to Suspend the Work

5.1.1 Owner's Right to Suspend Work. The Owner reserves the right to suspend the work at any time, or from time to time, at the Owner's sole discretion, upon giving CM/GC five (5) days advanced written notice thereof. If the Owner exercises this right and then resumes the work covered hereby, CM/GC shall be entitled, upon timely claim to a Change Order, to payment by Owner of any reasonable Actual Costs incurred by CM/GC in connection with the suspension and resumption of the work, as well as to an extension in the time for performance of the work to the extent CM/GC is delayed by Owner's suspension.

5.1.2 Owner's Right to Stop Work. The Owner reserves the right, and for any retained Owner's Construction Inspector, upon observation of apparent nonconforming work, to immediately stop the affected work at any time by oral direction at the Owner's sole discretion, with notice to be provided to CM/GC within 72 hours. If the work is later determined by the Design Professional to be in fact conforming work, then CM/GC, for the period commencing 72 hours after the issuance of the initial stop work order, shall be entitled, upon timely claim to a Change Order, to payment by Owner of any reasonable Actual Costs incurred by CM/GC in connection with the stop work order and resumption of the work, as well as to an extension in the time for performance of the work to the extent CM/GC is delayed by Owner's stop-work order beyond the initial 72 hours.

5.1.3 Owner's Rights Independent from Rights and Duty of the Design Professional. The rights granted to Owner under this Section are independent of the duty and obligation of the Design Professional to stop the work for nonconforming work or to issue Notices of Non-CompliantWork.

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PART 2 – CONTRACT ADJUSTMENTS AND DISPUTES

5.2.1 General Provisions.

5.2.1.1 No Arbitration. There is no agreement to arbitrate any dispute arising under the Contract Documents. Any and all references to arbitration in any of the Contract Documents, including without limitation any exhibits, attachments or references, are hereby deleted and rendered null and void.

5.2.1.2 Continuation of the Work. Unless otherwise agreed in writing, and notwithstanding any other rights or obligations of either of the parties under any Contract Documents or Agreements, the CM/GC must carry on with the performance of its contract services and the Work, including all duties and obligations hereunder, during the pendency of any claim, dispute, and other matter in question or during any alternative dispute resolution proceeding, court proceeding, or other proceeding to resolve any claim, dispute, and other matter in question, and the Owner will continue to make payments in accordance with the Contract Documents. The Owner, however, is under no obligation to make payments on or against such claims, disputes, and other matters in question during the time required to resolve such claims, disputes, and other matters in question.

5.2.2 General Claims for Contract Adjustments and Disputes.

5.2.2.1 General Claims of the CM/GC. Budgeting and cash flow being of material importance to the Owner, should the CM/GC suffer any injury or damage to person or property that CM/GC reasonably believes a legal basis exists for liability on the part of the Owner or Design Professional, and that should result in an adjustment in the Cost of the Work or the Contract Time, such claim shall be made in writing in the form of a Request for Change Order to the Owner within fourteen (14) days after such injury or damage is or should have been first observed. Any and all claims not made within said fourteen (14) days are barred, waived, released, and discharged.

5.2.2.2 Protest; Statement of General Claim; Time of Submission. No protest of the Owner's claim decision by the CM/GC, whether said claim shall be accrued or prospective, shall be valid unless a "Statement of Claim" in writing and accompanied by vouchers and other supporting data shall have been filed with the Owner by the CM/GC not later than thirty (30) days after the decision to reject the claim, time being of the essence. The "Statement of Claim" shall contain a concise and clear recital of the grounds and the legal basis upon which the claim is asserted, including a designation of the provision or provisions of the Contract Documents and the legal basis of liability on which the claim is based. The Statement of Claim shall indicate the dollar amount of the claim and the number of days of adjustment of the Contract Time.

5.2.2.3 Certain Claims Excluded from General Claims.

5.2.2.3.1 All claims for Unavoidable Delay as defined in Section 3.5.8 must be filed and processed pursuant to Section 3.5.10 and are subject to the limitations of Sections 3.5.7 and 3.5.9

5.2.2.3.2 All claims concerning designation of a Sole Source must be filed and processed pursuant to Section
3.4.6 and are subject to the provisions and limitations therein.

5.2.2.3.3 All claims to modify the Contract Time or extend the Construction Completion and Occupancy Date must be filed and processed pursuant to Section 3.5.10.

5.2.2.3.4 All claims to modify the Cost of Work or adjust the GMP must be filed and processed as a request for change order and subject to the processes and limitations set forth in Sections 3 and 4. If the requested change order is rejected, a protest may be made as set forth in Section 5.2.2.2 above.

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5.2.3 Dispute Resolution.

5.2.3.1 Initial Dispute Resolution. If a dispute arises out of or relates to this Contract or its breach, the parties shall endeavor to settle the dispute first through direct discussions between the parties' representatives who have the authority to settle the dispute. If the parties' representatives are not able to promptly settle the dispute, the parties may submit the dispute to mediation in accordance with Section 5.2.3.2.

5.2.3.2 Mediation. If the dispute cannot be settled pursuant to Section 5.2.3.1, the parties may elect to submit the dispute to mediation. The parties agree to conclude such mediation within sixty days of electing mediation. The parties shall select a mutually agreeable mediator and shall share the cost of the mediator equally. Either party may terminate the mediation at any time after the first session, but the decision to terminate shall be communicated directly by the party's representative to the other party's representative and the mediator.

5.2.3.3 Multiparty Proceeding. All parties necessary to resolve a claim shall be parties to the same dispute resolution proceeding and shall share the costs equally. Appropriate provisions shall be included in all other contracts relating to the Work to provide for the consolidation of such dispute resolution procedures.

5.2.3.4 No Litigation. No litigation may be commenced without first following the process in this Section. Litigation may be filed in the Superior Court of Lumpkin County, Georgia, after the filing party provides thirty days written notice to the opposing party. The parties hereby agree that the Superior Court of Lumpkin County, Georgia shall have exclusive jurisdiction and venue in all matters concerning this contract.

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PART 3 – TERMINATION

5.3.1 Owner's Right to Terminate Contract Without Cause.

5.3.1.1 Owner's Right to Terminate. If Owner determines the Project lacks feasibility or for any other reason, in its sole and complete discretion, elects to forego the Project's construction, the Owner shall have the right, upon thirty (30) days prior written notice to the CM/GC, to terminate this Contract without cause and irrespective of whether or not CM/GC is in default of any of its obligations hereunder.

5.3.1.2 Payment upon Termination. Should Owner elect to terminate under Section 5.3.1.1, the Owner shall pay CM/GC, up to the unpaid balance of the GMP, for (1) all Actual Costs, Contingency Costs and lump sum amounts earned to the date of such termination; (2) all other costs attributable to the termination (including by way of illustration only, cancellation charges owed to and other incurred obligations, commitments and claims of Trade Contractors or Trade Suppliers) and for which CM/GC is not otherwise compensated; (3) a proportionate amount of CM/GC's Fee that bears to the total Fee under the GMP the same ratio that the Actual Cost and lump sum amounts due with respect to the Work in place at the date of termination bears to the Estimated Cost Component of the GMP; and (4) fair compensation by purchase or rental (at Owner's election), for any equipment retained by Owner, to the extent it has not already paid for same as an item of Actual Cost or Contingency Cost.

5.3.1.3 Condition Precedent to Payment. As a condition precedent to receiving the payment set forth in this Section 5.3.1.2, CM/GC shall deliver to the Owner all papers, documents, assignments and agreements relating to the Project, in particular the Construction Documents (including ownership and copyright thereof).

5.3.1.3.1 Assignment. If requested, CM/GC shall assign to the Owner or to an entity of Owner's choice all of CM/GC's contractual rights in respect thereof, so that the assignee shall be fully vested with all rights and benefits of CM/GC under such papers, documents and agreements, together with releases and waivers of lien in the same manner as would be required upon Final Completion.

5.3.1.3.2 Cessation of Entitlement. Upon the CM/GC's assignment of agreements, contracts, Trade Contracts and/or Owner's payment of monies due CM/GC as provided in Section 5.3.1.2 above, CM/GC shall be entitled to no further compensation of any kind from Owner and shall have no further obligation with regard to the assigned agreements, contracts, or Trade Contracts.

5.3.2 Owner's Right to Declare Default and/or Terminate Contract for Cause.

5.3.2.1 Owner's Right to Terminate. If CM/GC makes a general assignment for the benefit of its creditors, or if a receiver is appointed on account of its insolvency, or if it persistently or repeatedly refuses or fails, except in cases for which extensions of time are provided, to supply enough properly skilled workmen or proper materials, or if it fails to make proper payment to Trade Contractors for materials or labor, or persistently disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction over the Project, or if it fails to diligently prosecute the work in accordance with the User's Program, the Construction Documents, or the Contract Documents, or if it otherwise is guilty of a substantial violation of any provision of this Contract, then the Owner may, without prejudice to any right or remedy and after giving the CM/GC and its surety, if any, ten (10) days' written notice of the Owner's Intent to Declare Default, during which period the CM/GC fails to cure or fails to commence and thereafter diligently prosecute Work necessary to cure the violation, declare the CM/GC to be in Default and to terminate the employment of the CM/GC.

5.3.2.2 Owner's Right to Take Possession and Finish Work. Upon default or termination of this Contract as set forth above, the Owner shall have the right to take possession of the Work, together with all materials, equipment, tools and improvements thereon and to finish the Work by whatever reasonable method the Owner may deem expedient. In such case, CM/GC shall not be entitled to receive any further payment until the Work is completed and shall take all necessary steps, including the legal assignment of its contract rights, as the Owner may require for the purpose of fully vesting in the Owner or the entity of Owner's choice the rights and benefits of CM/GC under such obligations or commitments as the Owner may elect. Upon final completion of the Work governed by Change Orders then in force, CM/GC shall pay the Owner the amount, if any, that the total cost of completing the Work governed by Change Orders in force at the time of default or termination,

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plus any damages recoverable by Owner for delays in completion, together with amounts previously paid to CM/GC, exceeds the amount stated in the Change Orders in force at the time of said default or termination. If there is no such excess, the Owner shall pay CM/GC any portion of the Actual Cost and lump sum amounts due with respect to the Work and the CM/GC's Fee that has not previously been paid and that was owed to CM/GC at the time of termination under Change Orders then in force, so long as the total amount paid by the Owner for completing the Work under such Change Orders, including all costs and damages incurred by the Owner as a result of any delay in completion, and all amounts previously paid to CM/GC, do not exceed the amount stated in the Change Orders in force at the time of termination.

5.3.2.3 Owner's Right to Prosecute the Work. Time being of the essence, if the CM/GC shall be declared in default or shall fail or neglect to carry out the Work in accordance with the Contract Documents, or fail to otherwise fully comply with its obligations under this Contract, both the CM/GC and the Surety agree that the Owner may, after giving the CM/GC and Surety twenty five (25) calendar days written notice, without prejudice to any other remedy and without invalidating the performance bond, make good such deficiencies and may deduct the cost thereof from payment due the CM/GC or at the Owner's option, the Owner may terminate this Contract and take possession of the Site and of all materials, equipment, tools and construction equipment and machinery thereon owned by the CM/GC and finish the Work by whatever method the Owner shall deem expedient.

5.3.2.4 Effect of Later Judicial Determination. In the event a court of competent jurisdiction determines (or the parties agree to settle with a consent determination) that a termination for default is wrongful or not the fault of the CM/GC, the termination shall be considered to be a Termination Without Cause and the sole remedy available to the CM/GC shall be the contractual treatment of the termination pursuant to Section 5.3.1 above and without any other damages or relief.

5.3.3 CM/GC's Right to Terminate.

5.3.3.1 CM/GC's General Right to Terminate. If the Project, in whole or substantial part, is stopped for a period of thirty
(30) days or more under an order of any court or other public authority having jurisdiction over the Project, or as a result of an act of government, such as a declaration of a national emergency making materials unavailable, through no act or fault of the CM/GC, or should the Work be suspended by Owner for a period of more than thirty (30) days, then the CM/GC may, upon seven (7) days' written notice to the Owner, terminate this Contract and, upon providing Owner with all releases and waivers of lien in the same manner as would be required upon Final Completion, recover from the Owner payment of Actual Costs, and lump sum amounts due for all Work properly executed, the CM/GC's Fee earned to date, and, upon timely claim therefor, for any proven loss sustained or cost incurred upon any materials, equipment, tools, construction equipment and machinery, and cancellation charges on existing obligations of the CM/GC.

5.3.3.2 CM/GC's Right to Terminate for Nonpayment. If the Owner fails to pay the CM/GC when payment is due, the CM/GC must give written notice of the CM/GC's intention to terminate this Contract. If the Owner fails to provide the CM/GC payment or written notice of a dispute as to the amount sought by the CM/GC within thirty (30) days after receipt of the CM/GC's written notice, the CM/GC may terminate this Contract. Upon such termination the Owner will pay the CM/GC the for the Work properly executed, the CM/GC's Fee earned to date, and, upon timely claim therefor, for any proven loss sustained or cost incurred upon any materials, equipment, tools, construction equipment and machinery, and cancellation charges on existing obligations of the CM/GC.

5.3.3.3 Limitation on Fee. The CM/GC Fee shall be deemed earned only to the extent of an amount that bears to the total fee the same ratio that the Work in place at the time of termination bears to the total Work, as reasonably determined by the Design Professional, and approved by the Owner.

5.3.4 Termination for Abandonment by CM/GC. Both the CM/GC and the Surety under any bond furnished for the Project, agree that the Owner, after fourteen (14) calendar days' written notice to the CM/GC, may terminate this Contract if the CM/GC abandons the Project. If such termination occurs, the Owner shall pay the CM/GC for Work completed and for the CM/GC's actual expenses for materials, equipment, tools and construction equipment and machinery, less any costs the Owner incurs in re-contracting and the start-up of a replacement for the CM/GC.

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5.3.5 Notices of Termination. Notwithstanding any other provision of this Contract, if the either party elects to terminate this Contract regardless of reason, the terminating party will issue a written Notice of Termination or of Default to the terminated or defaulted party by Certified Mail, Return Receipt Requested.

5.3.6 Cumulative Remedies. Except as otherwise provided herein, each right and remedy provided for in this Contract shall be cumulative and shall be in addition to every other right or remedy provided for in this Contract as now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise of any one or more of the rights or remedies provided for in this Contract as now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise of any or all other rights or remedies provided for in this Contract as now or hereafter existing at law or in equity or by statute or otherwise.

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SECTION 6 - PROJECT COMPLETION

PART 1 – PREPARATION FOR MATERIAL COMPLETION

6.1.1 Prerequisites.

6.1.1.1 Completion of the Work. The CM/GC must obtain Material Completion as defined in Section 6.1.2 below prior to any occupancy of the Project.

6.1.1.2 Submission of Final Documents. All Final Documents as defined herein are due at Material Completion.

6.1.1.3 Operation of Building Systems. All building systems specified in Section 6.2.1.2.7 are to be started up and tested to confirm operation. In accomplishing this certification, the CM/GC shall obtain the manufacturer's certificates and coordinate the initial start-up and testing of building systems. The CM/GC expressly agrees that the manufacturers are solely the agents of the CM/GC. In all cases where the equipment of two or more manufacturers ties in and functions together, the CM/GC shall require the field representatives to perform simultaneously the initial start-up, the testing, and the placing of their equipment into operation. "Start-up" is defined as putting the equipment into action. "Testing" is defined as performing such testing as is stipulated in the Contract Documents to be performed. "Placing into operation" is defined as operating the equipment for a sufficient period of time for the determination to be made that it is performing properly. All building commissioning activities should be completed, with the exception of those designated as "Permitted Incomplete Work."

6.1.1.4 Operation and Maintenance Training. Prior to Material Completion, the CM/GC shall furnish advance copies of proper written instructions to the Owner on operation and maintenance of all mechanical, electrical and other operating systems and equipment. The CM/GC shall provide training in the operation and maintenance of all mechanical, electrical and other operating systems and equipment to the Owner and shall give notice in writing to the Design Professional and Owner at least fifteen (15) days prior to the date it is proposes for the training.

6.1.1.5 Operation and Maintenance Manuals, Brochures and Data. At least seven (7) days prior to the proposed date of Inspection for Material Completion, the CM/GC shall furnish and deliver to the Design Professional complete manuals, brochures and data as prepared and published by the manufacturers covering details of operation and maintenance for all items equipment, systems or apparatus installed which require operation or maintenance after occupancy.

6.1.1.6 Test and Balance Report. A copy of the initial test and balance report on the heating, ventilating and air conditioning system shall be submitted to the Design Professional at least seven (7) days prior to the proposed date of Inspection for Material Completion. Two additional Test and Balance Reports are required after Material Completion and Occupancy (*See* Section 6.4.7).

6.1.2 Material Completion.

6.1.2.1 Material Completion Defined. Material Completion is when the Work or designated portion thereof is complete in accordance with the Contract Documents so that the Owner can occupy and utilize the Work for its intended use. Material Completion shall require building commissioning and complete operation of all applicable building systems including, but not limited to, mechanical, electrical, plumbing, fire protection, fire alarm, telecom, data, security, life safety, and accessibility. The Work shall be complete except for Minor Items or Permitted Incomplete Work or Warranty Complaint Items.

6.1.2.1.1 Minor Item Defined. A Minor Item is a portion or element of the Work:

(a) that can be totally complete within thirty (30) days; and

(b) that can be completed while the Owner occupies the Work without impeding or interfering with either the Owner's use and occupation of the Work or the CM/GC's ability to complete the Minor Item; and

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(c) that will not interfere with the complete use and enjoyment of the project by the Owner.

6.1.2.1.2 Permitted Incomplete Work Defined. Permitted Incomplete Work is work that is incomplete through no fault of the CM/GC, as determined by the Owner, including, but not limited to, HVAC seasonal test and balance (*See* Section 6.4.7), seasonal landscaping or maintenance, scheduled elevator/escalator inspection or maintenance, incomplete work due to failure of Separate Contractors to complete work, and the like.

6.1.2.2 Material Completion Date. Material Completion shall be achieved on or before the Material Completion Date specified in the Contract as amended by Change Orders. Failure by the CM/GC to achieve Material Completion by the Material Completion Date, as amended, shall be sufficient cause for the assessment of Liquidated Damages.

6.1.2.3 No Partial Occupancy; Exceptions. No partial occupancy of the Project or the Work shall be permitted, unless elected by the Owner via a properly executed Change Order. In the event the Owner otherwise elects to have a partial occupancy of the Project after execution of this agreement, which decision shall be at the sole discretion of the Owner, a Change Order will be executed. A partial occupancy will follow all the requirements for Material Completion for the specific area of the Project that is to be accepted and turned over to Owner.

6.1.3 Effect of Achieving Material Completion. Upon the date when Material Completion is achieved, the following matters are conclusively determined:

6.1.3.1 Occupancy of the Work. The Owner may immediately occupy and secure the Work without restriction except as provided in Section 1 Part 4 and Sections 1.7.4 and 6.4.5.

6.1.3.2 Warranty Periods. All warranties begin to run from the date Material Completion is achieved.

6.1.3.3 Utilities. All utilities become the responsibility of the Owner.

6.1.3.4 Insurance. The Owner is responsible for all insurance for the Project.

6.1.3.5 Liquidated Damages. The Liquidated Damages daily rate is reduced to zero.

6.1.3.6 Payment for Material Completion. The CM/GC may request payment of the remaining contract balance, including retainage, less amounts credited the Owner or incurred as liquidated damages, and less amounts withheld for the Punchlist by reason of Minor Items or Permitted Incomplete Work (*See* Section 6.6.3.2).

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PART 2 – DOCUMENTS AND DELIVERABLES

6.2.1 Final Documents Due at Material Completion.

6.2.1.1 Final Documents Defined. Final Documents consist of all certificates, warranties, guarantees, manuals, instructions and documents as required by the Contract Documents.

6.2.1.2 Schedule of Delivery of Final Documents. All Final Documents are due at Material Completion. Certain documents require prior approval from the Design Professional. The CM/GC shall coordinate the assemblage, approval and delivery of Final Documents to correlate with the scheduled Material Completion Date and completion of the Construction Professional's Checklist for Material Completion. These documents and deliverables include but are not limited to the following:

6.2.1.2.1 Affidavits.

(a) A non-influence affidavit.

(b) A statutory affidavit.

6.2.1.2.2 Bonds.

(a) Any Bonds to Discharge Claim issued to Trade Contractors and suppliers.

6.2.1.2.3 Written Guarantees and Warranties. All written guarantees or warranties as called for in the Specifications. Each written guarantee or warranty shall specify the term and contact information for enforcement and shall be in such form as to permit direct enforcement by the Owner against any Trade Contractor, subcontractor, materialmen, or manufacturer related to the guarantee. The effective date of all warranties and guarantees shall be the Material Completion Date.

6.2.1.2.4 Marked-up Construction Documents. The CM/GC shall provide a complete set of Marked-up Construction Documents to the Design Professional, which set shall reflect all changes caused by addenda, field changes, Change Orders, or observed changes by the CM/GC or subcontractor(s) for the purpose of the Design Professional's issuance of Record Documents to the Owner.

6.2.1.2.5 Operation and Maintenance Manuals. Receipts for transmittal of Operation and Maintenance Manuals, Brochures and Data to the Design Professional as required by Section 6.1.1.5.

6.2.1.2.6 Certification of Building Systems' Operations. A certification by the CM/GC that all building systems specified in Section 6.2.1.2.7 are operational. The CM/GC expressly agrees that the manufacturers are solely the agents of the CM/GC. In accomplishing this certification, the CM/GC shall obtain the manufacturer's certificates and coordinate the initial start-up and testing of building systems.

6.2.1.2.7 Certificates of Manufacturers for Major Components. For major components of air conditioning systems (i.e., cooling towers, compressors, condensers, absorption units, chiller units, fan coil units, air handling units, boilers, base mounted pumps, and temperature controls); major components of heating systems (i.e., boilers, base mounted pumps, air handling units, unit ventilators, fan coil units, temperature controls, and boiler chemical feed systems); major components of plumbing systems (i.e., boilers, base mounted pumps, sewage pumps and water treatment systems) and incinerator systems; start-up, testing, and placing into operation shall be performed by the field representative(s) of the manufacturer(s), and certificate(s) of the manufacturer(s) shall be filed with the Owner on the letterhead(s) of the manufacturer(s) in which the manufacturer(s) certifies or certify that "the equipment has been installed in strict compliance with the recommendations of the manufacturer(s) and is operating properly," in the format. The manufacturer shall list in the certificate the item or items furnished to the job and the date, name, or other positive means of identifying any supplementary documents containing the recommendations of the manufacturer, with a copy of each

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of the supplementary documents attached to the certificate.

6.2.1.2.8 Certificates of Manufacturers for Products. Where required by the specifications, Certificates of Manufacturers for products and other materials (not Major Components) shall be provided using the manufacturer's certificate format.

6.2.1.2.9 Final Certification of Costs. For proper capital asset reporting of the Project, the CM/GC shall submit his Final Certification of Costs in a format acceptable to the Owner.

6.2.1.3 Presentation of Final Documents**.** Final Documents will be arranged by category and delivered at or before Material Completion is a format suitable for the presentation, use and retention of the documents. Three (3) sets of each document are required with originals in one set of documents.

6.2.1.3.1 Warranties, Guarantees, and Manufacturer's Certificates shall be in a separate three ring binder(s) with summary list of contents.

6.2.1.3.2 Affidavits and Bonds shall be presented in a separate three ring binder.

6.2.1.3.2 Operation and Maintenance Manuals shall be in three ring binders or manufacturer's binder. If documents are provided on electronic format (CD/DVD), one printed copy is required plus two (2) disks.

6.2.2 Deliverables

6.2.2.1 Keys. Keys with tags attached indicating number and/or description of door or room each key is intended to fit attached to each key shall be delivered to the Owner. CM/GC shall prepare and furnish with the keys an itemized key schedule in quintuplicate listing the door or room number and/or description, serial number of keys, and number of keys being delivered for each door or lock.

6.2.2.2 Attic Stock and Loose Equipment. If the Contract Documents provide for the furnishing of any loose equipment or furnishings or attic stock of materials, the CM/GC shall make arrangements to locate such material in a secure location at the Project site to facilitate inspection by the Design Professional and Owner.

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PART 3 – INSPECTIONS FOR MATERIAL COMPLETION

6.3.1 General Responsibility of the CM/GC for Inspection. The CM/GC acknowledges and agrees that he has an indivisible, non-delegable, and nontransferable contractual obligation to the Owner to make his own inspections of the Work at all stages of construction; and he shall supervise and superintend performance of the Contract in such manner as to enable him to confirm and corroborate at all times that all work has been executed strictly, literally, rigidly, and inflexibly in accordance with the methods and materials designated in the Contract Documents. The CM/GC's inspections are also for the purpose of permitting the CM/GC to accurately represent that (a) his certifications on Applications for Payment are true and correct and (b) his notices of readiness for inspections are true and correct. Accordingly, the CM/GC acknowledges and agrees that he may not defend or excuse any deviation from the Contract Documents on the ground (a) that the deviation was not brought to his attention by another person or party or other persons or parties or (b) that a subcontractor is or subcontractors are at fault.

6.3.2 Notice of Readiness for Inspection for Material Completion.

6.3.2.1 Preparation of Initial Punchlist. Prior to the Material Completion Date, the CM/GC shall correct all non-compliant Work. The CM/GC shall then prepare an "Initial Punchlist" itemizing to the best of the CM/GC's knowledge all Minor Items and Permitted Incomplete Work (as defined in Section 6, Part 1) and provide a copy of the Initial Punchlist to the Design Professional and Owner. The CM/GC is encouraged to consult with the Design Professional and Owner prior to finalizing the Initial Punchlist, in particular in arriving at consensus for Minor Items and Permitted Incomplete Work.

