

AGREEMENT FOR CONSTRUCTION MANAGEMENT/GENERAL CONTRACTOR SERVICES

This AGREEMENT FOR CONSTRUCTION MANAGEMENT/GENERAL CONTRACTOR SERVICES (the "Agreement") is made and entered into by and between MACON BIBB COUNTY, GEORGIA (the "Owner") and _____ (hereinafter referred to as the "Construction Manager" or "CM"). This Agreement is executed under seal, and it shall be effective on the date it is executed by the last party to execute it.

This Agreement is for the furnishing of construction management services for a project identified as ____ **construction of the Sheriff's Investigative Center 2nd floor** for Macon Bibb County.

NOW, THEREFORE, for and in consideration of the mutual promises, covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are herein acknowledged, the Owner and the Construction Manager agree as follows:

ARTICLE 1

CONSTRUCTION MANAGER'S SERVICES AND RESPONSIBILITIES

1.1 GENERALLY

The **Construction Manager (CM)** is the Owner's fiduciary responsible for undertaking all necessary action contemplated under this Contract to (a) establish during the design phase a Guaranteed Maximum Price (GMP) to construct the project (construction management) and (b) ensure timely and quality completion of the project at a cost within the GMP (general contracting).

"Construction Manager" or "CM" as used in this Agreement means **Construction Manager at Risk** (CM at Risk).

1.1.1 The intent of this Agreement is that the Construction Manager shall (a) provide all of those services, furnish any required materials and labor, and enter into and cause to be performed all Trade Contracts necessary to achieve complete, correct and timely completion of the complete construction of the Project in accordance with the Contract Documents (the "Work") and (b) warrant all of such Work and services as provided herein.

1.1.2 The Construction Manager covenants with the Owner to further the interests of the Owner by furnishing the Construction Manager's best skill and judgment in cooperation with the Architect. The Construction Manager agrees to furnish business administration and management services and to perform in an expeditious and economical manner consistent with the interests of the Owner.

1.1.3 The term "Contract Documents" means this Agreement, the Trade Contracts, the plans, specifications, and drawings for the Project, and any Change Orders and Field Orders issued in connection with this Agreement or with the Trade Contracts.

1.1.4 By executing this Agreement, the Construction Manager makes the following express representations and warranties to the Owner:

- (a) The Construction Manager is professionally qualified to act as a construction manager for the Project and has, and shall maintain, any and all licenses, permits or other authorizations necessary to act as a construction manager for the Project;
- (b) The Construction Manager has become familiar with the Project site and the local conditions under which the Project is to be designed, constructed and operated; and,
- (c) The Construction Manager assumes full responsibility to the Owner for the improper acts and omissions of its consultants, the Trade Contractors, or others employed or retained by it in connection with the Project.

NOTHING CONTAINED HEREIN SHALL IN ANY MANNER WHATSOEVER SUPERSEDE, LIMIT OR RESTRICT ANY OTHER REPRESENTATION OR WARRANTY SET FORTH ELSEWHERE IN THE CONTRACT DOCUMENTS.

BASIC SERVICES

The Construction Manager's Basic Services consist of the Preconstruction Phase Services and the Construction Phase Services.

1.2 PRECONSTRUCTION PHASE SERVICES

During the Preconstruction Phase of the Project, the Construction Manager shall perform the following services.

1.2.1 Provide preliminary evaluation of the Project budget requirements. With the Architect's assistance, prepare preliminary estimates of construction cost for early schematic designs based on area, volume or other standards. Assist the Owner and the Architect in achieving mutually agreed upon Project budget requirements and other design parameters. Provide cost evaluations of alternative materials and systems.

1.2.2 Review design during its development for constructability. Advise on site use and improvements, selection of materials, building systems and equipment and methods of Project delivery. Provide recommendations on relative feasibility of construction methods, availability of materials and labor, time requirements for procurement, installation and construction, and factors related to cost including, but not limited to, cost of alternative designs or materials, preliminary budgets and possible economies.

1.2.3 Provide for the Architect's and the Owner's review, and periodically update, a Project Schedule that coordinates and integrates the Construction Manager's services, the Architect's services and the Owner's responsibilities.

1.2.4 During preparation of Design Development and Construction Documents, prepare, as may be requested by the Owner or the Architect, detailed estimates of construction costs, and, if it appears that such costs may exceed the Project budget, make recommendations for corrective action.