6.3.2.2 Notice of Readiness for Inspection for Material Completion. After or simultaneously with the provision of the Initial Punchlist, the CM/GC shall give the Design Professional and Owner written notice requesting inspection for Material Completion in the following words:

> *"The work on the Contract for the [SHOW NAME OF PROJECT AS IT APPEARS IN THE CONTRACT] having been materially completed, it is requested that an Inspection for Material Completion be made promptly by the Design Professional in accordance with Section 6 of the General Requirements. The Initial Punchlist, to the best of the CM/GC's knowledge, is attached hereto."*

6.3.2.3 No Inspection without Notice. No Inspection for Material Completion shall be made until such time the Design Professional and Owner have received notice in the exact form indicated above. In the event the CM/GC shall have issued the "Notice of Readiness for Inspection for Material Completion " prematurely, hereinafter referred to as a "false start," the CM/GC shall be liable for the damage resulting from the false start including, but not limited to, additional fee claims from the Design Professional for extra site visits.

6.3.3 Conducting the Inspection for Material Completion. The Design Professional shall conduct the Inspection for Material Completion. The Design Professional shall confirm the Initial Punch List and shall add or delete such Minor Items or Permitted Incomplete Work as shall be appropriate. Where appropriate, the Design Professional shall assign completion dates for the items of Permitted Incomplete Work. At the completion of the Inspection for Material Completion, the resulting punch list shall become the "Final Punch List" and also documented as a final "Notice of Non-Compliance".

6.3.4 Executing Material Completion Certificates and Occupancy by the Owner. When the Design Professional completes the Final Punch List (Five (5) days allowed), the Owner, CM/GC and Design Professional are prepared to execute the Material Completion Certificates for occupancy. The Owner administers the execution and distribution of the Material Completion certificates on the Material Completion date.

6.3.4.1 Construction Professional's Material Completion Checklist. This form is a recital of submittals and requirements for Material Completion provided as a guide to this Section 6 Project Completion.

6.3.4.2 Design Professional's Certificate of Material Completion. This certificate confirms inspection of the work and representation as to Material Completion; establishes the Final Punchlist (Notice of Non-Compliance); and establishes the amount to be withheld as contingency.

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6.3.4.3 Certificate for Material Completion and Occupancy. This certificate authorizes the Owner to occupy the Work, secure the site and assume operations.

6.3.5 Notification of Owner of Site Visits by the CM/GC or Trade Contractors. Following the successful completion of the Inspection for Material Completion the CM/GC and his Trade Contractors or subcontractors shall make no visits to the site without first giving notice to the Owner.

6.3.6 Effect of Failure to Achieve Material Completion. Should Material Completion not be achieved by the Material Completion Date, as amended, the following matters are conclusively determined:

6.3.6.1 Breach of Covenant of Time. As time is of the essence in the completion of the Work, the CM/GC is in breach of the covenant of time and is subject to default.

6.3.6.2 Liquidated Damages. Liquidated Damages at the specified daily rate in the Contract begin to accrue and are payable on the day immediately following the Material Completion Date.

6.3.6.3 Extension of Time. While it is anticipated that all applications of the CM/GC for additional time or extensions of the Material Completion Date would have been filed and determined by the Owner prior to the Material Completion Date, the CM/GC may, within 10 days after the Material Completion Date, file for any additional extensions of time pursuant to Section 3, Part 4, and the collection, but not the accrual, of Liquidated Damages shall be suspended until the Owner's decision. Should such a belated application be filed after the 10-day period, the Owner, in its sole discretion, may continue to collect Liquidated Damages. Should the Owner grant any applications for extension of time and the Material Completion Date, Liquidated Damages shall be adjusted accordingly.

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PART 4 – PAYMENT FOR MATERIAL COMPLETION

6.4.1 Payment for Material Completion. Payment for Material Completion shall be due 10 days after receipt by the Owner of the application for payment upon achievement and certification of Material Completion. Payment shall be made by a check payable to the CM/GC and shall be mailed to the CM/GC.

6.4.2 Application for Payment for Material Completion.

6.4.2.1 Certification of CM/GC. The CM/GC shall certify, by his own signature, that the Work provided for by the Contract Documents has been completed under the terms and conditions thereof, and that the entire balance of the contract, including retainage, is due and payable, except for those amounts determined by the Design Professional to be withheld due to credits due to the Owner and Minor Items or Permitted Incomplete Work pursuant to Section 6.6.3 below.

6.4.2.2 Supporting Documentation.

6.4.2.2.1 Financial Data. The CM/GC shall submit evidence satisfactory to the Owner and Design Professional that all payrolls, material bills, and other indebtedness connected with the work have been paid.

6.4.2.2.2 Affidavits and Bonds. The CM/GC shall attach copies of the affidavits and bonds set forth in Sections
6.4.2.2.1 and 2 above, execute the payment certification, and forward it directly to the Design Professional.

6.4.3 Release of CM/GC's Retainage.

6.4.3.1 Establishment of List. At the completion of the Inspection for Material Completion, the Design Professional and CM/GC, with the consent of the Owner, shall develop the Final Punchlist. The Design Professional will assign a value for each the Minor Items and Permitted Incomplete Work and issue the Final Punchlist within five (5) days after the date of Inspection for Material Completion.

6.4.3.2 Establishment of Amount to be Withheld for Punchlist Items. In general, the amount to be withheld from the Payment for Material Completion and to be paid upon Final Completion shall be equal to 200% of the assigned value of completing the Work for each Minor Item or Permitted Incomplete Work. The following additional amounts to be withheld shall be applied where applicable.

6.4.3.2.1 Certificates. For each certificate required for major components a sum of $500.00 shall be withheld until such certificate shall have been filed with the Owner.

6.4.4 Effect of Payment for Material Completion and Release of Claims. Owner shall process the Payment for Material Completion as expeditiously as possible in accordance with the certification of the Design Professional, but interest shall not accrue until thirty (30) days have elapsed from receipt, unless error is found in the application or supporting documents. Acceptance of Payment for Material Completion by the CM/GC shall operate as settlement, waiver, release, discharge and payment in full of all claims against Owner of any nature arising out of the Project except for the work associated with the Minor Items and the Permitted Incomplete Work.

6.4.5 Notification of Readiness for Interim Inspection for Punchlist Completion. Not more than 30 days after Material Completion, and upon completion of the Final Punchlist (including *all* Minor Items and such Permitted Incomplete Items as are due to be completed), the CM/GC shall give the Design Professional and the Owner written notice requesting inspection for Final Completion in the following words:

> *The work on the Contract for the [SHOW NAME OF PROJECT AS IT APPEARS IN THE CONTRACT] having been 100% completed, except for Permitted Incomplete Work not yet due to be completed, it is requested that an Inspection for Final Completion be made promptly by the Design Professional in accordance with Section 6 of the General Conditions.*

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No Inspection for Interim Inspection for Punchlist Completion shall be made until such time as the Design Professional and Owner have received notice in the exact form indicated above. In the event the CM/GC shall have issued the "Notice of Readiness for Interim Inspection for Punchlist Completion " prematurely, hereinafter referred to as a "false start," the CM/GC shall be liable for the damage resulting from the false start including, but not limited to, the salaries, professional fees, and travel and living expenses of the persons or parties inconvenienced by the false start.

6.4.6 Conducting the Interim Inspection for Punchlist Completion. The Design Professional shall conduct the Interim Inspection for Punchlist Completion. The Design Professional shall confirm the Final Punch List has been completed including all Minor Items. Upon successful completion of the inspection, the Design Professional shall issue a Report of Interim Inspection for Punchlist Completion, noting any Permitted Incomplete Work which remains to be accomplished and the date by which it is to be completed. In the event *all* Permitted Incomplete Work has been completed at the time of this Interim Inspection, and the Design Professional so certifies, then this inspection shall be deemed an Inspection for Final Completion. In the event any Minor Item is determined to be incomplete, the Owner may give the fourteen (14) day notice of failure to complete the Work set forth in Section 6.6.5.

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PART 5 – CORRECTION OF WORK AFTER MATERIAL COMPLETION

6.5.1 Non-Compliant or Defective Work.

6.5.1.1 Duty to Correct. Neither (1) the Certificate of Material Completion, (2) nor any decision of the Design Professional, (3) nor payment, (4) nor any provision in the Contract shall relieve the CM/GC of responsibility for faulty materials, faulty workmanship, or omission of contract work, and he shall remedy any defects or supply any omissions resulting therefrom and pay for any damage to other work resulting therefrom.

6.5.1.2 Notice of Non-Compliant or Defective Work. The Owner shall give notice of observed defects or omissions with reasonable promptness. The notice shall be in the form of a Warranty Complaint letter, sent by U.S. mail or electronic transmission to the CM/GC by the Owner; or a Notice of Non-Compliant Work issued by the Design Professional.

6.5.2 Warranty Complaint Procedure.

6.5.2.1 Notice of Warranty/Guaranty Complaint Items. The Owner acknowledges that many malfunctions in building equipment and systems do not constitute Non-Compliant or defective Work. Accordingly, the Owner may provide notice of such apparent warranty work by a Warranty Complaint letter, sent by U.S. mail or electronic transmission to the CM/GC. The letter should outline, in non-technical language, the complaint item. In emergency situations, the initial notification may be oral by the Owner to a person or office designated by the CM/GC. The CM/GC shall respond promptly to all such notices.

6.5.2.2 Duty to Correct. During the one-year period of the warranty and guarantee any defects of material or workmanship that become apparent shall be the responsibility of the CM/GC until and unless the CM/GC can show abuse or design defect. The CM/GC shall immediately correct all defects that become known during the one-year period at no cost to the Owner unless notice is given to the Design Professional and Owner, prior to correcting the defect that the cause of the defect is the result of abuse or design deficiency.

6.5.2.2.1 Initial Response. When the Owner or the Design Professional notifies the CM/GC of a defect, the CM/GC will visit the site to review the complaint within five (5) days and shall promptly correct the Work. If the CM/GC fails to respond within this time limit, the Owner may correct the defect or malfunction and charge the CM/GC for the Work. The CM/GC shall give notice in writing to the Owner when corrections have been completed.

6.5.2.2.2 Design Defect or User Abuse. If the CM/GC believes that a design defect or user abuse has caused the malfunction or defect, he will notify the Design Professional and the Design Professional will issue a formal decision in his capacity as Design Professional and impartial interpreter of the conditions of the contract. If it is determined the complaint is not the responsibility of the CM/GC, the CM/GC shall be promptly paid for the cost of the corrective work.

6.5.2.2.3 Emergency Situations. If the condition is an emergency, this will be communicated to the CM/GC with the request that no matter what he finds, corrections are to be accomplished immediately. The CM/GC shall respond to the notice in emergency situations within twenty-four (24) hours. If the CM/GC fails to respond within this time limit, the Owner may correct the defect and charge the CM/GC for the Work. If it is determined the complaint is not the responsibility of the CM/GC, the CM/GC shall be promptly paid for the cost of the corrective work. The CM/GC shall give notice in writing to the Owner when corrections have been completed.

6.5.3 Warranty and Guarantee

6.5.3.1 Obligation for Correction of the Work. The CM/GC shall within the space of time designated in Notices of Non- Compliant Work and without expense to the Owner, correct, remedy, replace, re-execute, supply omitted work, or remove from the premises all work designated as Non-Compliant by the Design Professional. The CM/GC shall give prompt notice in writing to the Design Professional, with copy to the Owner, upon completion of the supplying of any omitted work or the correction of any work designated as Non-Compliant

Attachment: Contract CM at Risk - Aquatic Facility GMP Phase 1 (2021-057 : Aquatic Center Site Work GMP)

by the Design Professional. In the absence of said notice, it shall be and is presumed under this Contract that there has been no correction of the Non-Compliant work or supplying of omitted work. If the CM/GC does not remove, make good the deficiency, correct, or remedy faulty work, or supply any omitted work within the space of time designated in Notices of Non-Compliant Work without expense to the Owner, the Owner, after ten (10) days' notice in writing to the CM/GC, may remove the work, correct the work, remedy the work or supply omitted work at the expense of the CM/GC. In case of emergency involving health, safety of property, or safety of life the Owner may proceed at once with correction of the Work without waiving any rights of the Owner. Correction of defective work executed under the plans and specifications or supplying of omitted work whether or not covered by warranty of a subcontractor or materialmen, remains the primary, direct responsibility of the CM/GC. The foregoing obligation of the CM/GC shall remain in effect until the expiration of the statute of limitations covering the Work.

6.5.3.2 One Year Warranty and Guaranty**.** As additional security for the fulfillment of such obligation, but in no way limiting the same, the CM/GC warrants and guarantees (1) that all work executed under the plans and specifications shall be free from defects of materials or workmanship for a period of one year from the date of the Certificate of Material Completion of the Design Professional, and (2) that for not less than one year from the date of the Certificate of Material Completion of the Design Professional, or for such greater space of time as may have been designated in the specifications, products of manufacturers shall be free from defects of materials and workmanship. Whenever written guaranties or warranties are called for, the CM/GC shall furnish the aforesaid for such period of time as may be stipulated. The aforesaid instruments shall be in such form as to permit direct enforcement by the Owner against any subcontractor, materialmen, or manufacturer whose guaranty or warranty is called for. The CM/GC further agrees that:

6.5.3.2.1 Jointly and Severally Liable. The CM/GC is jointly and severally liable with such subcontractors, materialmen, or manufacturers; and

6.5.3.2.2 Agents of the CM/GC. The said subcontractors, materialmen, or manufacturers are agents of the CM/GC for purposes of performance under this section, and the CM/GC, as principal, ratifies the warranties or guaranties of his aforesaid agents by the filing of the aforesaid instruments with the Owner. The CM/GC as principal is liable for the acts or omissions of his agents.

6.5.3.2.3 Service of notice. Service of notice on the CM/GC that there has been breach of any warranty or guaranty will be sufficient to invoke the terms of the instrument.

6.5.3.2.4 Bind Subcontractors, etc. The CM/GC will bind his subcontractor, materialmen, and manufacturers to the terms of this section.

6.5.3.2.5 Warranties no Limitation. The calling for or the furnishing of written warranties shall in no way limit the contractual obligation of the CM/GC to correct the work as set forth in this Part. The remedies stated in this section are in addition to the remedies otherwise available to the Owner, do not exclude such other remedies, and are without prejudice to any other remedies.

[Remainder of Page Intentionally Left Blank]

Attachment: Contract CM at Risk - Aquatic Facility GMP Phase 1 (2021-057 : Aquatic Center Site Work GMP)

PART 6 – FINAL COMPLETION

6.6.1 Final Completion.

6.6.1.1 Final Completion Defined. Final Completion is the completion of all Work, including completion of all Minor Items and Permitted Incomplete Work as defined in Section 6, Part 1. Final Completion shall be evidenced by the Design Professionals' Certificate of Final Completion.

6.6.1.2 When Final Completion Required. Final Completion shall be obtained not later than thirty (30) days after the Material Completion Date. The Design Professional's Certificate of Final Completion shall not be issued until all Work is completed.

6.6.2 RESERVED.

6.6.3 Effect of Achieving Final Completion. Upon the date when Final Completion is achieved and the Design Professional's Certificate of Final Completion is issued, the following matters are conclusively determined:

6.6.3.1 Project Completion. The Project and the Work are complete.

6.6.3.2 Payment for Final Completion. All amounts withheld from Payment for Material Completion and not credited to the Owner, as set forth in Section 6 Part 4, are payable upon receipt of a final pay request from the CM/GC.

6.6.4 Conducting the Inspection for Final Completion. In the event that Permitted Incomplete Work remains after the Interim Inspection for Punchlist Completion, at such time when all such Permitted Incomplete Work has been completed or scheduled for completion, the CM/GC shall call for and the Design Professional shall schedule the Final Inspection with the Owner and CM/GC. The Design Professional shall conduct the Inspection for Final Completion and shall confirm that all Permitted Incomplete and other Work has been completed. Upon successful completion of the inspection, the Design Professional shall issue the Certificate of Final Completion. Final Payment, including any remaining funds withheld may, upon an application for payment, be paid to the CM/GC. Any Final Documents or updates to Final Documents not yet submitted must be submitted with the call for Final Inspection. In the event any item of Permitted Incomplete Work is determined to be incomplete and the date for its completion has passed, the Owner may give the fourteen (14) day notice of failure to complete the Work set forth in Section 6.6.5.

6.6.5 Effect of Failure to Achieve Final Completion. Should Final Completion not be achieved within the time specified, the Owner will issue to the CM/GC a fourteen (14) day notice as a final warning to complete the Work. If Final Completion is not achieved by the end of the 14th day from the date of the Notice, the following matters are conclusively determined:

6.6.5.1 Breach of Covenant of Time. As time is of the essence in the completion of the Work, the CM/GC is in breach of the covenant of time and is subject to default.

6.6.5.2 Ineligibility to Bid Upon County Contracts. The CM/GC is ineligible to bid upon any contract invitation to bid of Lumpkin County. In the event a bid has been submitted but the bid award has not been made, the CM/GC's ineligibility requires that its bid be rejected.

6.6.5.2.1 Automatic Restoration of Eligibility to Bid. The CM/GC's eligibility to bid upon county contracts shall be restored automatically as of the date of achievement of Final Completion as evidenced by the Certificate of Final Completion.

6.6.5.2.2 Application to Reinstate Eligibility to Bid. The CM/GC's eligibility to bid upon county contracts may be reinstated upon the following:

(a) A written application to the Owner, not earlier than 18 months after the date of failure to achieve final completion; requesting reinstatement of eligibility, and

Attachment: Contract CM at Risk - Aquatic Facility GMP Phase 1 (2021-057 : Aquatic Center Site Work GMP)

(b) The showing of good and just cause why the CM/GC's eligibility should be reinstated, or that there is good and just cause to believe that the achievement of Final Completion was impossible to the extent that determination of ineligibility was improvident.

6.6.6 Final Payment. Final Payment shall be due 10 days after receipt by the Owner of the application for payment upon achievement and certification of Final Completion. Payment shall be made by a check payable jointly to the CM/GC and surety and shall be mailed to the surety. Owner shall process the Final Payment expeditiously as possible in accordance with the certification of the Design Professional, but interest shall not accrue until thirty (30) days have elapsed from receipt, unless error is found in the application or supporting documents.

6.6.6.1 Certification of CM/GC. The CM/GC shall certify, over his own signature, that the Work provided for by the Contract Documents has been completed under the terms and conditions thereof, and that the entire balance of the contract is due and payable.

6.6.6.2 Supporting Documentation.

6.6.6.2.1 Financial Data. The CM/GC shall submit evidence satisfactory to the Design Professional and the Owner that all payrolls, material bills, and other indebtedness connected with the work have been paid.

6.6.6.2.2 Affidavits and Bonds. The CM/GC shall attach copies of the affidavits and bonds set forth in Sections
6.4.2.2.1 and 2 above, execute the payment certification, and forward it directly to the Design Professional.

6.6.7 Effect of Final Payment and Release of Claims. Acceptance of Final Payment for Final Completion by the CM/GC shall operate as settlement, waiver, release, discharge and payment in full of all claims against Owner of any nature arising out of the Project.

[Remainder of Page Intentionally Left Blank]

Attachment: Contract CM at Risk - Aquatic Facility GMP Phase 1 (2021-057 : Aquatic Center Site Work GMP)

Project: **Aquatic Center & Elementary School Complex Paving**
Date: May 17, 2021
Owner: Lumpkin County
GMP (Paving, Curb, Striping, & Guardrail)

CARROLL DANIEL CONSTRUCTION

Bid Package	Item Description	GMP
02A	Paving, Curb & Gutter, Striping, & Guardrail	$1,559,651
02A	Guardrail Reduction VE (Owner Request)	-$48,200
	TOTAL DIRECT COSTS	**$1,511,451**
	Allowances/Bonds/Insurance	$40,000
	General Conditions (6%)	$90,687
	CM Fee (2.75%)	$45,159
	Contingency	$88,805
	PROJECT TOTAL	**$1,776,102**

The contents of this report are strictly confidential and are provided solely for the intended recipient on the understanding that it will be held confidentially

Attachment: GMP Phase 1 Exhibit A (002) (2021-057 : Aquatic Center Site Work GMP)

- Curb - 14,604 LF
- Guardrail - 2,544 LF
- Lumpkin County Spec Paving (8"/2"/1.5") - 17,752 SY
- Normal Duty Paving (6"/2"/1.5") - 13,530 SY

LUMPKIN COUNTY AQUATIC CENTER PAD AREA (BY OTHERS) (3.1 AC+/-)

STORMWATER MANAGEMENT AREA (0.6 AC.+/-)

LUMPKIN COUNTY ELEMENTARY SCHOOL

SERVICE AREA

PLAYGROUND AREA (1.3 AC.+/-)

STORMWATER MANAGEMENT AREA (1.0 AC.+/-)

ROUNDABOUT DESIGN BY OTHERS

N/F PROPERTY OF Don Michael Cottrell DEED BOOK 1282 / PAGE 318

Attachment: Lumpkin ES (Site) - Paving Curb Guardrail (003) (2021-057 : Aquatic Center Site Work GMP)

SEE ARCHITECTURAL DRAWINGS FOR EXACT BUILDING DIMENSIONS AND DETAILS. ANY BUILDING DIMENSIONS SHOWN ON THIS PLAN ARE FOR GENERAL COORDINATION PURPOSES ONLY AND SHOULD NOT BE USED TO LAYOUT THE BUILDING OR ITS APPURTENANCES (STAIRS, DOORS, DOCKS ETC...)

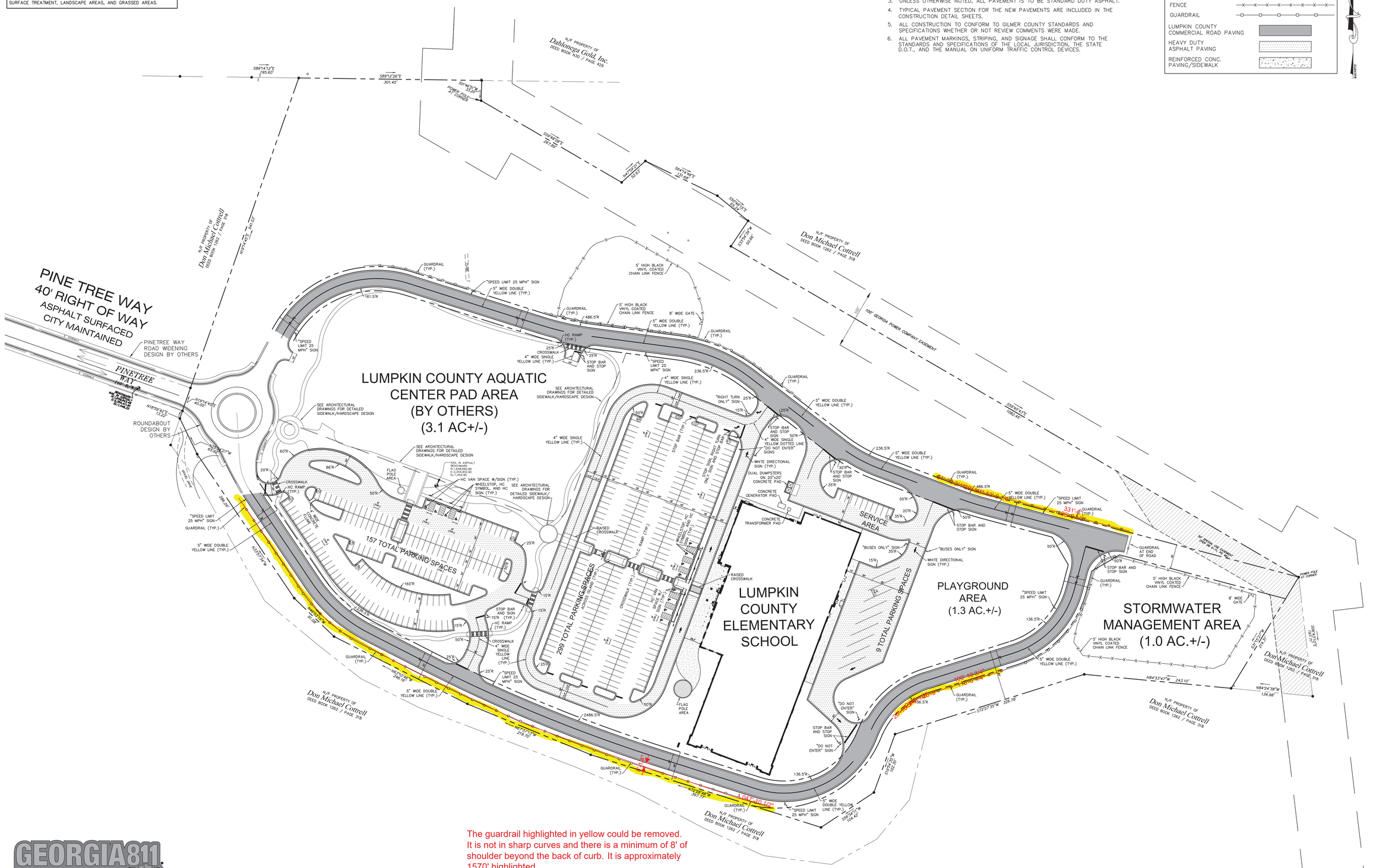
SEE LANDSCAPE AND HARDSCAPE PLANS FOR EXACT SIDEWALK LAYOUT, HARDSCAPE PLAN, DISPOSITION OF CONCRETE SIDEWALK OR OTHER SURFACE TREATMENT, LANDSCAPE AREAS, AND GRASSED AREAS.

SITE PLAN NOTES:

1. ALL DIMENSIONS AND RADII ARE TO/FROM THE FACE OF CURB, EDGE OF ASPHALT, AND/OR THE OUTSIDE FACE OF THE BUILDING WALL UNLESS OTHERWISE STATED. ALL RADII DIMENSION ADJACENT TO PARKING SPACES ARE 3' UNLESS OTHERWISE NOTED.
2. ALL NEW CONSTRUCTION SHALL CONFORM TO THE LATEST REQUIREMENTS OF THE AMERICAN DISABILITIES ACT (A.D.A.). SEE ARCHITECTURAL DWGS. FOR STRUCTURE COMPLIANCE.
3. UNLESS OTHERWISE NOTED, ALL PAVEMENT IS TO BE STANDARD DUTY ASPHALT.
4. TYPICAL PAVEMENT SECTION FOR THE NEW PAVEMENTS ARE INCLUDED IN THE CONSTRUCTION DETAIL SHEETS.
5. ALL CONSTRUCTION TO CONFORM TO GILMER COUNTY STANDARDS AND SPECIFICATIONS WHETHER OR NOT REVIEW COMMENTS WERE MADE.
6. ALL PAVEMENT MARKINGS, STRIPING, AND SIGNAGE SHALL CONFORM TO THE STANDARDS AND SPECIFICATIONS OF THE LOCAL JURISDICTION, THE STATE D.O.T., AND THE MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES.

LEGEND

- EXISTING FEATURES
- EXISTING BUILDING
- PROPOSED FEATURES
- PROPOSED BUILDING
- PROPERTY LINES
- FENCE
- GUARDRAIL
- LUMPKIN COUNTY COMMERCIAL ROAD PAVING
- HEAVY DUTY ASPHALT PAVING
- REINFORCED CONC. PAVING/SIDEWALK



The guardrail highlighted in yellow could be removed. It is not in sharp curves and there is a minimum of 8' of shoulder beyond the back of curb. It is approximately 1570' highlighted.

SITE PLAN

GRAPHIC SCALE

60' 0 60' 120' 240'

(IN FEET)

1 inch = 60 ft.

GEORGIA811 Utilities Protection Center, Inc.

Know what's below. Call before you dig.

Dial 811 Or Call 800-282-7411

THE LOCATION OF ALL UTILITIES (ABOVE OR BELOW GROUND) SHOWN ON THESE DRAWINGS ARE APPROXIMATE & WERE OBTAINED FROM OBSERVATIONS AT THE SITE AND/OR FROM THE UTILITY OWNERS. HAINES, GIPSON & ASSOC., INC. DOES NOT GUARANTEE THAT LOCATIONS SHOWN ARE EXACT. IT SHALL BE THE RESPONSIBILITY OF THE OWNER OF THE PROPERTY OR HIS AGENT AND/OR THE CONTRACTOR TO DETERMINE EXACT LOCATIONS OF EXISTING UTILITIES (ABOVE OR BELOW GROUND) & TO NOTIFY UTILITY OWNERS BEFORE BEGINNING ANY CONSTRUCTION.

CAUTION--NOTE TO CONTRACTOR

THE CONTRACTOR IS SPECIFICALLY CAUTIONED THAT THE LOCATION AND/OR ELEVATION OF EXISTING UTILITIES AS SHOWN ON THESE PLANS IS BASED ON RECORDS OF THE VARIOUS UTILITY COMPANIES AND ONLY APPROXIMATE LOCATIONS WERE DETERMINED IN THE FIELD. THE INFORMATION IS NOT TO BE RELIED ON AS BEING EXACT OR COMPLETE. GA. LAW REQUIRES THE CONTRACTOR TO CALL THE UTILITY PROTECTION CENTER AT LEAST 72 HOURS BEFORE ANY EXCAVATION TO REQUEST EXACT FIELD LOCATION OF UTILITIES. IT SHALL BE THE RESPONSIBILITY OF THE CONTRACTOR TO COORDINATE THE RELOCATION OF ALL THE UTILITIES WHICH CONFLICT WITH THE PROPOSED IMPROVEMENTS SHOWN ON THE PLANS.

HGA JOB No. 2020-294

BREAUX & ASSOCIATES ARCHITECTS
5955 Shiloh Road East, Suite 200
Alpharetta, Georgia 30005 | (678) 585-4508

HAINES GIPSON & ASSOCIATES
Civil • Structural • Bridge

PROGRESS PRINT

NO	DESCRIPTION	DATE

NEW LUMPKIN CO. ELEMENTARY SCHOOL
SITE PACKAGE
215 PINETREE WAY, DAHLONEGA, GA 30533

LUMPKIN COUNTY SCHOOLS

Issued For:

SITE PLAN

Date 3/16/2021

Project Number 20104

C1.0

Attachment: guardrail areas that could be removed (004) (2021-057 : Aquatic Center Site Work GMP)

PAD ELEV= 1454.33

FFE= 1456.00

NAIL IN ASPHALT
BENCHMARK
N: 1,648,682.85
E: 2,354,902.90
EL: 1,454.95

JB Q-1; STUB OUT FOR AQUATIC CENTER DRAINAGE CONNECTION

TOP OF BERM=1445.00

OS R-2

HW P-1

JB P-6

JB P-5

JB P-4

DWCB P-2

DWCB P-3

DWCB G-2

DWCB G-1

DWCB A-10

DWCB A-11

DWCB E-4

DWCB E-3

DWCB E-2

DWCB E-1

DWCB F-1

DWCB A-9

JB A-8

DWCB M-2

DWCB M-1

DWCB H-11

DWCB H-10

DWCB D-1

DI H-6

DI H-5

DI H-7

DI H-8

DI H-9

DI L-1

DI L-2

DI L-3

DI L-4

YI H-4

HP 1455.05

HP 1453.02

HP 1453.74

HP 1453.88

HP 1455.29

HP 1455.28

HP 1455.26

HP 1453.20

HP 1452.26

HP 1452.00

HP 1451.35

HP 1450.98

HP 1449.27

HP 1448.23

HP 1451.00

HP 1452.25

HP 1453.46

HP 1454.50

HP 1454.00

HP 1454.80

HP 1454.66

HP 1454.38

HP 1454.36

HP 1453.88

HP 1453.10

HP 1454.54

HP 1454.30

HP 1454.20

HP 1453.64

HP 1453.95

HP 1453.50

HP 1451.30

HP 1451.25

HP 1450.50

HP 1450.00

HP 1452.00

HP 1451.25

HP 1451.30

HP 1451.35

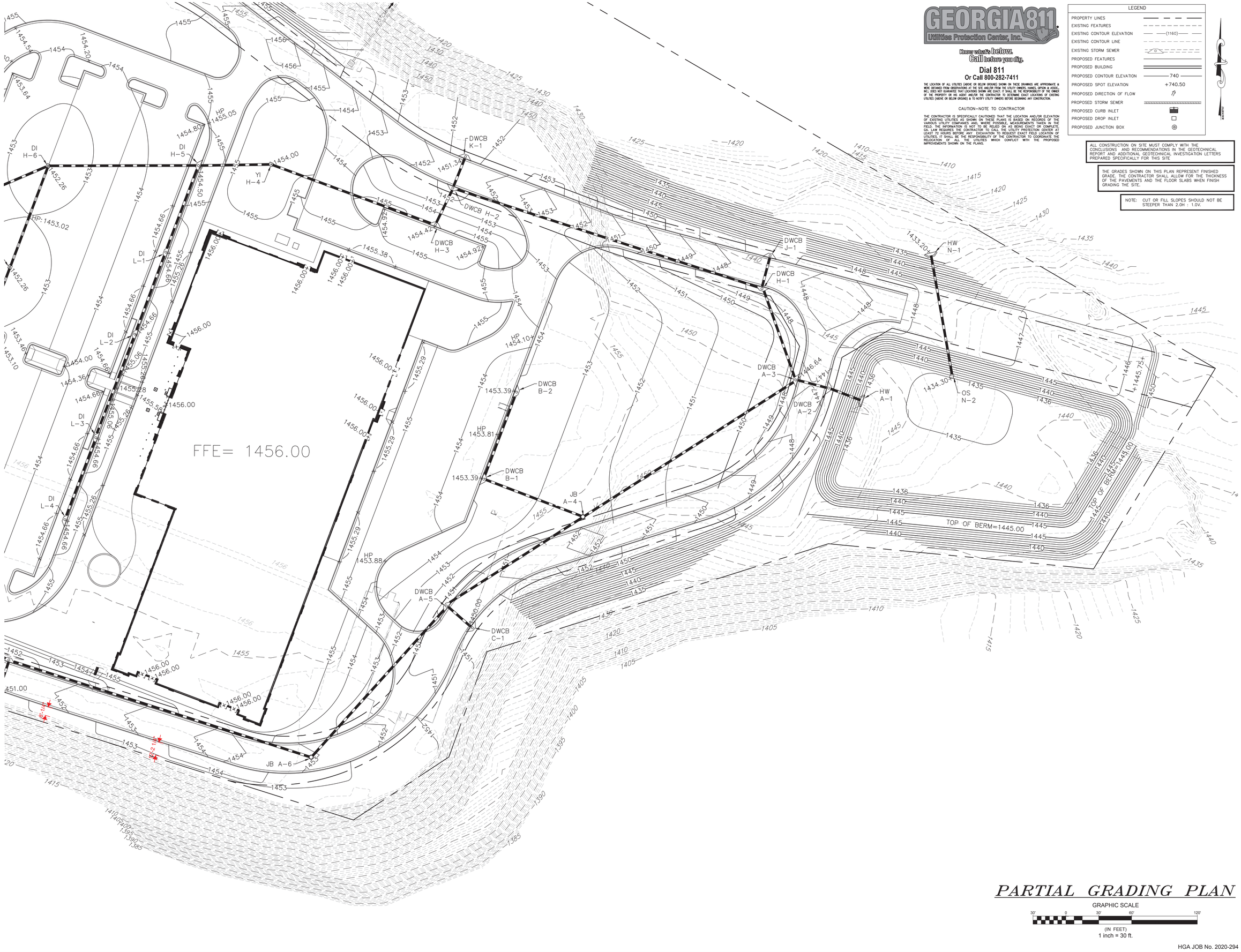
HP 1450.98

HP 1449.27

HP 1448.23

HP 1451.00

HP 1452.26



GEORGIA 811
Utilities Protection Center, Inc.

Know what's **below.**
Call before you dig.

Dial 811
Or Call 800-282-7411

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CAUTION—NOTE TO CONTRACTOR

THE CONTRACTOR IS SPECIFICALLY CAUTIONED THAT THE LOCATION AND/OR ELEVATION OF EXISTING UTILITIES AS SHOWN ON THESE PLANS IS BASED ON RECORDS OF THE VARIOUS UTILITY COMPANIES AND, WHERE POSSIBLE, MEASUREMENTS TAKEN IN THE FIELD. THE INFORMATION IS NOT TO BE RELIED ON AS BEING EXACT OR COMPLETE. THE CONTRACTOR SHALL CALL THE UTILITY COMPANIES AT LEAST 72 HOURS, BUT NOT MORE THAN 10 DAYS, BEFORE ANY EXCAVATION TO REQUEST EXACT FIELD LOCATION OF UTILITIES. IT SHALL BE THE RESPONSIBILITY OF THE CONTRACTOR TO COORDINATE THE RELOCATION OF ALL THE UTILITIES WHICH CONFLICT WITH THE PROPOSED IMPROVEMENTS SHOWN ON THE PLANS.

LEGEND

PROPERTY LINES	
EXISTING FEATURES	
EXISTING CONTOUR ELEVATION	(1160)
EXISTING CONTOUR LINE	
EXISTING STORM SEWER	
PROPOSED FEATURES	
PROPOSED BUILDING	
PROPOSED CONTOUR ELEVATION	740
PROPOSED SPOT ELEVATION	+740.50
PROPOSED DIRECTION OF FLOW	
PROPOSED STORM SEWER	
PROPOSED CURB INLET	
PROPOSED DROP INLET	
PROPOSED JUNCTION BOX	

ALL CONSTRUCTION ON SITE MUST COMPLY WITH THE CONCLUSIONS AND RECOMMENDATIONS IN THE GEOTECHNICAL REPORT AND ADDITIONAL GEOTECHNICAL INVESTIGATION LETTERS PREPARED SPECIFICALLY FOR THIS SITE.

THE GRADES SHOWN ON THIS PLAN REPRESENT FINISHED GRADE. THE CONTRACTOR SHALL ALLOW FOR THE THICKNESS OF THE PAVEMENTS AND THE FLOOR SLABS WHEN FINISH GRADING THE SITE.

NOTE: CUT OR FILL SLOPES SHOULD NOT BE STEEPER THAN 2.0H : 1.0V.

PARTIAL GRADING PLAN

GRAPHIC SCALE
30' 0 30' 60' 120'
(IN FEET)
1 inch = 30 ft.

HGA JOB No. 2020-294

BHA
Breaux & Associates
ARCHITECTS
5955 Shiloh Road East, Suite 200
Alpharetta, Georgia 30005 | (678) 585-4508

HAINES GIPSON & ASSOCIATES
Civil • Structural • Bridge

NO	DESCRIPTION	DATE

PROGRESS PRINT

NEW LUMPKIN CO. ELEMENTARY SCHOOL
SITE PACKAGE
215 PINETREE WAY, DAHLONEGA, GA 30533

LUMPKIN COUNTY SCHOOLS

Issued For:

PARTIAL GRADING PLAN

Date 3/16/2021

Project Number 20104

C3.2

Attachment: guardrail areas that could be removed (004) (2021-057 : Aquatic Center Site Work GMP)

Lumpkin County, Georgia

Public Works Department

Date: September 21, 2021

Agenda Item: Little Mountain Road Bridge Replacement Contract Revision

Item Description: Little Mountain Road Bridge Replacement Contract Revision. Ratify the contract revision to increase the height of the box culverts by 1 foot.

Facts & Historical Information: On July 6, 2021, North Georgia Concrete, Inc. was awarded a contract in the amount of $296,294.95 for the replacement of the bridge over Poverty Creek with triple 6'x6' box culverts. As a result of the heavy rains from Tropical Storm Fred, it was discovered that the creek flowline was approximately 1 foot below the elevation used as the base of design for the culvert. In normal circumstances this would not be an issue. Since the bridge is located in a zone A flood plain, the culvert was sized based on the elevations of the surrounding area. The top elevation of the box was designed to be at the elevation of the road adjacent to the bridge. The width of the boxed was then calculated to be capable of handling that flow. During the 100-yr flood event the culvert size is not the limiting factor, it is the characteristics of the flood plain that control the water elevation in that area. This means that during extreme flood events the water will flow over the road and any increased height or width in the boxes would not provide any benefit to the flow. By raising the top of the box 1 foot, to the original design elevation, the culvert will function as design and limit any flow over the road to a depth less than 6". The cost of this change is $22,610. 65. The DOT has agreed to pay for 70 % of this cost with the county paying the remaining $6,785.65. Due to the point of construction of the culverts at the time the error was discovered, the BOC was informed and agreed to go ahead with the change to prevent any delays in the project.

Potential Courses Of Action:
a) Ratify the revision to the contract with North Georgia Concrete, Inc.
b) Do not approve

Budget Impact: The BOC has approved $2,000,000 for the road widening project from the 2020 SPLOST. The revised total cost to the county for the bridge replacement part of the project will be approximately $95,685.

Staff Recommendation: **Staff recommends COA a). Ratify the revision to the contract with North Georgia Concrete, Inc.**

Attachments:
DOT funding increase email
Change Order on Little Mountain Rd Culvert_

Larry Reiter

From: Wright, William <wwright@dot.ga.gov>
Sent: Friday, August 20, 2021 8:48 AM
To: Charles Trammell
Cc: Larry Reiter
Subject: RE: Little Mountain Road Culvert

Hi Charles,
I believe that brings the total cost to $328,105.60.
70 percent of that would be $229,673.92.
We have paid $213,850 so we will send another check in the amount of $15,825.
Thank you,
Bill

Bill Wright
Local Grants Administrator

GDOT Georgia Department of Transportation

Local Grants
One Georgia Center
600 West Peachtree Street NW, 17th Floor
Atlanta, GA, 30308
404-347-0231 Office
404-694-6564 Cell

From: Charles Trammell <Charles.Trammell@LumpkinCounty.GOV>
Sent: Thursday, August 19, 2021 3:02 PM
To: Wright, William <wwright@dot.ga.gov>
Cc: Larry Reiter <Larry.Reiter@LumpkinCounty.GOV>
Subject: Little Mountain Road Culvert

Bill,

Attached you will find, as discussed with you this morning, a change order to increase the size of the culvert from a triple 6x6 to a triple 6x7. This was brought about because of tropical storm Fred and we found out the 6x6 size was not going to handle the water. Assistance was approved earlier for this project and we hope to add this additional cost if possible.

If you could incorporate this $22,610.65 into our project, I think we should still be within the amount approved by the commissioner.

I appreciate your help in this manner and if additional information is needed, please don't hesitate to contact me.

Charles Trammell
Special Projects Manager
Lumpkin County
706-300-6444

Attachment: DOT funding increase email (2021-058 : Little Mountain Road Bridge Replacement Contract Revision)

Georgia is a state of natural beauty. And it's a state that spends millions each year cleaning up litter that not only mars that beauty, but also affects road safety, the environment and the economy. Do your part – don't litter. How can you play an active role in protecting the splendor of the Peach State? Find out at http://keepgaclean.com/.

Attachment: DOT funding increase email (2021-058 : Little Mountain Road Bridge Replacement Contract Revision)

NORTH GEORGIA CONCRETE INC.

85 Chestatee Industrial Park Dr. Dahlonega, GA 30533

Phone: (706) 867-1774 Fax (706) 867-1608

Change Order Request For:

LUMPKIN CO. - LITTLE MOUNTAIN ROAD BOX CULVERT

LUMPKIN COUNTY, GA

August 19, 2021

LINE NO.	WORK ITEM	UNIT	ESTIMATED QUANTITY	UNIT PRICE	TOTAL
	CHANGE ORDER REQUEST FOR REVISING BOX CULVERT FROM A TRIPLE 6' X 6' TO A TRIPLE 6' X 7'				
	MODIFY EXISTING FORMWORK AND REINFORCING STEEL TO CHANGE BOX	**LS**	**1.00**	**$22,610.65**	**$22,610.65**
	CULVERT FROM A TRIPLE 6' x 6' TO A TRIPLE 6' x 7'				
	Price includes additional concrete and reinforcing steel for all barrel and wing walls.				
				TOTAL	**$22,610.65**

Change Order Request Approved by (Printed Name): _____

Change Order Request Approved by (Signature): _____

Owner/Company: _____

Date: _____

NGC USE ONLY: Approval - Date -

CONDITIONS OF PROPOSAL

1. THIS PROPOSAL IS VALID FOR FIFTEEN DAYS FROM THE DATE OF PROPOSAL. DUE TO THE VOLATILITY OF THE MARKET MATERIAL INCREASES MAY BE REQUIRED AFTER FIFTEEN DAYS.

If you have any questions regarding this proposal please contact me at your convenience. Thank you for the opportunity to quote this work.

Sincerely,

Jeff Rudiger

Project Manager/Estimator

Attachment: Change Order on Little Mountain Rd Culvert_ (2021-058 : Little Mountain Road Bridge Replacement Contract Revision)

Lumpkin County, Georgia

County Attorney Department

Date: September 21, 2021

Agenda Item: Ratify Contract for Land Purchase - Ben Higgins Road

Item Description: Ratify Contract for Land Purchase - Ben Higgins Road

Facts & Historical Information:

Potential Courses Of Action:

Contract Term:

Budget Impact:

Staff Recommendation:

Attachments:
Ben Higgins Rd contract

LAND PURCHASE AND SALE AGREEMENT

Offer Date: 8/27/2021

Georgia REALTORS

2021 Printing

A. KEY TERMS AND CONDITIONS

1. **Purchase and Sale.** The undersigned buyer(s) ("Buyer") agree to buy and the undersigned seller(s) ("Seller") agree to sell the real property described below including all fixtures, improvements and landscaping therein ("Property") on the terms and conditions set forth in this Agreement.
   a. **Property Identification:** Address: Twin Fawns Trail
   City Dahlonega, County Lumpkin, Georgia, Zip Code 30533
   MLS Number: 6896799 Tax Parcel I.D. Number: 047-388 & 047-389
   b. **Legal Description:** The legal description of the Property is *[select one of the following below]*:
   ☐ (1) attached as an exhibit hereto;
   ☐ (2) the same as described in Deed Book _____, Page _____, et. seq., of the land records of the above county; OR
   ☑ (3) Land Lot(s) 516 of the 12 District, _____ Section/ GMD, Lot #1 and #2, Block _____, Unit _____, Phase/Section _____ of Deerwoods Subdivision/Development, according to the plat recorded in Plat Book 1-122, Page 33, et. seq., of the land records of the above county.

2. **Acreage.** A Controlling Survey of the Property will be obtained by ☐ Buyer OR ☐ Seller and paid for by ☐ Buyer OR ☐ Seller.

3. **Purchase Price of Property to be Paid by Buyer.**
   $139,900.00 OR
   $_____ per acre. If price is per acre, Seller's estimate of acreage is _____ acres.

4. **Closing Costs.**
   Seller's Contribution at Closing:
   $0.00

5. **Closing Date and Possession.**
   Closing Date shall be 9/30/2021 with possession of the Property transferred to Buyer at
   ☑ Closing OR ☐ _____ days after Closing at _____ o'clock ☐ AM ☐ PM (attach F219 Temporary Occupancy Agreement).

6. **Holder of Earnest Money ("Holder").** (If Holder is Closing Attorney, F510 must be attached as an exhibit hereto, and F511must be signed by Closing Attorney.)
   Chestatee Real Estate

7. **Closing Attorney/Law Firm.**
   Horne and Edleberg

8. **Earnest Money.** Earnest Money shall be paid by ☑ check ☐ ACH ☐ cash or ☐ wire transfer of immediately available funds as follows:
   ☐ a. $_____ as of the Offer Date.
   ☑ b. $1000.00 within 3 days from the Binding Agreement Date.
   ☐ c. _____

9. **Inspection and Due Diligence.**
   a. **Due Diligence Period:** Property is being sold subject to a Due Diligence Period of 14 days from the Binding Agreement Date.
   b. **Option Payment for Due Diligence Period:** In consideration of Seller granting Buyer the option to terminate this Agreement, Buyer:
   (1) has paid Seller $10.00 in nonrefundable option money, the receipt and sufficiency of which is hereby acknowledged; plus
   (2) shall pay Seller additional option money of $_____ by ☐ check or ☐ wire transfer of immediately available funds either ☐ as of the Offer Date; OR ☐ within _____ days from the Binding Agreement Date. Any additional option money paid by Buyer to Seller ☐ shall (subject to lender approval) or ☐ shall not be applied toward the purchase price at closing and shall not be refundable to Buyer unless the closing fails to occur due to the default of the Seller.

10. Property is currently zoned RG under the applicable zoning ordinances of Lumpkin City/County

11. **Assignment.** Buyer ☑ shall OR ☐ shall not have the right to assign this Agreement; OR ☐ shall have the right to Assign this Agreement only to a legal entity in which Buyer owns at least a 25% interest.

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12. **Brokerage Relationships in this Transaction.**

a. **Buyer's Broker is** Chestatee Real Estate, LLC. **and is:**
(1) ☑ representing Buyer as a client.
(2) ☐ working with Buyer as a customer.
(3) ☐ acting as a dual agent representing Buyer and Seller.
(4) ☐ acting as a designated agent where:
_____ has been assigned to exclusively represent Buyer.

b. **Seller's Broker is** Jayne Hanlon Realty, LLC. **and is:**
(1) ☑ representing Seller as a client.
(2) ☐ working with Seller as a customer.
(3) ☐ acting as a dual agent representing Buyer and Seller.
(4) ☐ acting as a designated agent where:
_____ has been assigned to exclusively represent Seller.

c. **Material Relationship Disclosure:** The material relationships required to be disclosed by either Broker are as follows:

13. **Time Limit of Offer.** The Offer set forth herein expires at 11:59 o'clock p .m. on the date 8/30/2021.

Buyer(s) Initials _____ Seller(s) Initials RP 08/08/21

B. CORRESPONDING PARAGRAPHS FOR SECTION A

1. **Purchase and Sale.**
   a. **Warranty:** Seller warrants that at the time of closing Seller will convey good and marketable title to said Property by limited warranty deed subject only to: (1) zoning; (2) general utility, sewer, and drainage easements of record as of the Binding Agreement Date and upon which the improvements do not encroach; (3) declarations of condominium and declarations of covenants, conditions and restrictions of record on the Binding Agreement Date; and (4) leases and other encumbrances specified in this Agreement. Buyer agrees to assume Seller's responsibilities in any leases specified in this Agreement.
   b. **Examination:** Buyer may examine title and obtain a survey of the Property and furnish Seller with a written statement of title objections at or prior to the closing. If Seller fails or is unable to satisfy valid title objections at or prior to the closing or any unilateral extension thereof, which would prevent the Seller from conveying good and marketable title to the Property, then Buyer, among its other remedies, may terminate the Agreement without penalty upon written notice to Seller. Good and marketable title as used herein shall mean title which a title insurance company licensed to do business in Georgia will insure at its regular rates, subject only to standard exceptions.
   c. **Title Insurance:** Buyer hereby directs any mortgage lender involved in this transaction to quote the cost of title insurance based upon the presumption that Buyer will be obtaining an enhanced title insurance policy since such a policy affords Buyer greater coverage

2. **Acreage.** Buyer or Seller can terminate this Agreement if the Seller's estimate of the total acreage to be sold to Buyer is at least 15% more or less than the estimate.

3. **Purchase Price to be Paid by Buyer.** The Purchase Price shall be paid in U.S. Dollars at closing by wire transfer of immediately available funds, or such other form of payment acceptable to the closing attorney. If the Purchase Price is stated as a price per acre, the acreage shall be determined by a survey obtained in the accordance with the procedure below ("Controlling Survey"). The total purchase price shall be determined by multiplying the total number of acres, to the nearest one one-thousandth of an acre as determined by a survey prepared by a registered Georgia surveyor. In the event the Seller is in possession of a survey, to which Buyer agrees in writing shall constitute the Controlling Survey, then said survey be controlling as the exact amount of the acreage being purchased and sold herein. If no survey exists or the existing survey is not acceptable, then a new survey shall be prepared. If there are no objections to the new survey, then the new survey shall be the Controlling Survey to determine the acreage being purchased and sold herein. If there is a dispute by either party regarding the new survey, the dispute shall be resolved in accordance with the Survey Resolution Exhibit attached hereto.

   Buyer warrants that Buyer will have sufficient cash at closing, will allow Buyer to complete the purchase of Property. Buyer does not need to sell or lease other real property in order to complete the purchase of Property.

4. **Closing Costs and Prorations.**
   a. **Seller's Contribution at Closing:** At closing, Seller shall make the referenced Seller's Monetary Contribution which Buyer may use to pay any cost or expense of Buyer related to this transaction. Buyer acknowledges that Buyer's mortgage lender(s) may not allow the Seller's Monetary Contribution, or the full amount thereof, to be used for some costs or expenses. In such event, any unused portion of the Seller's Monetary Contribution shall remain the property of the Seller. The Seller shall pay the fees and costs of the closing attorney: (1) to prepare and record title curative documents and (2) for Seller not attending the closing in person.
   b. **Items Paid by Buyer:** At closing, Buyer shall pay: (1) Georgia property transfer tax; (2) the cost to search title and tax records and prepare the limited warranty deed; and (3) all other costs, fees and charges to close this transaction, except as otherwise provided herein.

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c. **Prorations:** Ad valorem property taxes, community association fees, solid waste and governmental fees and utility bills for which service cannot be terminated as of the date of closing shall be prorated as of the date of closing. Notwithstanding any provision to the contrary, in the event ad valorem property taxes are based upon an estimated tax bill or tax bill under appeal, Buyer and Seller shall, upon the issuance of the actual tax bill or the appeal being resolved, promptly make such financial adjustments between themselves as are necessary to correctly prorate the tax bill. In the event there are tax savings resulting from a tax appeal, third party professional costs to handle the appeal may be deducted from the savings for that tax year before re-prorating. Any pending tax appeal for the year in which the Property is sold shall be deemed assigned to Buyer at closing. The liability to the county and if applicable, city, in which the Property is located for ad valorem real property taxes for the year in which the Property is sold shall be assumed by Buyer upon the Closing of the Property. Buyer agrees to indemnify Seller against any and all claims of the county and if applicable, city, for unpaid ad valorem real property taxes for the year in which the Property is sold.

5. **Closing Date and Possession.**
   a. **Right to Extend the Closing Date:** Buyer or Seller may unilaterally extend the closing date for eight (8) days upon notice to the other party given prior to or on the date of closing if: (1) Seller cannot satisfy valid title objections (excluding title objections that: (a) can be satisfied through the payment of money or by bonding off the same; and (b) do not prevent Seller from conveying good and marketable title, as that term is defined herein, to the Property); (2) Buyer's mortgage lender (even in "all cash" transactions) or the closing attorney is delayed and cannot fulfill their respective obligations by the date of closing, provided that the delay is not caused by Buyer; or (3) Buyer has not received required estimates or disclosures and Buyer is prohibited from closing under federal regulations. The party unilaterally extending the closing date shall state the basis for the delay in the notice of extension. If the right to unilaterally extend the closing date is exercised once by either the Buyer or Seller, the right shall thereafter terminate.
   b. **Keys and Openers:** At Closing, Seller shall provide Buyer with all keys, door openers, codes and other similar equipment pertaining to the Property.

6. **Holder of Earnest Money.** The earnest money shall be deposited into Holder's escrow/trust account (with Holder being permitted to retain the interest if the account is interest bearing) not later than: (a) five (5) banking days after the Binding Agreement Date hereunder or (b) five (5) banking days after the date it is actually received if it is received after the Binding Agreement Date. If Buyer writes a check or pays with an ACH for earnest money and the same is deposited into Holder's escrow/trust account, Holder shall not return the earnest money until the check or ACH has cleared the account on which the check was written or from which the ACH was sent. In the event any earnest money check is dishonored by the bank upon which it is drawn, or earnest money is not timely paid, Holder shall promptly give notice of the same to Buyer and Seller. Buyer shall have three (3) banking days from the date of receiving the notice to cure the default and if Buyer does not do so, Seller may within seven (7) days thereafter terminate this Agreement upon notice to Buyer. If Seller fails to terminate the Agreement timely, Seller's right to terminate based on the default shall be waived.

7. **Closing Attorney/Law Firm.** Buyer shall have the right to select the closing attorney to close this transaction, and hereby selects the closing attorney referenced herein. In all cases where an individual closing attorney is named in this Agreement but the closing attorney is employed by or an owner, shareholder, or member in a law firm, the law firm shall be deemed to be the closing attorney. If Buyer's mortgage lender refuses to allow that closing attorney to close this transaction, Buyer shall select a different closing attorney acceptable to the mortgage lender. The closing attorney shall represent the mortgage lender in any transaction in which the Buyer obtains mortgage financing (including transactions where the method of payment referenced herein is "all cash"). In transactions where the Buyer does not obtain mortgage financing, the closing attorney shall represent the Buyer.

8. **Earnest Money.**
   a. **Entitlement to Earnest Money:** Subject to the paragraph below, Buyer shall be entitled to the earnest money upon the: (1) failure of the parties to enter into a binding agreement; (2) failure of any unexpired contingency or condition to which this Agreement is subject; (3) termination of this Agreement due to the default of Seller; or (4) termination of this Agreement in accordance with a specific right to terminate set forth in the Agreement. Otherwise, the earnest money shall be applied towards the purchase price of the Property at closing or if other funds are used to pay the purchase price then the earnest money shall be returned to Buyer.
   b. **Disbursement of Earnest Money:** Holder shall disburse the earnest money upon: (1) the closing of Property; (2) a subsequent written agreement of Buyer and Seller; (3) an order of a court or arbitrator having jurisdiction over any dispute involving the earnest money; or (4) the failure of the parties to enter into a binding agreement (where there is no dispute over the formation or enforceability of the Agreement). In addition, Holder may disburse the earnest money upon a reasonable interpretation of the Agreement, provided that Holder first gives all parties at least ten (10) days notice stating to whom and why the disbursement will be made. Any party may object to the proposed disbursement by giving written notice of the same to Holder within the ten (10) day notice period. Objections not timely made in writing shall be deemed waived. If Holder receives an objection and, after considering it, decides to disburse the earnest money as originally proposed, Holder may do so and send notice to the parties of Holder's action. If Holder decides to modify its proposed disbursement, Holder shall first send a new ten (10) day notice to the parties stating the rationale for the modification and to whom the disbursement will now be made. Holder shall disburse the earnest money to Seller by check in the event Holder: (1) makes a reasonable interpretation of the Agreement that the Agreement has been terminated due to Buyer's default; and (2) sends the required ten (10) day notice of the proposed disbursement to Buyer and Seller. The above-referenced check shall constitute liquidated damages in full settlement of all claims of Seller against Buyer and the Brokers in this transaction. Holder may require Seller to sign a W-9 before issuing a check to Seller for liquidated damages of $600 or more. Such liquidated damages are a reasonable pre-estimate of Seller's actual damages, which damages the parties agree are difficult to ascertain and are not a penalty.
   c. **Interpleader:** If an earnest money dispute cannot be resolved after a reasonable time, Holder may interplead the earnest money into a court of competent jurisdiction if Holder is unsure who is entitled to the earnest money. Holder shall be reimbursed for and may deduct its costs, expenses and reasonable attorney's fees from any funds interpleaded. The prevailing defendant in the interpleader lawsuit shall be entitled to collect its attorney's fees, court costs and the amount deducted by Holder to cover Holder's costs and expenses from the non-prevailing defendant.

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d. **Hold Harmless:** All parties hereby covenant and agree to: (1) indemnify and hold Holder harmless from and against all claims, injuries, suits and damages arising out of the performance by Holder of its duties; (2) not to sue Holder for any decision of Holder to disburse earnest money in accordance with this Agreement.

9. **Inspection and Due Diligence.**
   a. **Right to Inspect Property:** Upon prior notice to Seller, Buyer and/or Buyer's representatives shall have the right to enter the Property at Buyer's expense and at reasonable times (including immediately prior to closing) to inspect, examine, test, appraise and survey Property. This right to enter shall include the time period after the end of any Due Diligence Period to, among other things, and without limitation, meet contractors and vendors, measure for renovations and confirm that any agreed upon repairs have been made and the Property otherwise remains in the same condition. Seller shall cause all utilities, systems and equipment to be on so that Buyer may complete all inspections. Buyer agrees to hold Seller and all Brokers harmless from all claims, injuries and damages relating to the exercise of these rights and shall promptly restore any portion of the Property damaged or disturbed from testing or other evaluations to a condition equal to or better than the condition it was in prior to such testing or evaluation. If Buyer is concerned that the Property may have been used as a laboratory for the production of methamphetamine, or as a dumpsite for the same, Buyer should review the National Clandestine Laboratory Register – Georgia at www.dea.gov.
   b. **Duty to Inspect Neighborhood:** In every neighborhood there are conditions which different buyers may find objectionable. Buyer shall have the sole duty to become familiar with neighborhood conditions that could affect the Property such as landfills, quarries, power lines, airports, cemeteries, prisons, stadiums, odor and noise producing activities, crime and school, land use, government and transportation maps and plans. It shall be Buyer's sole duty to become familiar with neighborhood conditions of concern to Buyer. **If Buyer is concerned about the possibility of a registered sex offender residing in a neighborhood in which Buyer is interested, Buyer should review the Georgia Violent Sex Offender Registry available on the Georgia Bureau of Investigation Website at www.gbi.georgia.gov.**
   c. **Warranties Transfer:** Seller agrees to transfer to Buyer, at closing, subject to Buyer's acceptance thereof (and at Buyer's expense, if there is any cost associated with said transfer), Seller's interest in any existing manufacturer's warranties, service contracts, termite treatment and/or repair guarantee and/or other similar warranties which, by their terms, may be transferable to Buyer.
   d. **Property Sold "As-Is" Unless this Agreement is Subject to Due Diligence Period:**
      (1) **General:** Unless the Property is being sold subject to a Due Diligence Period referenced herein, the Property shall be sold "as-is" with all faults. Even if the Property is sold "as-is" Seller is required under Georgia law to disclose to the Buyer latent or hidden defects in the Property which Seller is aware and which could not have been discovered by the Buyer upon a reasonable inspection of the property. The inclusion of a Due Diligence Period herein shall: (a) during its term make this Agreement an option contract in which Buyer may decide to proceed or not proceed with the purchase of the Property for any or no reason; and (b) be an acknowledgement by Seller that Buyer has paid separate valuable consideration of $10 for the granting of the option.
      (2) **Purpose of Due Diligence Period:** During the Due Diligence Period, Buyer shall determine whether or not to exercise Buyer's option to proceed or not proceed with the purchase of the Property. If Buyer has concerns with the Property, Buyer may during the Due Diligence Period seek to negotiate an amendment to this Agreement to address such concerns.
      (3) **Notice of Decision Not To Proceed:** Buyer shall have elected to exercise Buyer's option to purchase the Property unless prior to the end of any Due Diligence Period, Buyer notifies Seller of Buyer's decision not to proceed by delivering to Seller a notice of termination of this Agreement. In the event Buyer does not terminate this Agreement prior to the end of the Due Diligence Period, then: (a) Buyer shall have accepted the Property "as-is" subject to the terms of this Agreement; and (b) Buyer shall no longer have any right to terminate this Agreement based upon the Due Diligence Period.
   e. **Repairs:** All agreed upon repairs and replacements shall be performed in a good and workmanlike manner prior to closing.
   f. **Due Diligence Materials:** Seller shall provide to the Buyer within five (5) days from the Binding Agreement Date, the items below, if available, pertaining to the Property (hereinafter collectively referred to as "Due Diligence Materials").
      (1) **Tax and Title:**
         i. Most recent Property tax assessments and tax bills.
         ii. The most recent title insurance policy insuring the Property, including complete and legible copies of all documents (whether or not recorded) which are referenced as title exceptions.
         iii. The most recent ALTA (American Land Title Association) survey of the Property, or if such a survey is not available, the most recent survey of the Property prepared by a licensed Georgia surveyor.
         iv. A list of special assessment districts in which the Property is located and the schedule of unpaid or pending assessments – if any.
         v. A schedule of impact fees paid or owed on the Property, if any.
      (2) **Environmental and Assessments:**
         i. All soil reports covering the Property or any portion thereof.
         ii. All cruise reports of existing timber on the Property.
         iii. All environment (hazardous substances), engineering, physical inspection, marketing and feasibility studies, assessments and reports, including wetlands reports.
      (3) **Leases:**
      An executed copy of every lease of or affecting the Property or any portion thereof.
      (4) **Miscellaneous:**
         i. A schedule of management fees due in connection with any agreements pertaining to the Property.
         ii. All municipal, county, state or federal permits, licenses and authorizations affecting the use, operation, and maintenance of the Property."

10. **Sellers Warranties and Representations.** Except to the extent provided in Exhibit _____ to this Agreement, Seller warrants as follows:
   a. **Authority.** Seller has the right, power and authority to enter into this Agreement and to convey Property in accordance with the terms and conditions of this Agreement; and the persons executing this Agreement on behalf of Seller have been duly and validly authorized by Seller to execute and deliver this Agreement and have the right, power and authority to enter into this Agreement and bind Seller.

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b. **Bankruptcy.** Seller represents and warrants that Seller is solvent and has not made a general assignment for the benefit of creditors or been adjudicated as bankrupt or insolvent, nor has a receiver, liquidator or trustee of Seller or any of its respective properties (including Property) been appointed or a petition filed by or against Seller for bankruptcy, reorganization or arrangement pursuant to the Federal Bankruptcy Act or any similar federal or state statute, or any proceeding instituted for the dissolution or liquidation of Seller.

c. **Condemnation.** Seller has not been notified that any condemnation or other taking by eminent domain of Property or any portion thereof has been instituted and, to the best of Seller's knowledge, there are no pending or threatened condemnation or eminent domain proceedings (or proceedings in the nature or in lieu thereof) affecting Property or any portion thereof or its use.

d. **Hazardous Substances.** To the best of Seller's knowledge, (1) no "hazardous substances", as that term is defined in the Comprehensive Environmental Response, Compensation, and Liability Act, and the rules and regulations promulgated pursuant thereto, or any other pollutants, toxic materials, or contaminants have been or shall prior to closing be discharged, disbursed, released, stored, treated, generated, disposed of, or allowed to escape on Property in violation of applicable law; (2) no underground storage tanks are located on the Property or were located on the Property and subsequently removed or filled; (3) Property has not previously been used as a gas station, cemetery, landfill, or as a dump for garbage or refuse; and (4) Property has not previously been and is not currently listed on the Georgia Environmental Protection Division Hazardous Site. Seller has not received any notice or demand from any governmental or regulatory agency or authority requiring Seller to remove any hazardous substances or contaminants or toxic materials from Property.

e. **Leases.** Other than those leases provided by Seller to Buyer as part of the Due Diligence Materials, there are no other leases of or affecting the Property or any portion thereof and Seller will not enter into any new leases without the written permission of Buyer.

f. **No Litigation.** There are no actions, suits, or proceedings pending or, to the best of Seller's knowledge, threatened by any organization, person, individual, or governmental agency against Seller with respect to Property or against Property, or with respect thereto, nor does Seller know of any basis for such action. Seller also has no knowledge of any currently pending application for changes in the zoning applicable to Property or any portion thereof.

g. **Pre-Existing Right to Acquire.** No person or entity has any right or option to acquire Property or any portion thereof, which will have any force of effect after execution hereof, other than Buyer.

h. **Proceedings Affecting Access.** Seller has not been notified that there are any pending proceedings that could have the effect of impairing or restricting access between Property and adjacent public roads and, to the best of Seller's knowledge, no such proceedings are pending or threatened.

i. **Violations.** To the best of Seller's knowledge, there are no violations of laws, municipal or county ordinances or other legal requirements with respect to Property (excluding any improvements constructed thereon).

11. **Assignment.** In the event Buyer has the right to assign this Agreement, the assignment shall not release Buyer of any of its obligations or liabilities hereunder. Notice of such assignment shall be provided to Seller at least five (5) days prior to Closing.

12. **Brokerage Relationships in this Transaction.**

a. **Agency Disclosure:** No Broker in this transaction shall owe any duty to Buyer or Seller greater than what is set forth in their brokerage engagements and the Brokerage Relationships in Real Estate Transactions Act, O.C.G.A. § 10-6A-1 et. seq.:

(1) **No Agency Relationship:** Buyer and Seller acknowledge that, if they are not represented by Brokers in a client relationship, they are each solely responsible for protecting their own interests, and that Broker's role is limited to performing ministerial acts for that party.

(2) **Consent to Dual Agency:** If Broker is acting as dual agent in this transaction, Buyer and Seller consent to the same and acknowledge having been advised of the following:

i. **Dual Agency Disclosure:** *[Applicable only if Broker is acting as a dual agent in this transaction.]*

(a) As a dual agent, Broker is representing two clients whose interests are or at times could be different or even adverse;

(b) Broker will disclose all adverse material facts relevant to the transaction and actually known to the dual agent to all parties in the transaction except for information made confidential by request or instructions from each client which is not otherwise required to be disclosed by law;

(c) Buyer and Seller do not have to consent to dual agency and the consent of Buyer and Seller to dual agency has been given voluntarily and the parties have read and understand their brokerage engagement agreements.

(d) Notwithstanding any provision to the contrary contained herein Buyer and Seller each hereby direct Broker while acting as a dual agent to keep confidential and not reveal to the other party any information which could materially and adversely affect their negotiating position.

ii. **Designated Agency Disclosure:** If Broker in this transaction is acting as a designated agent, Buyer and Seller consent to the same and acknowledge that each designated agent shall exclusively represent the party to whom each has been assigned as a client and shall not represent in this transaction the client assigned to the other designated agent.

b. **Brokerage:** Seller has agreed to pay Seller's Broker(s) a commission pursuant to a separate brokerage engagement agreement entered into between the parties and incorporated herein by reference ("Seller Brokerage Engagement Agreement"). The Seller's Broker has agreed to share that commission with the Buyer's Broker. The closing attorney is hereby authorized and directed to pay the Broker(s) at closing, their respective portions of the commissions out of the proceeds of the sale. If the sale proceeds are insufficient to pay the full commission, the party owing the commission shall pay any shortfall at closing. The acceptance by the Broker(s) of a partial real estate commission at the closing shall not relieve the party owing the same from paying the remainder after the closing (unless the Broker(s) have expressly and in writing agreed to accept the amount paid in full satisfaction of the Broker(s) claim to a commission). The Brokers herein are signing this Agreement to reflect their role in this transaction and consent to act as Holder if either of them is named as such. This Agreement and any amendment thereto shall be enforceable even without the signature of any Broker referenced herein. The broker(s) are express third-party beneficiaries to this Agreement.

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c. **Disclaimer:** Buyer and Seller have not relied upon any advice or representations of Brokers other than what is included in this Agreement. Brokers shall have no duty to inspect the Property or to advise Buyer or Seller on any matter relating to the Property which could have been revealed through a survey, appraisal, title search, Official Georgia Wood Infestation Report, utility bill review, septic system inspection, well water test, tests for radon, asbestos, mold, methamphetamine, and lead-based paint; moisture test of stucco or synthetic stucco, inspection of the Property by a professional, construction expert, structural engineer or environmental engineer; review of this Agreement and transaction by an attorney, financial planner, mortgage consultant or tax consultant; and consulting appropriate governmental officials to determine, among other things and without limitation, the zoning of Property, the propensity of the Property to flood, flood zone certifications, whether any condemnation action is pending or has been filed or other nearby governmental improvements are planned. Buyer and Seller acknowledge that Broker does not perform or have expertise in any of the above tests, inspections, and reviews or in any of the matters handled by the professionals referenced above. Buyer and Seller should seek independent expert advice regarding any matter of concern to them relative to the Property and this Agreement. Buyer and Seller acknowledge that Broker shall not be responsible to monitor, supervise, or inspect any construction or repairs to Property and such tasks clearly fall outside the scope of real estate brokerage services. If Broker has written any special stipulations herein, the party for whom such special stipulations were written: a) confirms that each such stipulation reflects the party's complete understanding as to the substance and form of the special stipulations; b) hereby adopts each special stipulation as the original work of the party; and c) hereby agrees to indemnify and hold Broker who prepared the stipulation harmless from any and all claims, causes of action, suits, and damages arising out of or relating to such special stipulation. Buyer acknowledges that when and if Broker answers a question of Buyer or otherwise describes some aspect of the Property or the transaction, Broker is doing so based upon information provided by Seller rather than the independent knowledge of Broker (unless Broker makes an independent written disclosure to the contrary).

13. **Time Limit of Offer.** The Time Limit of the Offer shall be the date and time referenced herein when the Offer expires unless prior to that date and time both of the following have occurred: (a) the Offer has been accepted by the party to whom the Offer was made; and (b) notice of acceptance of the Offer has been delivered to the party who made the Offer.

C. OTHER TERMS AND CONDITIONS

1. **Notices.**
   a. **Generally:** All notices given hereunder shall be in writing, legible and signed by the party giving the notice. In the event of a dispute regarding notice, the burden shall be on the party giving notice to prove delivery. The requirements of this notice paragraph shall apply even prior to this Agreement becoming binding. Notices shall only be delivered: (1) in person; (2) by courier, overnight delivery service or by certified or registered U.S. mail (hereinafter collectively "Delivery Service"); or (3) by e-mail or facsimile. The person delivering or sending the written notice signed by a party may be someone other than that party.
   b. **Delivery of Notice:** A notice to a party shall be deemed to have been delivered and received upon the earliest of the following to occur: (1) the actual receipt of the written notice by a party; (2) in the case of delivery by a Delivery Service, when the written notice is delivered to an address of a party set forth herein (or subsequently provided by the party following the notice provisions herein), provided that a record of the delivery is created; (3) in the case of delivery electronically, on the date and time the written notice is electronically sent to an e-mail address or facsimile number of a party herein (or subsequently provided by the party following the notice provisions herein). Notice to a party shall not be effective unless the written notice is sent to an address, facsimile number or e-mail address of the party set forth herein (or subsequently provided by the party following the notice provisions herein).
   c. **When Broker Authorized to Accept Notice for Client:** Except where the Broker is acting in a dual agency capacity, the Broker and any affiliated licensee of the Broker representing a party in a client relationship shall be authorized agents of the party and notice to any of them shall for all purposes herein be deemed to be notice to the party. Notice to an authorized agent shall not be effective unless the written notice is sent to an address, facsimile number or e-mail address of the authorized agent set forth herein (or subsequently provided by the authorized agent following the notice provisions herein). Except as provided for herein, the Broker's staff at a physical address set forth herein of the Broker or the Broker's affiliated licensees are authorized to receive notices delivered by a Delivery Service. The Broker, the Broker's staff and the affiliated licensees of the Broker shall not be authorized to receive notice on behalf of a party in any transaction in which a brokerage engagement has not been entered into with the party or in which the Broker is acting in a dual agency capacity. In the event the Broker is practicing designated agency, only the designated agent of a client shall be an authorized agent of the client for the purposes of receiving notice.

2. **Default.**
   a. **Remedies of Seller:** In the event this Agreement fails to close due to the default of Buyer, Seller's sole remedy shall be to retain the earnest money as full liquidated damages. Seller expressly waives any right to assert a claim for specific performance. The parties expressly agree that the earnest money is a reasonable pre-estimate of Seller's actual damages, which damages the parties agree are difficult to ascertain. The parties expressly intend for the earnest money to serve as liquidated damages and not as a penalty.
   b. **Remedies of Buyer:** In the event this Agreement fails to close due to the default of Seller, Buyer may either seek the specific performance of this Agreement or terminate this Agreement upon notice to Seller and Holder, in which case all earnest money deposits and other payments Buyer has paid towards the purchase of the Property shall be returned to Buyer following the procedures set forth elsewhere herein.
   c. **Rights of Broker:** In the event this Agreement is terminated or fails to close due to the default of a party hereto, the defaulting party shall pay as liquidated damages to every broker involved in this Agreement the commission the broker would have received had the transaction closed. For purposes of determining the amount of liquidated damages to be paid by the defaulting party, all written agreements establishing the amount of commission to be paid to any broker involved in this transaction are incorporated herein by reference. The liquidated damages referenced above are a reasonable pre-estimate of the Broker(s) actual damages and are not a penalty.
   d. **Attorney's Fees:** In any litigation or arbitration arising out of this Agreement, including but not limited to breach of contract claims between Buyer and Seller and commission claims brought by a broker, the non-prevailing party shall be liable to the prevailing party for its reasonable attorney's fees and expenses.

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3. **Risk of Damage to Property.** Seller warrants that at the time of closing the Property and all items remaining with the Property, if any, will be in substantially the same condition (including conditions disclosed in the Seller's Property Disclosure Statement or Seller's Disclosure of Latent Defects and Fixtures Checklist) as of the Offer Date, except for changes made to the condition of Property pursuant to the written agreement of Buyer and Seller. At time of possession, Seller shall deliver Property clean and free of trash, debris, and personal property of Seller not identified as remaining with the Property. Notwithstanding the above, if the Property is destroyed or substantially destroyed prior to closing, Seller shall promptly give notice to Buyer of the same and provide Buyer with whatever information Seller has regarding the availability of insurance and the disposition of any insurance claim. Buyer or Seller may terminate this Agreement without penalty not later than fourteen (14) days from receipt of the above notice. If Buyer or Seller do not terminate this Agreement, Seller shall assign at closing all of its rights to receive the proceeds from all insurance policies affording coverage for the claim. If the insurance proceeds are paid prior to Closing, the amount of such proceeds shall be credited against the purchase price of the Property.

4. **Other Provisions.**
   a. **Condemnation:** Seller shall: (1) immediately notify Buyer if the Property becomes subject to a condemnation proceeding; and (2) provide Buyer with the details of the same. Upon receipt of such notice, Buyer shall have the right, but not the obligation for 7 days thereafter, to terminate this Agreement upon notice to Seller in which event Buyer shall be entitled to a refund of all earnest money and other monies paid by Buyer toward the Property without deduction or penalty. If Buyer does not terminate the Agreement within this time frame, Buyer agrees to accept the Property less any portion taken by the condemnation and if Buyer closes, Buyer shall be entitled to receive any condemnation award or negotiated payment for all or a portion of the Property transferred or conveyed in lieu of condemnation.
   b. **Consent to Share Non-Public Information:** Buyer and Seller hereby consent to the closing attorney preparing and distributing an American Land Title Association ("ALTA") Estimated Settlement Statement-Combined or other combined settlement statement to Buyer, Seller, Brokers and Brokers' affiliated licensees working on the transaction reflected in this Agreement for their various uses.
   c. **Duty to Cooperate:** All parties agree to do all things reasonably necessary to timely and in good faith fulfill the terms of this Agreement. Buyer and Seller shall execute and deliver such certifications, affidavits, and statements required by law or reasonably requested by the closing attorney, mortgage lender and/or the title insurance company to meet their respective requirements.
   d. **Electronic Signatures:** For all purposes herein, an electronic or facsimile signature shall be deemed the same as an original signature; provided, however, that all parties agree to promptly re-execute a conformed copy of this Agreement with original signatures if requested to do so by, the buyer's mortgage lender or the other party.
   e. **Entire Agreement and Modification:** This Agreement constitutes the sole and entire agreement between all of the parties, supersedes all of their prior written and verbal agreements and shall be binding upon the parties and their successors, heirs and permitted assigns. No representation, promise or inducement not included in this Agreement shall be binding upon any party hereto. This Agreement may not be amended or waived except upon the written agreement of Buyer and Seller. Any agreement to terminate this Agreement or any other subsequent agreement of the parties relating to the Property must be in writing and signed by the parties.
   f. **Extension of Deadlines:** No time deadline under this Agreement shall be extended by virtue of it falling on a Saturday, Sunday or federal holiday except for the date of closing.
   g. **GAR Forms:** The Georgia Association of REALTORS®, Inc. ("GAR") issues certain standard real estate forms. These GAR forms are frequently provided to the parties in real estate transactions. No party is required to use any GAR form. Since these forms are generic and written with the interests of multiple parties in mind, they may need to be modified to meet the specific needs of the parties using them. If any party has any questions about his or her rights and obligations under any GAR form, he or she should consult an attorney. Provisions in the GAR Forms are subject to differing interpretations by our courts other than what the parties may have intended. At times, our courts may strike down or not enforce provisions in our GAR Forms, as written. No representation is made that the GAR Forms will protect the interests of any particular party or will be fit for any specific purpose. The parties hereto agree that the GAR forms may only be used in accordance with the licensing agreement of GAR. While GAR forms may be modified by the parties, no GAR form may be reproduced with sections removed, altered or modified unless the changes are visible on the form itself or in a stipulation, addendum, exhibit or amendment thereto.
   h. **Governing Law and Interpretation:** This Agreement may be signed in multiple counterparts each of which shall be deemed to be an original and shall be interpreted in accordance with the laws of Georgia. No provision herein, by virtue of the party who drafted it, shall be interpreted less favorably against one party than another. All references to time shall mean the time in Georgia. If any provision herein is to be unenforceable, it shall be severed from this Agreement while the remainder of the Agreement shall, to the fullest extent permitted by law, continue to have full force and effect as a binding contract.
   i. **No Authority to Bind:** No Broker or affiliated licensee of Broker, by virtue of this status, shall have any authority to bind any party hereto to any contract, provisions herein, amendments hereto, or termination hereof. However, if authorized in this Agreement, Broker shall have the right to accept notice on behalf of a party. Additionally, any Broker or real estate licensee involved in this transaction may perform the ministerial act of filling in the Binding Agreement Date. In the event of a dispute over the Binding Agreement Date, it may only be resolved by the written agreement of the Buyer and Seller.
   j. **Notice of Binding Agreement Date:** The Binding Agreement Date shall be the date when a party to this transaction who has accepted an offer or counteroffer to buy or sell real property delivers notice of that acceptance to the party who made the offer or counteroffer in accordance with the Notices section of the Agreement. Notice of the Binding Agreement Date may be delivered by either party (or the Broker working with or representing such party) to the other party. If notice of accurate Binding Agreement Date is delivered, the party receiving notice shall sign the same and immediately return it to the other party.
   k. **Statute of Limitations:** All claims of any nature whatsoever against Broker(s) and/or their affiliated licensees, whether asserted in litigation or arbitration sounding in breach of contract and/or tort, must be brought within two (2) years from the date any claim or cause of action arises. Such actions shall thereafter be time-barred.
   l. **Survival of Agreement:** The following shall survive the closing of this Agreement: (1) the obligation of a party to pay a real estate commission; (2) any warranty of title; (3) all written representations of Seller in this Agreement regarding the Property or neighborhood in which the Property is located; (4) the section on condemnation; (5) the section on attorney's fees; (6) the obligations of the parties regarding ad valorem real property taxes; and (7) any obligations which the parties herein agree shall survive the closing or may be performed or fulfilled after the Closing.

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m. **Terminology:** As the context may require in this Agreement: (1) the singular shall mean the plural and vice versa; and (2) all pronouns shall mean and include the person, entity, firm, or corporation to which they relate. The letters "N.A." or "N/A", if used in this Agreement, shall mean "Not Applicable", except where the context would indicate otherwise.

n. **Time of Essence:** Time is of the essence of this Agreement.

5. **Definitions.**
   a. **Banking Day:** A "Banking Day" shall mean a day on which a bank is open to the public for carrying out substantially all of its banking functions. For purposes herein, a "Banking Day" shall mean Monday through Friday excluding federal holidays.
   b. **Binding Agreement Date:** The "Binding Agreement Date" shall be the date when a party to this transaction who has accepted an offer or counteroffer to buy or sell real property delivers notice of that acceptance to the party who made the offer or counteroffer in accordance with the Notices section of the Agreement. Once that occurs, this Agreement shall be deemed a Binding Agreement.
   c. **Broker:** In this Agreement, the term "Broker" shall mean a licensed Georgia real estate broker or brokerage firm and its affiliated licensees unless the context would indicate otherwise.
   d. **Business Day:** A "Business Day" shall mean a day on which substantially all businesses are open for business. For all purposes herein, a "Business Day" shall mean Monday through Friday excluding federal holidays.
   e. **Material Relationship:** A material relationship shall mean any actually known personal, familial, social, or business relationship between the broker or the broker's affiliated licensees and any other party to this transaction which could impair the ability of the broker or affiliated licensees to exercise fair and independent judgment relative to their client.

6. **Property Not Being Sold for Value of Any Improvements on Land.** Buyer acknowledges that the Property may contain certain incidental improvements such as existing homes, barns, fences, outbuildings and wells. Buyer acknowledges that the Property is being purchased for the value of the land rather than the value of any improvements presently located thereon. All improvements are being sold in "as-is" condition. Buyer acknowledges that the improvements on the Property, if any, may be in need of significant repair, may contain defective conditions and may not have been constructed or used in accordance with all applicable laws. Since the condition of any existing improvements is immaterial to Buyer's decision to purchase the Property, Seller shall have no responsibility to make any disclosures or repairs relative to the same. Buyer covenants not to sue Seller with respect to any matter relating to the condition of said improvements and agrees to indemnify and hold Seller harmless with respect to the same. Buyer expressly waives: (1) any and all rights to inspect and test for lead-based paint and/or lead-based paint hazards for not less than ten (10) days from the Binding Agreement Date; and (2) the right not to be contractually obligated under this Agreement until the above time period has lapsed.

7. **WARNING TO BUYERS AND SELLERS: BEWARE OF CYBER-FRAUD.** Fraudulent e-mails attempting to get the buyer and/or seller to wire money to criminal computer hackers are increasingly common in real estate transactions. Specifically, criminals are impersonating the online identity of the actual mortgage lender, closing attorney, real estate broker or other person or companies involved in the real estate transaction. In that role, the criminals send fake wiring instructions attempting to trick buyers and/or sellers into wiring them money related to the real estate transaction, including, for example, the buyer's earnest money, the cash needed for the buyer to close, and/or the seller's proceeds from the closing. These instructions, if followed, will result in the money being wired to the criminals. In many cases, the fraudulent email is believable because it is sent from what appears to be the email address/domain of the legitimate company or person responsible for sending the buyer or seller wiring instructions. The buyer and/or seller should verify wiring instructions sent by email by independently looking up and calling the telephone number of the company or person purporting to have sent them. Buyers and sellers should never call the telephone number provided with wiring instructions sent by email since they may end up receiving a fake verification from the criminals. Buyer and sellers should be on special alert for: 1) emails directing the buyer and/or seller to wire money to a bank or bank account in a state other than Georgia; and 2) emails from a person or company involved in the real estate transaction that are slightly different (often by one letter, number, or character) from the actual email address of the person or company.

8. **LIMITATION OF LIABILITY. BUYER AND SELLER ACKNOWLEDGE THAT BROKER(S):**
   a. **SHALL, UNDER NO CIRCUMSTANCES, HAVE ANY LIABILITY GREATER THAN THE AMOUNT OF THE REAL ESTATE COMMISSION PAID HEREUNDER TO BROKER (EXCLUDING ANY COMMISSION AMOUNT PAID TO A COOPERATING REAL ESTATE BROKER, IF ANY) OR, IF NO REAL ESTATE COMMISSION IS PAID TO BROKER, THAN A SUM NOT TO EXCEED $100; AND**
   b. **NOTWITHSTANDING THE ABOVE, SHALL HAVE NO LIABILITY IN EXCESS OF $100 FOR ANY LOSS OF FUNDS AS THE RESULT OF WIRE OR CYBER FRAUD.**

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9. **Exhibits and Addenda.** All exhibits and/or addenda attached hereto, listed below, or referenced herein are made a part of this Agreement. If any such exhibit or addendum conflicts with any preceding paragraph (including any changes thereto made by the parties), said exhibit or addendum shall control:

- ☐ Back-up Agreement Contingency Exhibit (F604) "_____"
- ☐ Closing Attorney Acting as Holder of Earnest Money Exhibit (F510) "_____"
- ☐ Community Association Disclosure Exhibit (F322) "_____"
- ☐ Legal Description Exhibit (F807 or other) "_____"
- ☐ Seller's Property Disclosure Statement Exhibit (F302, F307) "_____"
- ☐ Special Title Exceptions Pertaining to Property as Exhibit "_____"
- ☐ Special Warranties and Representations of Seller as Exhibit "_____"
- ☐ Survey of Property as Exhibit "_____"
- ☐ Temporary Occupancy Agreement for Seller after Closing Exhibit (F219) "_____"
- ☒ Other All Cash Contingency as Exhibit "A"
- ☐ Other _____
- ☐ Other _____
- ☐ Other _____

SPECIAL STIPULATIONS: The following Special Stipulations, if conflicting with any exhibit, addendum, or preceding paragraph (including any changes thereto made by the parties), shall control:

1. ~~Seller shall provide a copy of the soil analysis on Lot 2 within 3 days of the Binding Agreement Date.~~ RP 8/30/21

The soil analysis for Lot 2 is included as Exhibit "B". RP 8/30/21

☐ **Additional Special Stipulations are attached.**

Attachment: Ben Higgins Rd contract (2021-059 : Ratify Contract for Land Purchase - Ben Higgins Road)

By signing this Agreement, Buyer and Seller acknowledge that they have each read and understood this Agreement and agree to its terms.

Buyer Acceptance and Contact Information

1 Buyer's Signature

Lumpkin County Board of Commissioners
Print or Type Name

Date 8/27/2021

99 Courthouse Hill, Ste H, Dahlonega, GA 30533
Buyer's Address for Receiving Notice

706-482-2566
Buyer's Phone Number: ☐ Cell ☐ Home ☐ Work

Buyer's E-mail Address

2 Buyer's Signature

Print or Type Name

Date

Buyer's Address for Receiving Notice

Buyer's Phone Number: ☐ Cell ☐ Home ☐ Work

Buyer's E-mail Address

☐ Additional Signature Page (F267) is attached.

Seller Acceptance and Contact Information

Ranjan Patil
1 Seller's Signature

RANJAN PATIL
Print or Type Name

08/27/2021
Date

280 Davenham Court
Seller's Address for Receiving Notice

Alpharetta, GA 30005
Seller's Phone Number: ☐ Cell ☐ Home ☐ Work

ranjan.patil@mail.com
Seller's E-mail Address

2 Seller's Signature

Print or Type Name

Date

Seller's Address for Receiving Notice

Seller's Phone Number: ☐ Cell ☐ Home ☐ Work

Seller's E-mail Address

☐ Additional Signature Page (F267) is attached.

Buyer's Broker/Affiliated Licensee Contact Information

Chestatee Real Estate, LLC.
Buyer Brokerage Firm

Broker/Affiliated Licensee Signature

Date

ANTHONY PAUL NUNLEY
Print or Type Name

240448
GA Real Estate License #

(706) 344-2090
Licensee's Phone Number

Fax Number

apnunley@windstream.net
Licensee's E-mail Address

REALTOR® Membership

768 Crown Mountain Dr. Dahlonega, GA 30533
Broker's Address

(706) 867-0196
Broker's Phone Number

(706) 864-0367
Fax Number

CHEP01
MLS Office Code

H-58167
Brokerage Firm License Number

Seller's Broker/Affiliated Licensee Contact Information

Jayne Hanlon Realty, LLC.
Seller Brokerage Firm

JAYNE C HANLON
Broker/Affiliated Licensee Signature

8/27/21
Date

JAYNE C HANLON
Print or Type Name

206810
GA Real Estate License #

(706) 344-2600
Licensee's Phone Number

Fax Number

jayne@jaynehanlonrealty.com
Licensee's Email Address

400 North
REALTOR® Membership

Suite 200
60 Nature View Road, Dahlonega, GA 30533
Broker's Address

(706) 344-2600
Broker's Phone Number

(678) 807-2581
Fax Number

JHRL01
MLS Office Code

H-44796
Brokerage Firm License Number

Binding Agreement Date: The Binding Agreement Date in this transaction is the date of _____ and has been filled in by _____.

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Attachment: Ben Higgins Rd contract (2021-059 : Ratify Contract for Land Purchase - Ben Higgins Road)

ALL CASH SALE
(NO FINANCING CONTINGENCY)
EXHIBIT "A"

2021 Printing

This Exhibit is part of the Agreement with an Offer Date of 8/27/2021 for the purchase and sale of that certain Property known as: FMLS # 6896799, _____, Georgia 30533.

1. All Cash Sale. While Buyer has sufficient liquid assets to purchase the Property in this transaction for "all cash", Buyer:
   A. ☐ reserves the right to pay all or a portion of the purchase price by obtaining an institutional first mortgage secured by a deed to secure debt on the Property; AND/OR
      ☐ reserves the right to pay all or a portion of the purchase price by obtaining a non-institutional first mortgage or other loan (including a private "hard-money" loan).

   OR

   B. ☑ shall not have the right to obtain a mortgage financing to pay for all or a portion of the purchase price of the Property. The Buyer is not obtaining a loan; therefore, the Buyer has no right to unilaterally extend the closing date for eight (8) days for reasons of mortgage lender delay.

2. Verification of Funds. Within 3 days from the Binding Agreement Date Buyer shall be obligated to provide or cause to be provided to Seller information describing in specific detail all of the sources of Buyer's funds to purchase the Property ("Required Information"). The Required Information shall consist of at least one of the following:
   A. A letter or letters from a trust, stock brokerage firm and/or financial institution holding funds, stocks, bonds and/or other assets (hereinafter collectively referred to as "Assets") of or on behalf of Buyer and dated subsequent to the Binding Agreement Date stating that Buyer has funds of at least an amount specified in the letter and/or Assets on deposit with the institution of a value specified in the letter, that are sufficient to allow Buyer to complete the purchase of the Property;
   B. An account statement or statements from the trust, stock brokerage firm and/or financial institution(s) holding funds and/or Assets confirming a specific amount of funds and/or Assets on deposit with the institution. Such account statement must be for the regular time period that such statements are issued immediately preceding the Binding Agreement Date.

3. Authorization and Security. Buyer does hereby authorize Seller and Listing Broker to communicate with any person providing information regarding Buyer's source of funds to purchase the Property to verify such information and to answer any questions Seller or Listing Broker may have regarding the source of Buyer's funds to purchase the Property. In providing any account statement to Seller, Buyer shall be entitled to delete or otherwise shield account numbers, social security numbers, telephone numbers and other information the release of which could jeopardize the security of the account or put the Buyer at greater risk of identity theft.

4. Seller's Right to Terminate. In the event Buyer fails to provide Seller with the Required Information within the timeframe set forth above, Seller shall notify Buyer of the default and give Buyer three (3) days from the date of the delivery of the notice to cure the same. If Buyer does not timely cure the default, Seller may terminate this Agreement within seven (7) days thereafter due to Buyer's default upon notice to Buyer. In the event Seller does not terminate this Agreement within that timeframe, the right to terminate on this basis shall be waived.

5. Appraisal Contingency. In addition to the other rights of Buyer set forth herein, this Agreement ☑ shall or ☐ shall not be subject to the Property appraising for at least the purchase price. Buyer shall have the rights set forth in this exhibit in the event the Property does not appraise for at least the purchase price in accordance with the terms and conditions set forth below:
   A. **Type of Appraisal:** The appraisal shall be a "certified appraisal" of the Property (as that term is defined in O.C.G.A. § 43-39A-2) performed or signed off by a licensed or certified appraiser (as those terms are defined in the rules and regulations of the Georgia Real Estate Appraiser's Board) and include a statement that the appraiser performed an "independent appraisal assignment" (as that term is defined in O.C.G.A. § 43-39A-2(13)) with respect to the Property.
   B. **Selection of Appraiser:** The appraiser shall be selected by *[Select one. The sections not selected shall not be a part of this Agreement.]:* ☐ Buyer, ☐ Seller, OR ☐ Other (_____); and all parties agree that this appraiser shall only perform a single certified appraisal of the Property.

THIS FORM IS COPYRIGHTED AND MAY ONLY BE USED IN REAL ESTATE TRANSACTIONS IN WHICH Anthony Nunley IS INVOLVED AS A REAL ESTATE LICENSEE. UNAUTHORIZED USE OF THE FORM MAY RESULT IN LEGAL SANCTIONS BEING BROUGHT AGAINST THE USER AND SHOULD BE REPORTED TO THE GEORGIA ASSOCIATION OF REALTORS® AT (770) 451-1831.

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C. **Rights of Buyer If Property Does Not Appraise:** If any appraisal performed pursuant to and in accordance with this exhibit is for less than the purchase price of the Property, the Buyer shall have the right to request within 30 days from the Binding Agreement Date that Seller reduce the sales price of the Property to a price not less than the appraisal price by submitting an Amendment to Sales Price ("ATSP") to Seller along with a complete copy of the appraisal which is for less than the purchase price. In the event that Buyer does not submit an ATSP within the time frame referenced above, Buyer shall be deemed to have waived Buyer's right to request a reduction in the sales price and this Agreement shall no longer be subject to an appraisal contingency. The time limit of the offer for the Seller to accept or reject the ATSP shall run through the earlier of: (1) three (3) days from the date that the ATSP is delivered to Seller; or (2) the time of closing (excluding any extensions of the closing resulting from the unilateral extension of the closing date).

If Seller does not accept the ATSP, Buyer shall have the right, but not the obligation, to terminate this Agreement without penalty upon notice to Seller, provided that such notice is given within three (3) days of the earlier of: (a) the date that Buyer receives notice that Seller has not accepted the ATSP; or (b) the last date Seller could have accepted the ATSP. In neither circumstance shall the Buyer's right to terminate extend beyond the time of closing.

D. **Buyer Not Obligated to Seek Price Reduction:** Nothing herein shall require Buyer to seek any reduction in the sales price of the Property. If Buyer does not seek a reduction in the sales price, Buyer shall be obligated to purchase the Property for the price agreed to by the parties in the Agreement.

Buyer's Initials: _____ Seller's Initials: RP _____

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Attachment: Ben Higgins Rd contract (2021-059 : Ratify Contract for Land Purchase - Ben Higgins Road)

LEVEL 3 SOIL REPORT

COUNTY: Lumpkin **DATE:** March 28, 2007
OWNER: Ranjan Patil
SITE LOCATION ADDRESS: Lot #2, Deerwoods Subdivision, Ben Higgins Road, Lumpkin County
PHONE NUMBER: 404-219-4387, Ron Rigsby, Listing Agent
SCALE: 1"= 100'

SOIL PROPERTIES

SOIL BORING NUMBER	SOIL SERIES [2] *SEE SUITABILITY CODES*	SLOPE [1] *Ranges of soil type*	RESTRICTIVE/ REFUSAL LAYER [1] (inches)	DEPTH TO [1] SEASONAL HIGH H_2O TABLE (inches)	ABSORPTION RATE [3][4] AT RECOMMENDED TRENCH DEPTH (min/inch)	RECOMMENDED [1] [3] TRENCH DEPTH (inches)	SUITABILITY [4] CODE (Listed Below)
		(Verified)	*(Verified.)*	*(Verified)*	*(Predicted)*	*(Verified)*	
B-1	Pacolet Soil Series	20%	64	>64	45	36	*A*
B-2	Pacolet Soil Series	20%	>72	>72	45	36	*A*
B-3	Pacolet Soil Series	20%	>72	>72	45	36	*A*
B-4	Bethlehem Soil Series	20%	36	>36	NA	NA	*N*
B-5	Bethlehem Soil Series	15%	30	>30	NA	NA	*N*

1 Based on field observations.
2 Based on USDA NRCS descriptions.
3 Based on Georgia DHR Manual for On-Site Sewage Systems, Table CT-1.
4 Based on Soil Classifier interpretation of site conditions and soil classification.

Attachment: Ben Higgins Rd contract (2021-059 : Ratify Contract for Land Purchase - Ben Higgins Road)

SUITABILITY CODE DESCRIPTIONS & GENERAL NOTES:

SUITABILITY CODE A: SOIL SERIES SHOULD HAVE ABILITY TO FUNCTION AS A SUITABLE ABSORPTION FIELD WITH PROPER DESIGN, INSTALLATION, AND MAINTENANCE.

SUITABILITY CODE N: BECAUSE OF SOFT BEDROCK AT SHALLOW DEPTH, THESE SOILS TYPICALLY ARE NOT SUITABLE FOR INSTALLATION OF A CONVENTIONAL ON-SITE SYSTEM. HOWEVER, HYDRAULIC PROPERTIES OF ROCK VARY AND IN SOME AREAS THE SOFT ROCK HAS A PERCOLATION RATE SUITABLE FOR ON-SITE SYSTEM INSTALLATION. INTENSIVE INVESTIGATIONS ARE REQUIRED TO EVALUATE HYDRAULIC PROPERTIES OF THE ROCK AND SITE SUITABILITY. ON-SITE SYSTEM INSTALLATION BEFORE HOME CONSTRUCTION MAY BE REQUIRED TO ENSURE THE SYSTEM CAN BE PROPERLY INSTALLED. PROPERTIES OF THE SOIL AND SITE MAY REQUIRE THE DRAIN FIELD AREA TO BE GREATER THAN THE MINIMUM AND/OR THE DRAIN FIELD DESIGN TO REQUIRE EQUAL DISTRIBUTION OR LEVEL FIELD INSTALLATION. THE LOCAL ENVIRONMENTAL HEALTH SPECIALIST MUST APPROVE NON-CONVENTIONAL SYSTEM DESIGN AND INSTALLATION.

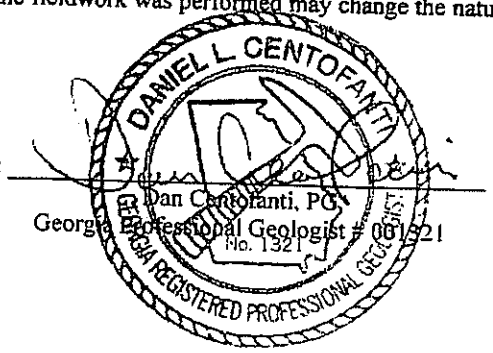
Miscellaneous Notes:

All borings are staked in the field and labeled.

This soil Report is in accordance with the standards and regulations set forth in the Georgia Department of Human Resources Manual for On-Site Sewage Management Systems, May 2001. Mill Creek Environmental Services, Inc. does not issue permits for, install, maintain or guarantee the performance of any on-site sewage management system. The County Health Department has the authority to permit on-site sewage management systems on this property and may have a different view of the soil conditions. The County Health Department has final jurisdiction over permitting and regulating on-site sewage management systems.

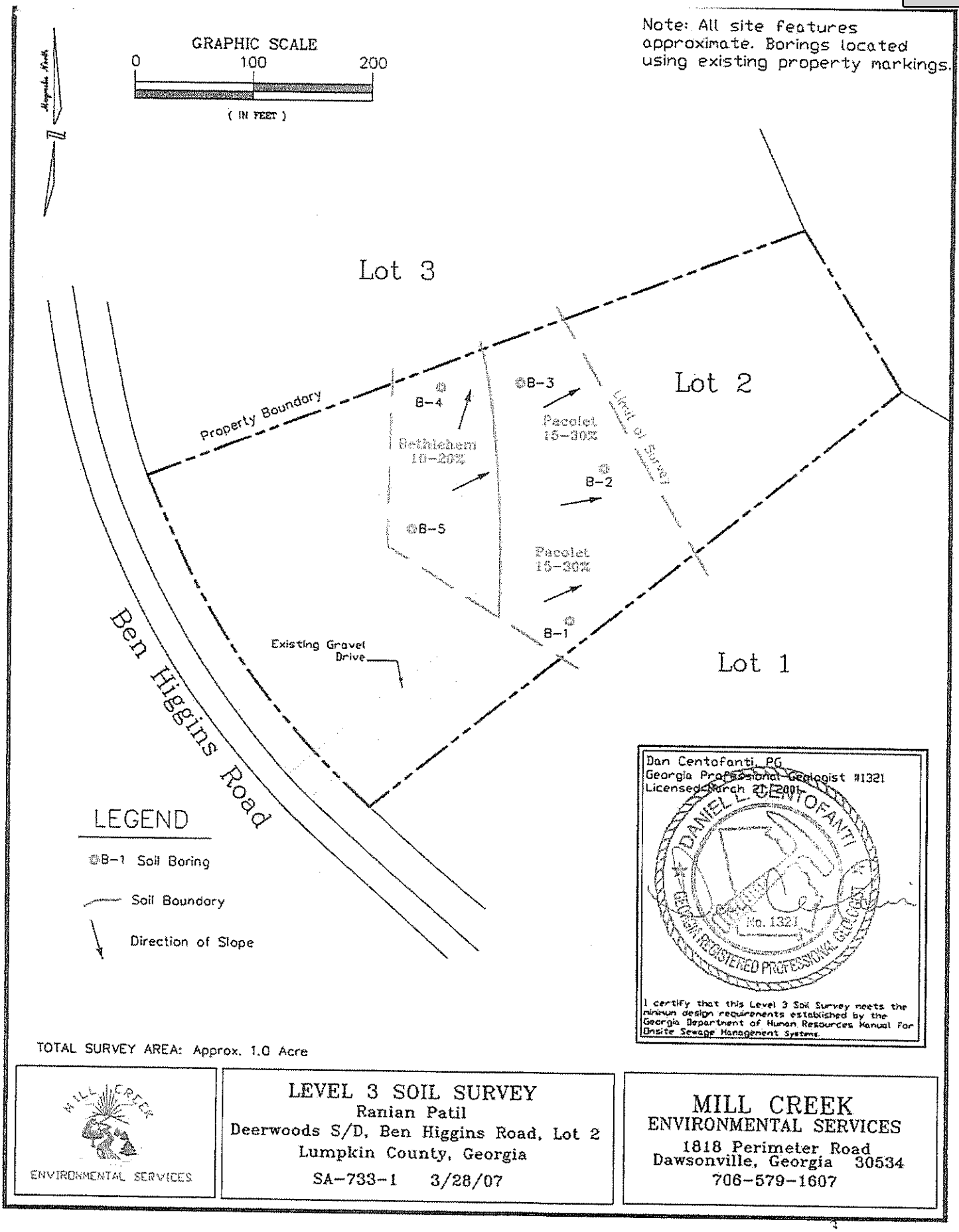
Any alteration to this report without my expressed, written consent and approval will render this report null and void. Any alteration to the site after the date on which the fieldwork was performed may change the nature and suitability of the site.

This report was completed by Certified Soil Classifier:



Dan Centofanti, PG,
Georgia Professional Geologist # 001321

Attachment: Ben Higgins Rd contract (2021-059 : Ratify Contract for Land Purchase - Ben Higgins Road)



Attachment: Ben Higgins Rd contract (2021-059 : Ratify Contract for Land Purchase - Ben Higgins Road)

AMENDMENT TO AGREEMENT

AMENDMENT # 1

Date: 9/13/2021

Georgia REALTORS

2021 Printing

Whereas, the undersigned parties have entered into a certain Agreement between Lumpkin County Board of commissioners ("Buyer") and RANJAN PATIL ("Seller"), with a Binding Agreement Date of 8/30/2021 for the purchase and sale of real property located at: Twin Fawns Trail, Dahlonega, Georgia 30533; and

Whereas, the undersigned parties desire to amend the aforementioned Agreement, it being to the mutual benefit of all parties to do so;

Now therefore, for and in consideration of the sum of Ten Dollars ($10.00) and other valuable considerations paid by each to the other, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree to modify and amend the aforementioned Agreement as follows: [Note: The following language is furnished by the parties and is particular to this transaction.]

1) Both parties agree to extend the due diligence period to 11:59 pm on 14 Oct 2021
2) Both parties agree to extend the closing to on for before 22 Oct 2021

☐ Additional pages are attached.

It is agreed by the parties hereto that all of the other terms and conditions of the aforementioned Agreement shall remain in full force and effect other than as modified herein. Upon execution by all parties, this Amendment shall be attached to and form a part of said Agreement.

By signing this Amendment, Buyer and Seller acknowledge that they have each read and understood this Amendment and agree to its terms.

1 Buyer's Signature

2 Buyer's Signature

☐ Additional Signature Page (F267) is attached.

Chestatee Real Estate, LLC.
Buyer Brokerage Firm

Broker/Affiliated Licensee Signature

400 North
REALTOR® Membership

Ranjan Patil
00bb61e
1 Seller's Signature

2 Seller's Signature

☐ Additional Signature Page (F267) is attached.

Jayne Hanlon Realty, LLC.
Seller Brokerage Firm

JAYNE C HANLON
8908704
Broker/Affiliated Licensee Signature

400 North
REALTOR® Membership

Acceptance Date. The above Amendment is hereby accepted, 3 o'clock p .m. on the date of 9/13/2021 ("Acceptance Date"). This Amendment will become binding upon the parties when notice of the acceptance of the Amendment has been received by offeror. The offeror shall promptly notify offeree when acceptance has been received.

jpb
d557544

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Attachment: Ben Higgins Rd contract (2021-059 : Ratify Contract for Land Purchase - Ben Higgins Road)

Lumpkin County, Georgia

Senior Center Department

Date: September 21, 2021

Agenda Item: Accessible Solutions, Inc./ ServTracker Program Contract

Item Description: Accessible Solutions, Inc./ ServTracker Program Contract. The Lumpkin County Senior Center is requesting that the Lumpkin County Board of Commissioners enter into an agreement with Accessible Solutions, Inc. This contract will provide for ServTracker program software which will automate tracking for the Meals on Wheels and Congregate programs.

Facts & Historical Information: Historically, the Senior Center has tracked the Meals on Wheels and Congregate programs manually using Excel spreadsheets (including meal orders, route sheets and directions, volunteer management, reassessment dates, funding sources and state reporting and reimbursement requests). This process utilizes multiple spreadsheets, is labor intensive and time consuming. The potential for errors is very high using the manual process. Utilizing the ServTracker software platform, there is one point of entry for each client. Additionally, volunteers will access a mobile app using a tablet instead of paper route sheets (tablets to be purchased separately). This will allow for real time tracking and individual client notations as well as step-by-step geographic directions using a mapping app.

The Gainesville-Hall County Senior Center is the largest Meals on Wheels and Congregate site in our region and has been using the ServTracker program for several months and highly recommend the program.

In 2018, Meals on Wheels America, the leadership organization for community-based senior nutrition programs, partnered with Accessible Solutions, Inc. to expand the utilization of ServTracker across the nationwide network of senior nutrition programs.

The initial investment for the ServTracker software is $2,759.50 which includes monthly licensing fee, user set-up fee, mobile meals app set-up fee, training and project management. The monthly licensing fee is $156.00.

Potential Courses Of Action:

A. Requesting submittal of an approved and signed contract.

B. Do not submit an approved and signed contract.

Comparison: If Course A is chosen, Lumpkin County Senior Center will utilize the ServTracker program software to automate the Meals on Wheels and Congregate programs.

If Course B is chosen, Lumpkin County Senior Center will continue to track the Meals on Wheels and Congregate programs manually.

Recommendation: It is recommended that Course A be chosen - Submit an approved and signed contract

to Accessible Solutions, Inc. The benefit for the Senior Center is a streamlined tracking system for the Meals on Wheels and Congregate programs, saving staff time to attend to other related important tasks and reducing the potential for error. Additionally, this acquisition postpones a request for additional staff in the near future.

Budget Impact: There will be no impact to the budget. The Senior Center budget is able to absorb the initial cost and monthly license fee for FY2021. The FY2022 approved budget is able to absorb the monthly license fee.

Staff Recommendation:

Attachments:
Final Accessible Solutions Inc. ServTracker Contract

Accessible Solutions Inc.
840 North Cocoa Blvd., Suite D
Cocoa, FL 32922
(321) 454-6944
www.accessiblesolutions.com

accessible SOLUTIONS

Lumpkin County Senior Center

Quote # MC001076 Version 1

Prepared for:

Lumpkin County Board of Commissioners

Prepared by:

Mark Cook

Attachment: Final Accessible Solutions Inc. ServTracker Contract (2021-060 : Accessible Solutions, Inc./ ServTracker Program Contract)

GENERAL TERMS AND CONDITIONS

ACCESSIBLE SOLUTIONS, INC.

The Terms and Conditions of this contract shall prevail notwithstanding any variations from the Terms and Conditions of any pas or present order by the Licensee for software licensing maintenance services and may not be changed or terminated orally. N terms, conditions, deletions, modifications, or other understandings, oral or written, in any way purporting to vary these terms an conditions, whether contained in Licensee forms or elsewhere, shall be binding upon ASI unless approved in writing and signe by ASI.

Each section, part, term, and provision of this contract shall be considered severable and if, for any reason, any section, par term, or provision herein is determined to be invalid, contrary to, or in conflict with any existing or future law or regulation of court of agency having valid jurisdiction, such shall not impair the operation nor affect the remaining portions, sections, parts terms, or provisions of this contract, and the latter will continue to be given full force and effect and bind the parties hereto, an said invalid section, part, term or provision shall be deemed not to be a part of this contract.

1. **TERM:** This contract is effective from the Commencement Date and shall continue for an initial term of one year. Th Commencement Date is defined as the point in time when all parties have signed this agreement and ASI has receive the deposit as specified herein. To assure continuity of service, this contract will be renewed automatically on a month to-month basis at the appropriate rate for the next period.

   Rates will be reviewed on an annual basis with rate increases not to exceed 5%. ASI may change the prices or othe terms and conditions provided hereunder after the expiration of a sixty (60) day written notice is sent to the Licensee a the conclusion of the initial annual contract term or anytime thereafter. All charges are exclusive of all federal, state municipal, or other government excise, sales, use, occupational, or like taxes now in force or enacted in the future.

2. **SECURITY INTEREST:** The Licensee grants to ASI, and ASI retains, a security interest in all software. ASI may fil any order resulting from this quotation as a financial statement. In the event of failure to make payment on the due dat in accordance with terms designated, the entire balance shall become due and payable at once. In case of default c payment, ASI shall have the right to terminate the access to your account. The Licensee agrees to pay ASI reasonabl attorney fees and legal expenses of collection and that the same are secured by the security interest granted herein.

3. **LIMITATION OF WARRANTY AND REMEDIES**: The warranty shall be in effect for the full term of the licens contract. All warranty periods are from the contract effective date. Warranty service is available during normal AS working hours, generally Monday through Friday from 8am to 6pm ET. Services not covered by ASI's maintenance an support will be invoiced at the prevailing ASI labor rates. ASI shall not perform or invoice Licensee for such additiona services without Licensee's prior written approval.

   ASI shall not be liable for any indirect, incidental, economic, or consequential loss or damage to the licensee or use c the software arising out of the failure of the product to operate, non-performance or delay in performance of the term and conditions herein, where such non-performance or delay is due to acts of nature, wars, riots, or any unforesee event beyond its control.

Attachment: Final Accessible Solutions Inc. ServTracker Contract (2021-060 : Accessible Solutions, Inc./ ServTracker Program Contract)

ASI warrants that the software and all modifications and customizations to the software made pursuant to this Agreemer will be free from defects and will operate and perform as described in the published specifications, and that the softwar does not infringe upon the intellectual property rights of any other third party. ASI warrants that it is the owner of th Software or otherwise has the right and authority to license the Software as set forth in this Agreement. ASI w indemnify and hold Licensee, its officers, employees, and agents harmless from and against all such infringement claim losses, suits and damages. This warranty is effective only if the Licensee is in good standing with the payment of a licensing fees.

Except for the express warranties stated in this contract, ASI disclaims all warranties, expressed implied, includin statutory warranties and including all implied warranties or merchantability and for a particular purpose and fc workmanlike service.

4. **AS-IS SOFTWARE**: The Licensee hereby acknowledges that the software system covered by this contract is Commercial Off The Shelf (COTS) package and therefore its functionality is limited to what has been presented prior t the execution of this contract. The software presented is a subset of the total base functionality of the system. Howeve any forms, reports, data, or other functionality outside of what has been presented, or of the base system, is not include nor implied unless specifically defined in this contract.

5. **LIMITATION OF LIABILITY:** Licensee and ASI acknowledge and agree that the license price has been negotiated i consideration of their agreement to limit certain liabilities of ASI. Accordingly, in no event is ASI liable for any specia consequential, economic, indirect or incidental damages, however caused; including but not limited to loss of profit business or property; resulting loss of data, loss of use of the products or loss of products, even if advised of th possibility of such damage. This limitation of liability applies regardless of the form of action, whether in contract or tor including negligence.

Also, ASI shall not be liable for any breach caused by a *Force Majeure* Event as defined in the Terms and Conditions this contract. In no event shall ASI be liable for any breach for which Licensee or anyone in the employ or contract wit Licensee (other than ASI) or in reasonable control or prevention of Licensee is a contributing cause. Accordingly, in th case of potential liability for breach of security resulting in Licensee's data being compromised, clear and convincin evidence must be produced that the data was stolen directly from the servers of ASI by a third party unrelated in ar respect to the Licensee or the agents, vendors, or those with any direct relationship with Licensee. In any case, the tot liability of ASI for damages arising out of or in connection with the breach in identity of Licensee's clients shall b limited *to the* ***limits of professional liability insurance carried by ASI or in the absence of such insuranc liability*** *shall be limited* to the lesser of $10,000 or the total of the fees (excluding expenses) due ASI under the contract

6. **FORCE MAJEURE:** ASI may suspend its performance in accordance with this contract in the event of a *Forc Majeure* Event. If a *Force Majeure* Event prevents ASI from effecting a cure of a breach existing on the date of th occurrence of the *Force Majeure* Event, the cure period provided under this contract with respect to the breach extended on a day-for-day basis for so long as the *Force Majeure* Event continues. If suspension of performance of AS for cause of *a Force Majeure* Event continues for a period of more than thirty(30) days, either party is entitled t terminate this contract by giving notice to the other party pursuant to the notice provisions of this contract. Followin termination of this contract due to a *Force Majeure* Event, neither party has any further obligation to perform under th contract or to make any further payments other than payments due and owing before the termination date. Any *Forc Majeure* Event affecting subcontractors or third party contractors of ASI constitutes a *Force Majeure* Event affecting AS If there is an act or event that constitutes a *Force Majeure* event under the contract between ASI and any subcontract or third party contractor, as the case may be, then that act or event is a *Force Majeure* Event as to ASI. A *Forc Majeure* Event means war, flood, lightning, drought, earthquake, fire, volcanic eruption, landslide, hurricane, cyclone typhoon, tornado, explosion, civil disturbance, act of God or the public enemy, terrorist act, military action, epidemi famine or plague, shipwreck, action of a court or public authority, strike, Change in Law, or any action beyond the contr

Attachment: Final Accessible Solutions Inc. ServTracker Contract (2021-060 : Accessible Solutions, Inc./ ServTracker Program Contract)

of ASI. "Change in Law" means any of the following:

- Any adoption after the date of this contract of any law, statute, act, ordinance, rule, regulation, requirement c order of any national, state or local government, or any agency, commission or other body or the instrumentalities (collectively, "Laws") affecting ASI.
- Any change after the date of this contract in any Law or in its interpretation or administration by ar governmental instrumentality affecting ASI.
- Any requirement to obtain any permit, approval, consent, license or other authorization not required on the dat of this contract, or any amendment or attachment to any permit, approval, consent, license or other authorizatic required on the date of this contract of any terms or conditions that have an adverse effect on the rights or th performance of ASI of its obligations under this contract.

7. **GENERAL:** Any provision of a contract resulting from a quotation prohibited by the law of any state shall, as to suc state, be ineffective to the extent of such prohibition without invalidating the remaining provisions of the contract. AS shall not be bound by statements or promises made by any representative of ASI which are not stated in and made part of a quotation or contract.

8. **TAXES, LICENSES AND PERMITS:** The Licensee is responsible for obtaining all licenses and permits and fc paying all applicable taxes and fees.

9. **CANCELLATION:** In the event that the Licensee cancels this contract without ***just cause*** prior to the initial twelv month term, Licensee shall be liable to ASI for an amount equal to 50% of the remaining ***contract value*** in addition t the fees for work already completed by Accessible Solutions, Inc. This amount shall be construed as **LIQUIDATE DAMAGES** representing any approximation of all administrative, engineering, and any other costs incurred by ASI i reliance upon the contract, not as a penalty. ASI's rights under this clause shall be in addition to all other rights an remedies available to it in law or equity and shall not be construed as ASI.' damages in any way recoverable as a resu of Licensee's breach.

   Notwithstanding the forgoing, after the initial twelve month term, Licensee may at its option, elect to cancel this Licens Agreement and the Maintenance Agreement, by providing written notice to ASI at least 30 days prior to the end of th current term. In such event, Licensee shall have no further obligation to ASI after the end of the current term.

   If either party shall neglect or fail to perform any of its obligations under this contract, and such failure continues for period of sixty (60) days after written notice thereof, the other party shall have the right to terminate this contrac immediately.

   Just cause is defined as either the software not performing as designed or support and maintenance is no longe provided in accordance with the maintenance and support agreement. The validity of just cause for any other reason w need to be determined by a court of law.

   Contract value is defined as all of the one-time fees as well as the monthly and/or annual licensing fees outlined herein

10. **PAYMENT TERMS:** A down payment, consisting of first and last month license fees, hardware fees and all initia license fees, is required for the licensing of ASI software. Payment in full is due upon receipt of each monthly invoic thereafter. Monthly invoicing will occur by the 15th of the month prior to the services received and payment is expecte by the 1st of the month. The effective date for the commencement of the monthly fees shall be the month in which th

Attachment: Final Accessible Solutions Inc. ServTracker Contract (2021-060 : Accessible Solutions, Inc./ ServTracker Program Contract)

first training session is held and access to the software has been made available.

Additional fees that are part of the contract, such as data conversion, software customization, project management an training will be billed 50% upfront and the remaining 50% upon completion of the work, due Net 30.

In the event payment is not received according to terms, ASI may, at its discretion, assess interest at the rate of 1.5% pe month or the maximum rate allowed by law, whichever is lower. The Licensee also agrees to pay reasonable an customary legal fees or agency commissions sustained by ASI in pursuit of past due payments.

11. **CHOICE OF LAW/VENUE/INTERPRETATION** It is the intention of the parties that the laws of Georgia sha govern the validity of this contract, the construction of its terms, and the interpretation of the rights and duties of th parties, and venue for any legal or other proceeding shall be in Lumpkin County, Georgia, or the Northern District Georgia. All the terms and provisions of this contract shall be binding on and inure to the benefit of ASI and b enforceable by the ASI and its successors and assigns. The interpretation of this contract shall not be construed again the drafter of this contract.

12. **ASSIGNMENT**. Neither this contract nor any right created by this contract shall be assignable by Licensee. Nothing this contract expressed or implied, is intended to confer on any person, other than the parties and their successors, ar rights or remedies under or by reason of this contract. The parties are not, and shall not be considered as joint venture partners, franchisor-franchisee, agents, or servants of each other and neither shall have the power to bind or obligate th other except as set forth in this contract.

13. **OWNERSHIP OF DATA.** Licensee shall have all right, title and interest in licensee's data and may request a copy said data from ASI at any time. ASI will make available licensee's data in the format as it exists while in the care of ASI.

14. **CONFIDENTIALITY AND NON DISCLOSURE.** WHEREAS, the parties wish to protect, pursuant to this Agreemer such information. NOW, THEREFORE, the parties, intending to be legally bound hereby, agree as follows:

    a. This Agreement shall apply to all Confidential Information disclosed by or on behalf of (i) ASI to Licensee or (ii) Licensee to ASI (including, without limitation, each party's officers, directors, employees, agents, and other representatives) whether specifically marked "**Confidential**" or not.

    b. The parties acknowledge and agree that "Confidential Information" means information in whatever form disclose hereunder, including, without limitation, written, visual, audible or oral, includes, without limitation, (i) informatic concerning any of a party's customers, clients, or vendors; (ii) information referring to, discussing, or in any wa related to a party's business condition, strategies or initiatives, systems, processes, and/or policies; (i proprietary technology and systems; and (iv) any other information that a party designates as confidential. Th parties further acknowledge and agree that "Confidential Information" also includes any reports, note summaries, abstracts, or drafts of Confidential Information or of oral presentations, reports, or discussior referring to, describing, elaborating upon, or otherwise relating to Confidential Information.

    c. Each party hereto acknowledges that, in connection with the Proposed Transaction, the other party has provide and from time to time may continue to provide, Confidential Information to the other party in confidence ar solely for the purpose of evaluating, negotiating, or otherwise discussing the Proposed Transaction. Each par represents and warrants that it has treated, and will continue to treat, all Confidential Information of the oth party as confidential and secret and that it has not disclosed or permitted access to, and will not disclose permit access to, such Confidential Information except as permitted under this Agreement. Each par acknowledges and agrees that (i) each party claims and reserves all rights afforded under all applicable privac intellectual property, and trade secret laws, regulations, and rulings in all Confidential Information furnished to th other party; (ii) a party is granted only a limited right of use of Confidential Information, as specified above, whic

Attachment: Final Accessible Solutions Inc. ServTracker Contract (2021-060 : Accessible Solutions, Inc./ ServTracker Program Contract)

right is revocable at will by the party granting such use and not coupled with any interest in the Confidentia Information; (iii) this Agreement shall not affect any transfer of right, title, or interest in or to any Confidentia Information; (iv) a party shall not assert any right, title, or interest in any Confidential Information of the othe party; and (v) neither party grants any license under any patents, trademarks, service marks or copyrights unde this Agreement.

d. Each party hereto agrees: (i) to protect any and all Confidential Information from unauthorized use or disclosur with at least the same degree of care such party uses to protect its own confidential information of a simila nature but at all times shall use at least reasonable care; (ii) to use the Confidential Information only for th purpose(s) expressly set forth in, and in accordance with, the terms of this Agreement; (iii) not to copy reproduce any Confidential Information in any form, except to the extent contemplated by this Agreement; (i not to disclose to or otherwise permit any third person or entity access to any Confidential Information excep with prior written consent of the party owning such Confidential Information; (v) to limit disclosure of Confidentia Information to those employees, agents, or other representatives of a party who are necessary for and involve in that party's performance of its obligations under this Agreement; (vi) to ensure that any of a party's employee agents, or other representatives who receive or obtain Confidential Information are advised of the nature of th Confidential Information and of the obligations such party has undertaken with respect to such information unde this Agreement and agree to comply with these obligations; and (vii) to take any and all other steps necessary t safeguard Confidential Information against unauthorized access or disclosure. Each party further agrees that, t assist the other party in identifying any access, disclosure, or use of Confidential Information in a manne inconsistent with the provisions of this Agreement, each party shall, upon request, inform the other party of a individuals or entities to whom Confidential Information has been disclosed or who otherwise have been afforde access to Confidential Information.

e. Information of a party shall not be deemed Confidential Information if (i) it is already, or otherwise become known to the public other than as a result of any act or omission of the other party, its officers, director employees, agents, or other representatives; (ii) it is lawfully received from a third party having the right t disseminate the information without restriction on disclosure; or (iii) it is voluntarily furnished to others by th party owning such Confidential Information without restriction on disclosure. A party shall notify the other part immediately, both orally and in writing, of any known possession, use, or knowledge of any Confidentia Information by any person or entity other than those authorized under this Agreement to receive the information.

f. Upon a party's (the "Disclosing Party") request or termination of the parties' negotiations or discussion whichever occurs first, the other party (the "Receiving Party") shall voluntarily surrender all Confidentia Information of the Disclosing Party in the Receiving Party's possession, custody, or control (including, witho limitation, the possession, custody, or control of any of the Receiving Party's officers, directors, employee agents, or other representatives), including, without limitation, any drafts, copies, or other non-originals, destroy, at the Disclosing Party's option.

g. Each Receiving Party acknowledges and agrees that the Disclosing Party operates in a highly regulated an competitive environment; and that the unauthorized disclosure or use of Confidential Information will caus irreparable harm and significant injury to the Disclosing Party which will be difficult to measure with certainty or t compensate through money damages. Accordingly, the Receiving Party agrees that injunctive or other equitabl relief shall be appropriate in the event of any breach by the Receiving Party of any part or parts of thi Agreement, in addition to such other remedies as may be available at law.

h. The Receiving Party acknowledges and agrees that neither the Disclosing Party, nor its officers, director employees, agents, or other representatives (the "Related Parties") has made or will make any representatio concerning the accuracy or completeness of Confidential Information; and that neither the Disclosing Party n any Related Party shall have any liability whatever to the Receiving Party resulting from the Receiving Party use of Confidential Information.

Attachment: Final Accessible Solutions Inc. ServTracker Contract (2021-060 : Accessible Solutions, Inc./ ServTracker Program Contract)

i. The Receiving Party shall not use the names, trade names, service marks, trademarks, trade dress, or logos o the Disclosing Party in publicity releases, advertising, or any other external communications or public disclosure without the Disclosing Party's prior written consent.

j. The Receiving Party shall indemnify, defend, and hold the Disclosing Party and Related Parties harmless fro any actual or threatened legal or administrative action, claim, liability, penalty, fine, assessment, lawsuit, litigatio or other loss, expense, or damage (together "Liability"), including, but not limited to, any reasonable attorney fees and costs, that the Disclosing Party or Related Parties may incur arising out of or relating to the Receivin Party's breach of any provision of this Agreement.

k. This Agreement is effective immediately. The rights and obligations under this Agreement shall survive it termination and the termination of any negotiations or discussions between the parties in any event for a perio of two (2) years.

l. In evaluating, negotiating, or discussing the Proposed Transaction, or in performing its obligations under an agreement to consummate the transaction, each party shall act solely in the capacity of an independer contractor and not an agent, servant, employee, or representative of the other party or any related entit Consequently, each party will not have, and will not make any statement or take any action that might cause an third party to believe the other party has, the authority to transact any business, enter into any agreement, or i any way bind or make any commitment on behalf of the first party or any affiliated entity unless expressl authorized in writing by a duly authorized officer of the first party.

m. No delay or omission by a party to exercise any right or power occurring upon any noncompliance or default b the other party with respect to any of the terms of this Agreement shall impair any such right or power or b construed to be a waiver thereof. A waiver by a party of any of the provisions of this Agreement shall not b construed to be a waiver of any succeeding breach thereof or of any other provision.

n. This Agreement shall be construed in accordance with the laws of the State of Florida, without regard to choic of law principles.

o. This Agreement constitutes the entire Agreement between the parties with respect to its subject matter and ther are no understandings or agreements relative to that subject matter other than those that are explicitly expresse herein.

p. A party shall not partially or completely assign, delegate, subcontract, or otherwise transfer any of its rights c obligations except with the express, prior written consent of a duly authorized officer of the other party.

q. This Agreement may be altered, amended, or otherwise changed only by a written instrument signed b authorized officers of both parties.

r. Nothing in this Agreement shall obligate either of the parties to consummate the Proposed Transaction c otherwise enter into any business relationship. Each party claims and reserves the right, in its sole discretion an judgment, to terminate all negotiations and discussions with the other.

s. All Confidential Information remains the property of the Disclosing Party and no rights to Confidential Informatio are granted or implied by this Agreement.

t. Except as may be required by law, the parties agree not to disclose to any person the fact that discussions c negotiations are taking place between the two parties without the prior written consent of the other party.

Attachment: Final Accessible Solutions Inc. ServTracker Contract (2021-060 : Accessible Solutions, Inc./ ServTracker Program Contract)

LICENSING FEES AND SIGNATURES

Contract fee includes: software licensing, web hosting, maintenance, and initial license fee for all of the items, including good and services, listed below.

Monthly Licensing Fees

Description	Price	Qty	Ext. Price
ServTracker License Fee (Users) EXPO.0.40	$50.00	2	$100.00
Mobile Meals App (Max Number of Routes)	$5.25	8	$42.00
Mobile Meals Dashboard Mobile Meals Dashboard	$0.00	1	$0.00
ServTracker Route Optimization (Max Number of Routes)	$1.75	8	$14.00
		Subtotal:	**$156.00**

One Time Fees

Description	Price	Qty	Ext. Price
ServTracker Setup Fee (Users) EXPO.0.40	$250.00	2	$500.00
Mobile Meals App Setup Fee Mobile Meals App Setup Fee	$250.00	1	$250.00
		Subtotal:	**$750.00**

Professional Services

Description	Price	Qty	Ext. Price
Training - Virtual (Number of Hours)	$90.00	12.75	$1,147.50
Project Management - ServTracker Project Management	$110.00	5	$550.00
		Subtotal:	**$1,697.50**

Attachment: Final Accessible Solutions Inc. ServTracker Contract (2021-060 : Accessible Solutions, Inc./ ServTracker Program Contract)

Deposit Requirements & Deposit

Accessible Solutions, Inc. requires a deposit with contract execution. Deposit consists of the following elements: First and last month licensing fees, as well as initial license fees and any other one time amounts for goods. In addition, fifty percent (50%) of the Professional Services fees are required with the deposit. Remaining balances are due upon completion of the activities.

Contract Deposit Breakdown

		Total	Deposit
Monthly Licensing Fees		$156.00	
	First + last monthly fees (required for deposit)		$312.00
One Time Fees	Total one time fees	$750.00	$750.00
Professional Services		$1,697.50	
	Half of Professional Services (required for deposit)		$848.75
		Total Deposit	**$1,910.75**
	Second half of Professional Services upon completion		$848.75
		Total initial investment	$2,759.50

The execution of the contract shall be completed upon Accessible Solutions Inc.'s receipt of the deposit as highlighted above. The deposit invoice shall be sent upon signing the contract.

Important Notes

- Training fees are an estimate only and may be adjusted after evaluation of training needs.
- Data migration is an estimate only and may require further evaluation.
- This quote is valid through the period beginning on the quote delivery date. The period shall end on the expiration date shown in the quote. At the time of expiration, this quote is subject to changes.

Attachment: Final Accessible Solutions Inc. ServTracker Contract (2021-060 : Accessible Solutions, Inc./ ServTracker Program Contract)

Lumpkin County Senior Center



Prepared by:

Accessible Solutions Inc.

Mark Cook
(321) 499-6663
mcook@accessiblesolutions.com

Prepared for:

Lumpkin County Board of Commissioners

266 Mechanicsville Rd
Dahlonega, GA 30533
Chris Dockery

chris.dockery@lumpkincounty.gov

Quote Information:

Quote #: MC001076

Version: 1
Delivery Date: 09/07/2021
Expiration Date: 11/21/2021

Quote Summary

Description	Amoun
Monthly Licensing Fees	$156.0
One Time Fees	$750.0
Professional Services	$1,697.5
Total:	**$2,603.5**

NOTE: The Quote Summary listed above DOES NOT reflect the deposit amount. The deposit is found on the previous page. Taxes, shipping, handling and other fees may apply. We reserve the right to cancel orders arising from pricing or other errors.

Accessible Solutions Inc.

Signature: Mark Cook

Name: Mark Cook

Title: Account Executive

Date: 09/07/2021

Lumpkin County Board of Commissioners

Signature: _____

Name: Chris Dockery

Date: _____

Attachment: Final Accessible Solutions Inc. ServTracker Contract (2021-060 : Accessible Solutions, Inc./ ServTracker Program Contract)

Lumpkin County, Georgia

Special Projects Department

Date: September 21, 2021

Agenda Item: Justice Center HVAC Repair

Item Description: Justice Center HVAC Repair. Acceptance of proposal to repair duct work in Justice Center HVAC system.

Facts & Historical Information:

Public Buildings received a maintenance request from the Justice Center concerning particles blowing out of the air vents. The air quality was compromised causing staff to become sick and preventing them from providing services. This repair was deemed an emergency and staff contacted an HVAC repair professional to help identify the problem and formulate a solution. What was discovered is the duct system in one portion of the unit is failing. The insultation that is located in the duct is disintegrating and blowing out into the building. The only way to repair this is to remove the duct from that portion and replace it. Staff has contacted multiple HVAC repair companies and all agree that this is the problem and the solution. The cost of this repair is over the threshold for staff to approve under the emergency section of the County's Purchasing Policy and therefore needs Board approval. Staff has received 4 proposals for this repair.

The first proposal is from Gainesville Mechanical for $35,453.00 which includes:

- Demo and remove from the job site all lined spiral duct stating at the point where the supply duct from RTU-2 enters the attic area and continuing to the point that each of the three branches of the supply duct turns downward into the ceiling of the conditioned space below.
- Replace the lined spiral duct with unlined spiral duct between the locations described above. Mastic and seal all joints.
- To the largest extent possible, remove any and all duct liner that remains in the transition from round spiral duct to rectangular duct passing from the attic area to the roof top unit outside.
- Provide weather protected external insulation on any outside duct involved.
- Apply 2" type II external duct insulation to all new supply duct securing the insulation with wire, staples and SMACNA tape as

required.

- Clean up job site removing all removed duct and construction debris.

Gainesville Mechanical proposes to start work at 1:00pm on a Friday, and have work completed by 8:00am on the following Monday. The warranty would be 1 year for material and labor.

The second proposal is from Lawson Air Conditioning for $48,500.00 which includes:

- Remove existing spiral ducting where internal insulation is coming loose.
- Existing spiral is as follows:
- 15ft-32", 15ft-28", 20ft-22", 30ft-18", 15ft -20"
- Reuse existing fittings, Ts, take offs, and hanging material
- Spiral to be single wall with external duct wrap insulation
- All ducting in attic location
- All ducting above ceilings/below attic to remain in place as is
- All existing equipment to remain in place as is

Lawson Air Conditioning proposes work to be completed over 2 weekends. The warranty for this proposal is 1 year on labor.

The third proposal is from Conditioned Air Systems for $17,858.00 which includes:

- Provide material and labor to replace three truck lines with single wall spiral and wrap with 2" fiberglass insulation. Remove existing duct. Double wall fittings to be reused.

Conditioned Air Systems proposal is based on all work being performed during normal business hours. The warranty is for 1 year on labor.

Staff does have concerns for this proposal as it is significantly less than the other proposals. Staff feels that this proposal may not capture the complete scope of the repair.

The fourth proposal is from Lanier HVAC Services for $29,500.00 which includes:

- Demolition of the existing duct work in the attic
- Replacement of the duct with single wall spiral duct work, with flanges.
- Replacement duct will be externally wrapped with fiberglass duct wrap.

Lanier HVAC Services states that all will be conducted on the weekends with the ability to have the unit operational during the week. The warranty is 1 year for workmanship and material defects.

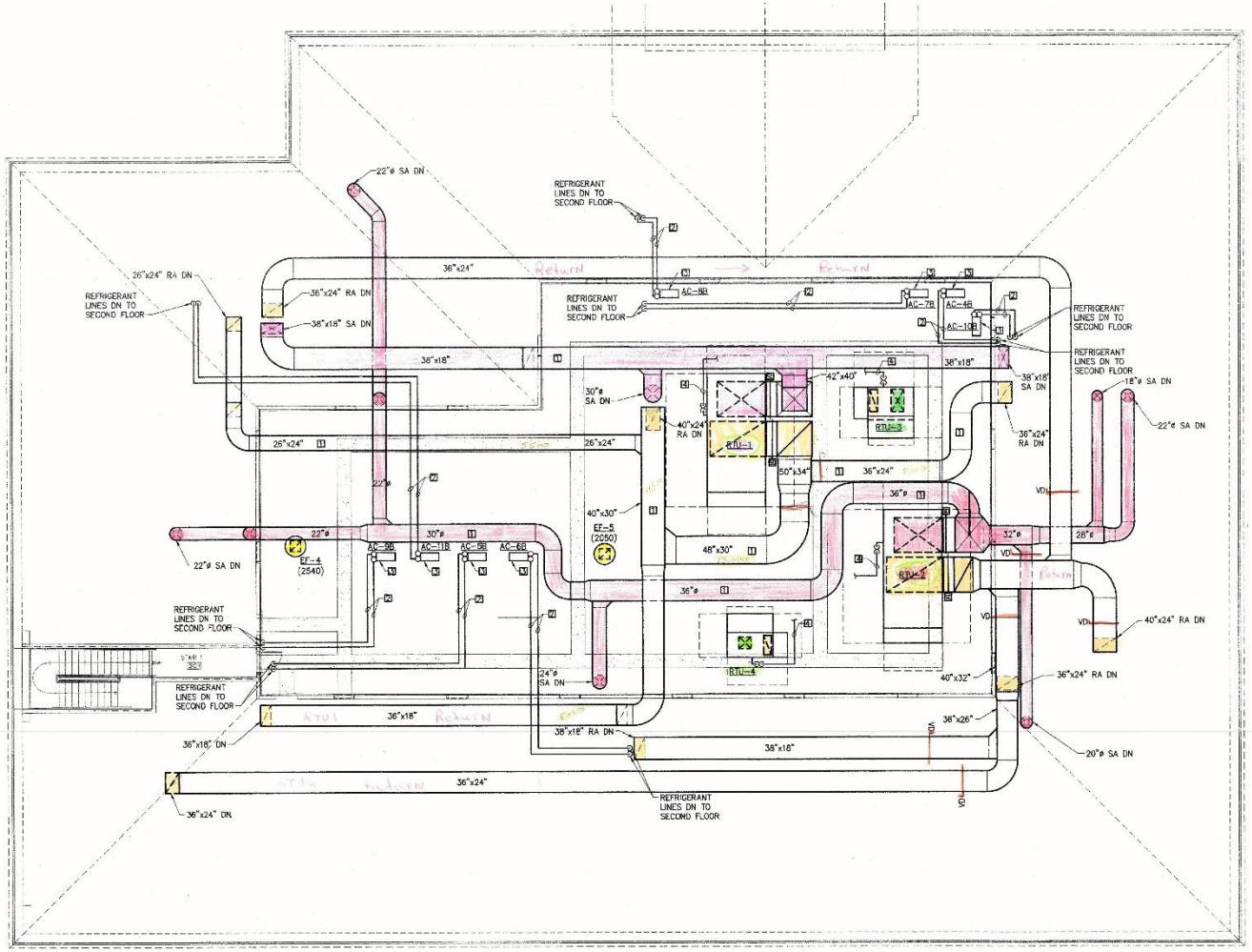
Potential Courses Of Action:

1. Approve the proposal from Gainesville Mechanical.
2. Approve the proposal from Lawson Air Conditioning.
3. Approve the proposal from Conditioned Air Systems
4. Approve the proposal from Lanier HVAC Services
5. Do not approve any of the proposals.

Budget Impact: The cost for this repair would have to be paid from contingency or from fund balance.

Staff Recommendation: **Staff's recommendation is to approve the proposal with Lanier HVAC Services as it is the least expensive proposal that staff feels correctly represents the scope of the required work.**

Attachments:
Drawing
Pictures
Justice Center HVAC repair

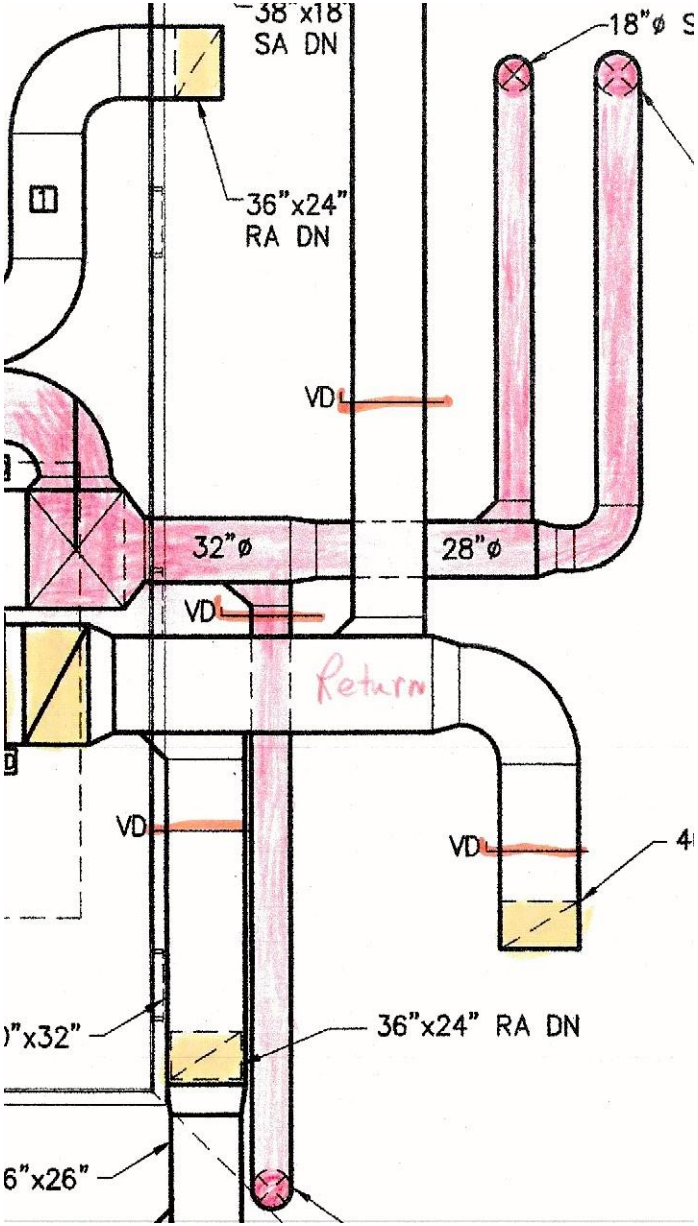


MECHANICAL ROOF & ATTIC PLAN
SCALE: 1/8" = 1'-0"

GRAPHIC SCALE
(IN FEET)
1"=8 Feet

Overview of Duct System

Attachment: Drawing (2021-061 : Justice Center HVAC Repair)



Section to be Replaced

Attachment: Drawing (2021-061 : Justice Center HVAC Repair)







CONTRACT FOR
LUMKPIN COUNTY JUSTICE CENTER HVAC REPAIR

This agreement is made and entered into between the **Lumpkin County Board of Commissioners**, hereinafter referred to as "Lumpkin County", a political subdivision of the State of Georgia, and _____, hereinafter referred to as "Contractor".

Whereas, in consideration of the mutual benefits accruing to each party, the parties hereby agree as follows:

A. Summary of Work and Payment:

1. Contractor shall provide all necessary labor, material and equipment for the repair of the HVAC system at the Lumpkin County Justice Center located at 325 Riley Rd, Dahlonega, GA 30533, as follows:

- Demo and remove from the job site all lined spiral duct starting at the point where the supply duct from RTU-2 enters the attic area and continuing to the point that each of the three branches of the supply duct turns downward into the ceiling of the conditioned space below.
- Replace the lined spiral duct with unlined spiral duct between the locations described above. Mastic and seal all joints.
- To the largest extent possible, remove any and all duct liner that remains in the transition from round spiral duct to rectangular duct passing from the attic area to the Roof Top Unit outside.
- Provide weather protected external insulation on any outside duct involved.
- Apply 2" Type II external duct insulation to all new supply duct securing the insulation with wire, staples and SMACNA tape as required.
- Clean up job site removing all removed duct and construction debris.

2. Contractor shall be authorized to begin work upon the issuance of a Notice to Proceed from Lumpkin County. All work must be completed no later than ____ days from the day the Notice to Proceed is issued. All work shall be performed during the following hours: _____.

3. The Contractor shall employ and assign only qualified and competent personnel to perform any service or task involved in this project. The Contractor shall designate one such person as a Project Manager, and the Project Manager shall be deemed to be the Contractor's authorized representative, who shall be authorized to receive and accept any and all communications from the County. The County shall name a Project Manager who shall be authorized to generate, receive and accept communication as an authorized representative of the County.

4. The Contractor hereby agrees to replace any personnel or sub-contractor, at no cost or penalty to the County, if the County reasonably determines that the performance of any

Attachment: Justice Center HVAC repair (2021-061 : Justice Center HVAC Repair)

sub- contractor or personnel is unsatisfactory.

5. Contractor shall be paid the lump sum of $_____ upon final completion of the work. Upon completion, Contractor shall submit an itemized invoice addressed to:

Lumpkin County Board of Commissioners
Attn: Accounts Payable
99 Courthouse Hill, Ste D
Dahlonega, GA 30533

Contractor must furnish documentation identifying the work has been completed in accordance with the specifications contained herein. Approved invoices will be paid within 30 days of approval.

B. Warranty:

Contractor warrants that all Work executed under this Contract, including, without limitation, all labor, material and equipment, shall be completed in a workmanlike manner consistent with the standards in the trade, profession or industry, and shall be fit for ordinary use of good quality, with no material defects, for a period of one year from the date of completion of the Work hereunder.

Because of the nature of the loosened duct liner being distributed throughout the supply duct systems serving the space below the floor of the attic, Contractor shall be responsible for any liner that may have settled in the air distribution system and may be released at some time in the future.

C. Liability:

Contractor shall be responsible for his work and every part thereof, and for all materials, tools, equipment, appliances, and properties of any and all description used in connection with this Contract.

Contractor assumes all risks of direct and indirect damage or injury to the property of persons used or employed on or in connection with the work contracted for, and of all damage or injury to any person or property wherever located, resulting from any action, omission, commission or operation under the Contract, or in connection in any way whatsoever with the contracted work.

Contractor shall be liable for any collateral damage caused as a result of its work under this Contract. Contractor shall restore and/or repair, at Contractor's cost, any and all collateral damage, including, but not limited to, damage to infrastructure, back to its pre-existing condition if the damage was caused by Contractor's activities.

Attachment: Justice Center HVAC repair (2021-061 : Justice Center HVAC Repair)

D. Insurance:

The Contractor shall, during the continuance of all work under the Contract, provide the following:

1. Maintain statutory Worker's Compensation and Employer's Liability insurance in an amount of not less than $1,000,000.00 to protect the Contractor from any liability or damages for any injuries (including death and disability) to any of its employees, volunteers, or sub-contractors, including any and all liability or damage which may arise by virtue or any statute or law in force within the State of Georgia, or which may be herein after enacted.
2. The Contractor agrees to maintain Comprehensive General Liability insurance in an amount of not less than $1,000,000.00 per occurrence to protect the Contractor, its sub-contractors, and the interest of the County, against any and all injuries to third parties, including bodily injury and personal injury, wherever located, resulting from any action or operation under the Contract or in connection with the contracted work. The General Liability insurance shall also include the Broad Form Property Damage Liability endorsement, in addition to coverage for explosion, collapse, and underground hazards, where required.
3. The Contractor agrees to maintain Automobile Liability Insurance in an amount of not less than$500,000 per occurrence. Such insurance shall include coverage for owned, hired, and non-owned automobiles.
4. The Contractor shall notify the County, in writing, thirty (30) days prior to any change in insurance coverage, including cancellation, non-renewal, etc. The Contractor shall furnish a new certificate prior to any change or cancellation date. The failure of the Contractor to deliver a new and valid certificate shall result in suspension of all payments until the new certificate is furnished. Additionally, contract work may be suspended until the new certificate is furnished to the County.
5. Insurance coverage required in these specifications shall be in force throughout the Contract term. Should the Contractor fail to provide acceptable evidence of current insurance within five (5) days of written notice at any time during the Contract term, the Owner shall have the absolute right to terminate the Contract without any further obligation to the Contractor. Further, the Contractor shall be responsible for the cost of procuring the uncompleted portion of the Contract at the time of termination.
6. Contractual and other Liability insurance provided under this Contract shall not contain a supervision, inspection, or engineering services exclusion that would preclude the County from supervising and/or inspecting the project as to the end result. The Contractor shall assume all on-the-job responsibilities as to the control of persons under its direct employment and of the sub-Contractors and any persons employed by the sub-Contractor.
7. The Contractor and all sub-Contractors shall comply with the Occupational Safety and Health Act of 1970, and amendments, as it may apply to this Contract.
8. If the Contractor does not meet the insurance requirements of the specifications, alternate insurance coverage satisfactory to the County may be considered. The Contractor shall be responsible for the costs of any and all alternate insurance coverage so obtained.

A “Certificate of Insurance” showing Lumpkin County Board of Commissioners as the Certificate Holder must be provided prior and incorporated as part of the award contract.

Attachment: Justice Center HVAC repair (2021-061 : Justice Center HVAC Repair)

E. Assignment of Contractual Rights and Subcontracting:

It is agreed that the Contractor will not assign, transfer, convey, or otherwise dispose of this contract or its right, title, or interest in or to the same, or any part thereof, without written consent of the County.

Contractor shall not subcontract any work without the express written consent of the County. The County must approve all subcontractors.

F. Indemnity:

To the fullest extent permitted by law, the Contractor will indemnify, defend, and hold Lumpkin County harmless from and against any and all claims, damages, losses, and expenses, including, but not limited to, fees and charges of attorneys and court and arbitration costs, arising out of or resulting from the negligent acts, negligent omissions, willful misconduct, or reckless misconduct of the Contractor or anyone for whom the Contractor is responsible.

G. Severability:

It is understood and agreed by the parties hereto that if any part, term, or provision of this Contract is held illegal or in conflict with any law of the State or Georgia, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular part, term, or provisions held to be invalid.

H. Dispute Resolution:

Lumpkin County and the Contractor agree to resolve through negotiation or mediation prior to filing any cause of action. The venue for any litigation arising from this contract shall be Lumpkin County, Georgia**.**

I. Cancellation:

Lumpkin County reserves the right to terminate the contract immediately in the event that the Contractor discontinues or abandons operations, is adjudged bankrupt, or is reorganized under any bankruptcy law; or fails to keep in force any required insurance policies or bonds.

Failure of the Contractor to comply with any section or part of the contract will be considered grounds for immediate termination of the contract by the County without penalty to Lumpkin County. Lumpkin County shall pay for services rendered up to the point of termination.

Notwithstanding anything to the contrary contained herein, the County may, without prejudice to any other rights it may have, terminate the contract for convenience and without cause, by giving thirty (30) days written notice to the Contractor.

Attachment: Justice Center HVAC repair (2021-061 : Justice Center HVAC Repair)

If the termination clause is used by the County, the Contractor will be paid by the County for all scheduled work completed satisfactorily by the Contractor up to the termination date set forth in the written termination notice.

J. Safe Working Environment and Drug Free Workplace

Contractor shall provide a safe working environment.

Contractor certifies that the provisions of Code Sections 5024-1 through 50-24-6 of the Official Code of Georgia Annotated, relating to the "Drug-free Workplace Act", have been complied with in full. The Contractor further certifies that:

1. A drug-free workplace will be provided for the Contractor's employees during performance of the contract; and

2. If Contractor hires a Sub Contractor to work in a drug-free work place, Contractor shall secure from that Sub Contractor the following written certification:

> As part of the subcontracting agreement with (Contractor's name), (Sub Contractor's name) certifies to the Contractor that a drug-free workplace will be provided for the Sub Contractor's employees during the performance of this Contract pursuant to Paragraph (7) of Sub-section (b) of Code Section 50-24-3".

The Contractor further certifies that it will not engage in the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana during the performance of the Contract.

K. Amendments or Modifications:

All contract amendments or modifications must be in writing and signed by all parties.

L. Notices:

Any notice, order, instruction, claim, or other written communication required or permitted under this contract shall be deemed to have been delivered or received:

1. Upon personal delivery to the Contractor or his authorized representative, which delivery may be accomplished by in person hand delivery, via bona fide overnight express service or telephonic facsimile transmission; or

2. Three (3) days after depositing in the United States mail a letter which is either certified or registered, with return receipt requested, addressed to the Contractor at the following address:

Attachment: Justice Center HVAC repair (2021-061 : Justice Center HVAC Repair)

_____
Attn: _____
_____
_____

and to Lumpkin County at the following address:

Lumpkin County Board of Commissioners
Attn: County Manager
99 Courthouse Hill, Ste A
Dahlonega, Georgia 30533

This Contract is made and entered into as of the ____ day of September, 2021.

Lumpkin County:

_____
Chris Dockery, Chairman
Lumpkin County Board of Commissioners

Attest:

_____
Melissa Z. Witcher
Lumpkin County Clerk

Contractor:

_____
By:

_____
Name:
Title:

Attachment: Justice Center HVAC repair (2021-061 : Justice Center HVAC Repair)

Lumpkin County, Georgia

County Clerk Department

Date: September 21, 2021

Agenda Item: Alcoholic Beverage License – Georgia Farm Wines LLC d/b/a Seven Day Bottoms Farm Winery

Item Description: Alcoholic Beverage License – Georgia Farm Wines LLC d/b/a Seven Day Bottoms Farm Winery This is for the issuance of an alcoholic beverage license for a Farm Winery Manufacturing located at 660 Junior Ward Road, Dahlonega, GA 30533.

Facts & Historical Information: Michael Davis is applying for Georgia Farm Wines LLC d/b/a Seven Day Bottoms Farm Winery to obtain a Farm Winery Manufacturing alcoholic beverage license.

Potential Courses Of Action:

A. Approve the license.
B. Deny the license

Staff Recommendation: **Approve the alcoholic beverage license.**

Lumpkin County, Georgia

Public Works Department

Date: September 21, 2021

Agenda Item: NGN Encroachment Permit Request

Item Description: NGN Encroachment Permit Request. NGN is requesting permission to run fiber optic cable across County owned property from Mechanicsville Rd. to the City Road Department building.

Facts & Historical Information: On August 26th, NGN submitted a permit application to allow the installation of fiberoptic cable across the County property were fields 3,4 and 5 are located. Since the property is not a road right of way, the application is more consistent with a request for a utility easement and therefore should come before the BOC. The project will consist of a directional bore with one bore pit located on County property. This project should not have any influence on the current use of the property, but could adversely affect any future redevelopment of the property. Staff recommends that the application include a special provision a requiring that NGN relocate the cable, at no cost to the County, in the event of future development.

Potential Courses Of Action:

a) Approve the application with a relocation special provision
b) Approve the application without any special provisions
c) Do not approve the application.

Discussion of Courses of Action:

a) COA a) This will allow the service to be provided to the City Road Department and not have a negative impact on any potential redevelopment of the county owned property.

b) COA b) This COA could cause an increase in cost of any redevelopment of the property.

c) COA c) This option will not have any effect on the property, but could result in an increased cost to the City to provide the service to the City Road Department.

Budget Impact: There will be no budget impact for this action.

Staff Recommendation: **Staff recommends COA a). Approve the application with a relocation special provision.**

Attachments:

Application for Utility Encroachment - Parcel #079 019
LUMPKIN CO BUILD PLAN PARCEL 079 019

Commissioner of Lumpkin County
99 Courthouse Hill, Suite H
Dahlonega, Georgia 30533
(706) 864-3742

Make 3 Copies:

One copy to County Commissioner's Office
One copy to Road Superintendent
One copy to Applicant

Application and permit for utility facility encroachment and/or any other crossing of public road maintained by Lumpkin County outside city limits of Dahlonega. (Applicable to all pipelines, telephone lines, electric lines, or other utility and/or encroachments.)

TO: Lumpkin County Commissioner, Dahlonega, Georgia

Application is hereby made by Jason Byers - NGN Connect - OSP Construction and Engineering Manager
(Name of Applicant – Utility owner, property owner – Title)

221 Grogan Drive, Suite 200, Dawsonville, GA 30534 706 897 7505
Address **Phone Number**

Jason Byers
Name of Contact Person for Applicant

For permission to make the following described utility installation or encroachment within the limits of Right-of-Way for the County maintained road knows as Parcel # 079 019 (property between Mechanicsville Rd and Dahlonega Road Department with ball fields).
Location of utility or encroachment to be installed: Through property.

A detailed plan (drawing) of project shall be shown on a separate sheet and attached to Application.

SPECIAL PROVISIONS:
In the event of any construction or redevelopment of the county owned property the applicant will relocate the utility at no cost t
Lumpkin County. JWB

All utilities crossing the Right-of-Way shall be placed three feet below top of roadbed, dry bored, and in casing (NO CUTTING INTO ROADWAY). Utilities running parallel with Right-of-Way or roadway will be placed within the last 5 feet of Right-of-Way, 3 feet deep minimum. Cuts not to exceed 12" in width. Where Right-of-Way is ditch-to-ditch, Applicant must obtain its Right-of-Way. Applicant must also be responsible for calling for locates on all underground utilities.

The utility covered hereby shall be installed in accordance with the attached plan. Applicant expressly agrees to comply with and be bound by the plan. See special requirements (attached).

Permit requested this 26th day of August, 2021. The signing of this permit application commits the applicant to the stipulations outlined in the permit.

By: _____
Applicant – Utility/Property Owner

This permit is to be strictly followed and no work other that that specifically described above is hereby authorized.

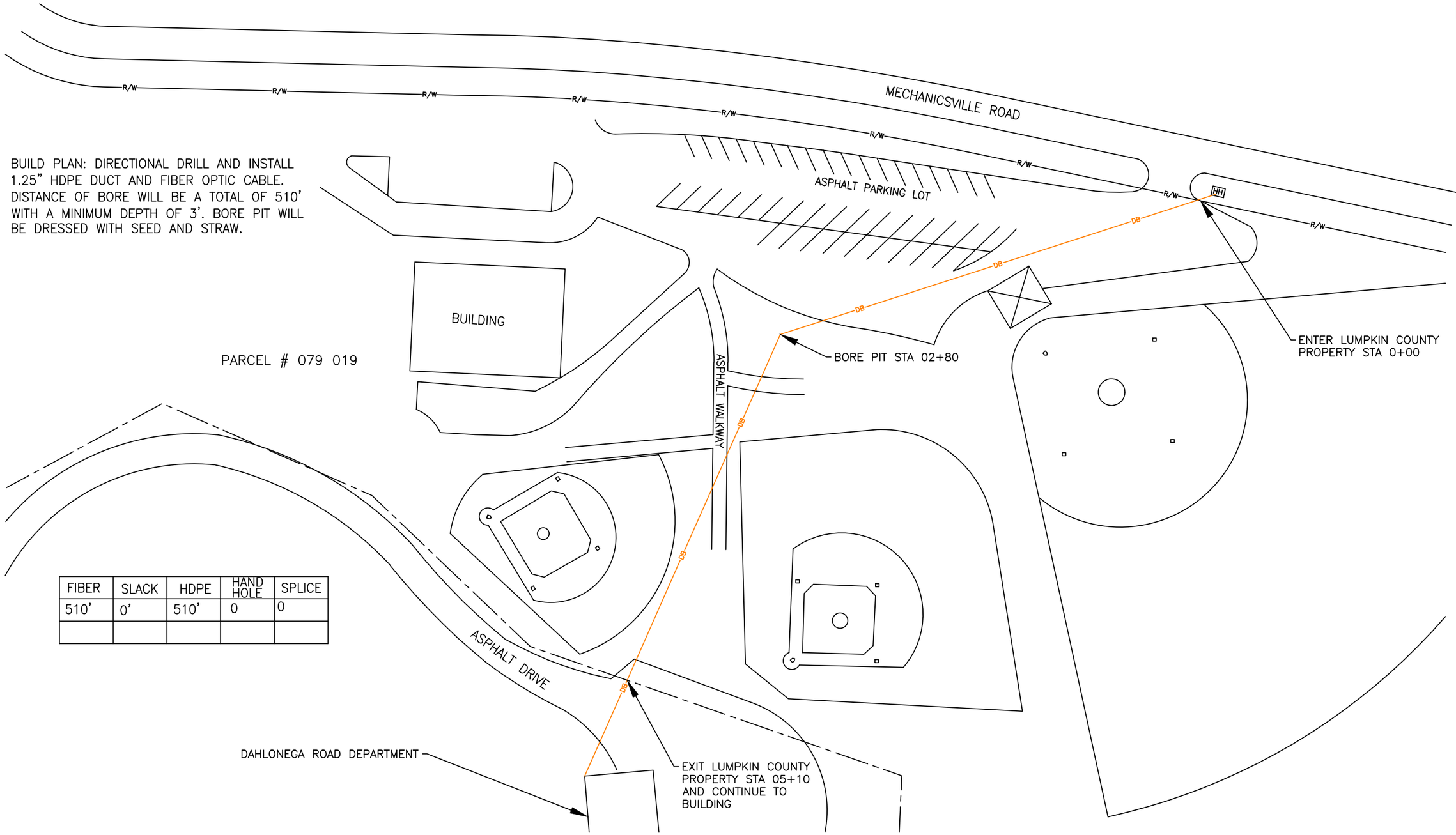
Date: _____ **Signed:** _____
County Manager

The installation described on this permit form has been completed in accordance with the provisions of the said permit and the plan attached hereto.

Date: _____ **Signed:** _____
County Road Superintendent

Attachment: Application for Utility Encroachment - Parcel #079 019 (3198 : NGN Encroachment Permit Request)

BUILD PLAN: DIRECTIONAL DRILL AND INSTALL 1.25" HDPE DUCT AND FIBER OPTIC CABLE. DISTANCE OF BORE WILL BE A TOTAL OF 510' WITH A MINIMUM DEPTH OF 3'. BORE PIT WILL BE DRESSED WITH SEED AND STRAW.



FIBER	SLACK	HDPE	HAND HOLE	SPLICE
510'	0'	510'	0	0

NGN Connect
221 GROGAN DRIVE, SUITE 600
DAWSONVILLE, GA 30534
706-754-5323

GEORGIA811 www.Georgia811.com
Know what's below. Call before you dig.

LEGEND

- EXISTING CABLE
- PROPOSED DIRECTIONAL DRILL — DB
- PROPERTY LINE
- ROAD RIGHT OF WAY — R/W
- UG HANDHOLE — HH

SHEET NO: 1 OF 1	ENGINEERED: JWB	DATE: 8/26/21

DRAWING NOT TO SCALE

CONSTRUCTION PLANS

LUMPKIN COUNTY PROPERTY
LOCATED ON MECHANICSVILLE ROAD
PARCEL #079 019

Attachment: LUMPKIN CO BUILD PLAN PARCEL 079 019 (3198 : NGN Encroachment Permit Request)

Lumpkin County, Georgia

Finance Department

Date: September 21, 2021

Agenda Item: 2019 TSPLOST 2021 Work Plan Amendment

Item Description: 2019 TSPLOST 2021 Work Plan Amendment. Consideration of amending the 2019 TSPLOST 2021 Work Plan to include completion of Aquatic Center Road.

Facts & Historical Information: As included in the IGA under consideration at the September 7, 2021 Work Session between Lumpkin County Board of Commissioners and Lumpkin County Board of Education, the Board of Commissioners commits to funding completion of Aquatic Center Road.

If the IGA is approved, the 2021 work plan of the 2019 TSPLOST should be amended to include funding for completion of Aquatic Center Road.

Potential Courses Of Action:

A. Amend the 2019 TSPLOST 2021 Work Plan
B. Take no action and determine an alternate funding source.

Budget Impact: There are funds available in the 2019 TSPLOST to fund completion of Aquatic Center Road.

Staff Recommendation: **Staff recommends Option A.**

Attachments:
Lumpkin County 2019 TSPLOST Work Plan 2021 proposed updates 09.07.21

LUMPKIN COUNTY
2019 ROAD MAINTENANCE AND IMPROVEMENT TAX

2021 WORK PLAN - REVISED
SEPTEMBER 7, 2021

Attachment: Lumpkin County 2019 TSPLOST Work Plan 2021 proposed updates 09.07.21

ROAD MAINTENANCE AND IMPROVEMENT TAX 2019 REFERENDUM STATEMENT

"Shall a special one percent sales and use tax be imposed in the Special District of Lumpkin County for a period of time not to exceed five (5) years and for the raising of an estimated amount of $15,000,000 for transportation purposes?

If imposition of the tax is approved by the voters, such vote shall also constitute approval of the issuance of general obligation debt of Lumpkin County in the principal amount of $11,910,000 for the purpose of funding County Projects, a joint County Project and City Project, capitalized interest on the debt and the costs of issuing the debt.

If the imposition of the tax is approved by the voters in the City of Dahlonega, such vote shall also constitute approval of the issuance of general obligation debt of the City of Dahlonega in the principal amount of $2,160,000 for the purpose of funding City Projects, capitalized interest on the debt and the costs of issuing the debt."

Attachment: Lumpkin County 2019 TSPLOST Work Plan 2021 proposed updates 09.07.21

2019 T.S.P.L.O.S.T. PROJECTS

A1	Joint – Lumpkin County & City of Dahlonega
B1	Roads and Bridges – Paving, Striping, Maintenance, Construction & Improvements
B2	Road Maintenance Equipment

Attachment: Lumpkin County 2019 TSPLOST Work Plan 2021 proposed updates 09.07.21

LUMPKIN COUNTY 2019 T.S.P.L.O.S.T.

• 2019 TSPLOST Referendum	$15,000,000
• Joint Project	$ 4,000,000
• Lumpkin County Share	$ 8,690,000
• City of Dahlonega Share	$ 2,310,000
• Program to Date Collections	$ 5,918,362.25
• Remaining Collections (estimated)	$ 9,081,637.75
• Projected 2019 TSPLOST Collections	$15,000,000
• Joint Project	$1,578,427.21
• Lumpkin County Share	$3,428,507.25
• City of Dahlonega	$ 911,427.79

Attachment: Lumpkin County 2019 TSPLOST Work Plan 2021 proposed updates 09.07.21

2019 T.S.P.L.O.S.T. EXPECTED FUNDS AVAILABLE BY PROGRAM YEAR 2 (LUMPKIN CO. SHARE)

Program Yr	Corresponding YR	Funds Available	Actual/Estimated
YR1 (6 mo)	2019	$ 1,112,361	Actual
YR2	2020	$ 2,316,146	Actual
YR3	2021	$ 1,738,000	Estimated
YR4	2022	$ 1,738,000	Estimated
YR5	2023	$ 1,738,000	Estimated
YR6 (fractional)	2024	$ 47,493	Estimated
TOTAL		$ 8,690,000	

Attachment: Lumpkin County 2019 TSPLOST Work Plan 2021 proposed updates 09.07.21

2019 T.S.P.L.O.S.T. PROPOSED PROJECT BUDGETS

	Description	Budget as Adopted
A1	Joint Project	$4,000,000
B1	Roads & Bridges – Paving, Striping, Maintenance, Construction & Improvements	$6,844,3000
B2	Road Maintenance Equipment	$1,845,700
Total Projected 2019 TSPLOST Program		$12,690,000

Attachment: Lumpkin County 2019 TSPLOST Work Plan 2021 proposed updates 09.07.21

2019 T.S.P.L.O.S.T. PROGRAM – APPROVED YR3 – 2021 PROJECTS

Proposed Projects	Requested	Encumbered 2019	**Approved**
A1 – Joint Project	$53,957.10	1,500,000	
Sub-Total	**$53,957.10**	**$1,500,000**	
B1 – Roads & Bridges – Paving, Striping, Maintenance, Constructions & Improvements	$1,200,000		
Aquatic Center Property Road	888,051		
Materials: gravel/stone/asphalt/pipe/signs	200,000		
Sub-Total	**$2,288,051**		
B2 – Road Maintenance Equipment			
Debris truck w/grapple (new)		248,168	
F-600 w/dump bed, plow, drop in spreader, brine tank and trailer	105,017		
2 – pick up truck replacements	60,000		
Sub-Total	**$165,017**	**$248,168**	
Totals	**$2,507,025.10**	**$1,748,168**	

Attachment: Lumpkin County 2019 TSPLOST Work Plan 2021 proposed updates 09.07.21

2024 TSPLOST

Election Date	Estimated Date for Call for Referendum (30/90* days prior to vote)
May 2022	April 2022
November 2022	August 2022

*When there is a Federal election, the call for referendum is 90 days out, if no Federal election, it is 30 days out.

*Elections and County Attorney can verify the dates for staff once a decision is made on an election cycle.

Attachment: Lumpkin County 2019 TSPLOST Work Plan 2021 proposed updates 09.07.21

SAMPLE TIMELINE

- Jan: Develop revenue estimate and decide how money will be distributed between county & city
- Jan-May: County & city develop project lists w/public input
- June: County & city elected officials vote on their list of projects
- June: Complete DRAFT master list for county to send to all elected officials in County
- June: Official meeting required by code to discuss project list
- July: Intergovernmental Agreement executed
- Aug: Resolution approved by County and forwarded to Election Superintendent – must be received 90 days before election for a General Election – 30 days for other (Municipal, Special, etc.)
- Aug-Nov: Voter information education. The public must be notified about the TSPLOST referendum by publishing the date of the referendum once a week for four weeks immediately before the election in the newspaper approved for county legal notices.
- Nov: Vote
- July: Collections Start (this is based upon a continuation for our county.)

Attachment: Lumpkin County 2019 TSPLOST Work Plan 2021 proposed updates 09.07.21

DISCUSSION

Attachment: Lumpkin County 2019 TSPLOST Work Plan 2021 proposed updates 09.07.21

Lumpkin County, Georgia

Finance Department

Date: September 21, 2021

Agenda Item: 2020 SPLOST 2021 Work Plan Amendment

Item Description: 2020 SPLOST 2021 Work Plan Amendment. Consideration of amending the 2020 SPLOST 2021 Work Plan to include completion of the aquatic center parking areas.

Facts & Historical Information: As included in the IGA under consideration at the September 7, 2021 Work Session between Lumpkin County Board of Commissioners and Lumpkin County Board of Education, the Board of Commissioners commits to funding completion of parking areas around the aquatic center.

If the IGA is approved, the 2021 work plan of the 2020 SPLOST should be amended to include funding for completion parking areas around the aquatic center.

Potential Courses Of Action:

A. Amend the 2020 SPLOST 2021 Work Plan

B. Take no action and determine an alternate funding source.

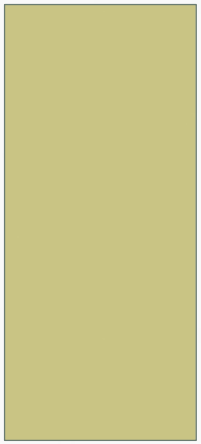
Budget Impact: There are funds available in the 2020 SPLOST to fund completion of parking areas around the aquatic center.

Staff Recommendation: **Staff recommends Option A.**

Attachments:
Lumpkin County 2020 SPLOST Work Plan 2021 yr 2 revised 09.07.21

LUMPKIN COUNTY
2020 S.P.L.O.S.T.

2021 WORK PLAN - REVISED
SEPTEMBER 7, 2021



Attachment: Lumpkin County 2020 SPLOST Work Plan 2021 yr 2 revised 09.07.21 (3204 : 2020 SPLOST

S.P.L.O.S.T.
2020 REFERENDUM STATEMENT

"Shall a special one percent sales and use tax be imposed in the special district of Lumpkin County for a period of time not to exceed Six (6) years and for the raising of an estimated amount of $18,900,000 for the purpose of (1) funding ECONOMIC DEVELOPMENT, WATER AUTHORITY SYSTEM IMPROVEMENTS, LUMPKIN COUNTY LIBRARY, JUDICIAL ACQUISITION CONTRACT PAYMENTS, ROADS AND BRIDGES EQUIPMENT, VEHICLES, RESURFACTING, IMPROVEMENTS AND SHERIFF'S DEPARTMENT EQUIPMENT AND VEHICLES for Lumpkin County, and (2) funding ROADS AND BRIDGES RESURVACING AND IMPROVEMENTS, STORM-WATER INFRASTRUCTURE AND WATER & SEWER SYSTEM IMPROVEMENTS for the City of Dahlonega?"

Attachment: Lumpkin County 2020 SPLOST Work Plan 2021 yr 2 revised 09.07.21 (3204 : 2020 SPLOST

2020 S.P.L.O.S.T. PROJECTS

A1	Judicial Center Acquisition Contract Payments
A2	Economic Development
A3	Roads & Bridges Equipment, Vehicles, Resurfacing, Improvements
A4	Lumpkin County Library
A5	Sheriff's Department Equipment & Vehicles
A6	Water Authority System Improvements
B1	City of Dahlonega: Roads & Bridges Resurfacing & Improvements Storm-water Infrastructure Water & Sewer System Improvements

Attachment: Lumpkin County 2020 SPLOST Work Plan 2021 yr 2 revised 09.07.21 (3204 : 2020 SPLOST

LUMPKIN COUNTY S.P.L.O.S.T.

- 2020 SPLOST Referendum $18,900,000
  - Lumpkin County Share 79% $14,931,000
  - City of Dahlonega Share 21% $ 3,969,000

- Program to Date Collections $ 3,307,477
- Remaining Collections (estimated) $16,537,500

- Projected 2020 SPLOST (based on avg collections) Collections $19,844,977
  - Lumpkin County Share $15,677,532
  - City of Dahlonega $ 4,167,445

Attachment: Lumpkin County 2020 SPLOST Work Plan 2021 yr 2 revised 09.07.21 (3204 : 2020 SPLOST

2020 S.P.L.O.S.T. EXPECTED FUNDS AVAILABLE BY PROGRAM YEAR 2 (LUMPKIN CO. SHARE)

Program Yr	Corresponding YR	Funds Available	Actual/Estimated
YR1	2020	$ 2,612,907	Actual
YR2	2021	$ 2,500,000	Estimated
YR3	2022	$ 2,500,000	Estimated
YR4	2023	$ 2,500,000	Estimated
YR5	2024	$ 2,500,000	Estimated
YR6	2025	$ 2,500,000	Estimated
YR7	2026	$ 564,625	Estimated
TOTAL		$15,677,532	

Attachment: Lumpkin County 2020 SPLOST Work Plan 2021 yr 2 revised 09.07.21 (3204 : 2020 SPLOST

2020 S.P.L.O.S.T. PROPOSED PROJECT BUDGETS

	Description	Budget as Adopted
A1	Judicial Acquisition Contract Payments	$4,917,770
A2	Economic Development	$2,086,043
A3	Roads & Bridges Equipment, Vehicles, Resurfacing, Improvements	$2,036,227
A4	Lumpkin County Library	$1,043,022
A5	Sheriff's Department Equipment and Vehicles	$1,313,896
A6	Water Authority System Improvements	$4,170,530
Total Projected 2020 SPLOST Program		$15,567,488

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2020 S.P.L.O.S.T. PRO-RATA DISTRIBUTION
9 CHECKS RECEIVED (LC SHARE)

PRO-RATA DISTRIBUTION	%	TOTAL
A1 – Judicial Center Acquisition Contract Payments	31.59%	$825,417
A2 – Economic Development	13.40%	$350,130
A3 - Roads and Bridges Equipment, Vehicles, Resurfacing, Improvements	13.08%	$341,768
A4 – Lumpkin County Library	6.70%	$175,065
A5 - Sheriff's Department Equipment and Vehicles	8.44%	$220,529
A6 - Water Authority System Improvements	26.79%	$699,998

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2020 S.P.L.O.S.T. PROGRAM – APPROVED YR2 – 2021 PROJECTS

Proposed Projects	Requested	Encumbered 2020	**Approved**
A1 – Judicial Center Acquisition Contract Payments	$763,282		
A2 – Economic Development	0		
A3 – Roads & Bridges Equipment, Vehicles, Resurfacing, Improvements**	*$989,086	767,000	
A4 – Lumpkin County Library		1,000,000	
A5 – Sheriff's Department Equipment & Vehicles*	$270,000		
A6 – Water Authority System Improvements	$518,374		
	$2,464,410		

***includes generator ($45,000) added by BOC at 3/16/21 meeting**

****requested revision at 4/20/21 meeting to include emergency bridge repair on Johnnie Collins Way ($26,535) and emergency culvert replacement on Lanier Drive ($74,500)**
****requested revision at 09/07/21 meeting to include Aquatic Center parking ($888,051)**

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DISCUSSION

Attachment: Lumpkin County 2020 SPLOST Work Plan 2021 yr 2 revised 09.07.21 (3204 : 2020 SPLOST

Lumpkin County, Georgia

Board of Commissioners Department

Date: September 21, 2021

Agenda Item: Consideration of a Moratorium in Certain Character Areas

Item Description: Consideration of a Moratorium in Certain Character Areas