1.2.5 Coordinate Contract Documents by consulting with the Owner and the Architect regarding drawings and specifications as they are being prepared, and recommend alternative solutions whenever design details affect construction feasibility, cost or schedules.

1.2.5.1 Provide recommendations and information to the Owner and the Architect regarding the assignment of responsibilities for safety precautions and programs. Provide information and recommendations regarding temporary Project facilities and equipment, materials, and services for common use of Trade Contractors. Verify that these requirements and assignments of responsibilities are included in the proposed Contract Documents.

1.2.5.2 Advise on the separation of the Project into Trade Contracts for various categories of the Work. Advise on the method to be used for selecting Trade Contractors and awarding Trade Contracts. Review the drawings and specifications and make recommendations as required to provide that (1) the Work of the separate Trade Contractors is coordinated, (2) all requirements for the Project have been assigned to the appropriate separate Trade Contract, (3) the likelihood of jurisdictional disputes has been minimized, and (4) proper coordination has been provided for phased construction.

1.2.5.3 Develop a Project Construction Schedule providing for all major elements such as phasing of construction and times of commencement and completion required of each Trade Contractor. Provide the Project Construction Schedule for each set of Bidding Documents.

1.2.5.4 Investigate and recommend a schedule for the Owner's purchase of materials and equipment requiring long lead time procurement, and coordinate the schedule with the early preparation of portions of the Contract Documents by the Architect. Expedite and coordinate delivery of these purchases.

1.2.6 Provide an analysis of the types and quantities of labor required for the Project and review the availability of appropriate categories of labor required for critical Phases. Make recommendations for actions designed to minimize adverse effects of labor shortages.

1.2.7 With the Architect's assistance, receive bids, prepare bid analyses and make recommendations to the Owner concerning the qualifications of Trade Contractors or rejection of bids.

1.2.8 With the Architect's assistance, conduct pre-award conferences with successful Bidders. Prepare Trade Contracts in such form as the Owner may require and advise the Owner on the acceptability of Trade Contractors and material suppliers proposed by Trade Contractors.

1.2.9 The Construction Manager shall issue the Trade Contracts which shall be between the Construction Manager and the Trade Contractors, and such contracts shall create no contractual relationship between the Owner and the Trade Contractors. The Construction Manager shall not enter into a Trade Contract with a proposed Trade Contractor with reference to whom the Owner has made reasonable and timely objection. All Trade Contracts shall afford the Construction Manager rights against the Trade Contractor which correspond to those rights afforded to the Owner against the Construction Manager herein including those rights of termination as set forth herein.

1.2.10 Notwithstanding any other provision of the Contract Documents, the Architect and its consultants are responsible for the design of the Project and the Construction Manager shall not be liable for any error, omission, lack of coordination, or other defect in the Project's design. Prior to agreement on a GMP, the Construction Manager is not responsible for the design resulting in a Project within the Owner's budget or for the cost of any re-design or other corrective action needed to bring the Project within the Owner's budget.

1.3 CONSTRUCTION PHASE SERVICES

During the Construction Phase of the Project, the Construction Manager shall perform the following services.

1.3.1 Unless otherwise provided in this Agreement and incorporated in the Contract Documents, the Construction Manager, in cooperation with the Architect, shall provide administration of the Trade Contracts for Construction as set forth below.

1.3.2 Schedule and coordinate the Work of the Trade Contractors. Provide administrative, management and related services as required to coordinate Work of the Trade Contractors with each other and with the activities and responsibilities of the Construction Manager, the Owner and the Architect to complete the Project in accordance with the Owner's objectives for cost, time and quality. Provide sufficient organization, personnel and management to carry out the requirements of this Agreement.

1.3.2.1 Schedule and conduct pre-construction, construction and progress meetings to discuss such matters as procedures, progress, problems and scheduling. Prepare and promptly distribute accurate minutes.

1.3.2.2 Consistent with the Project Construction Schedule issued with the Bidding Documents, and utilizing the Trade Contractors' Construction Schedules provided by the separate Trade Contractors, update the Project Construction Schedule incorporating the activities of Trade Contractors on the Project, including activity sequences and durations, allocation of labor and materials, processing of Shop Drawings, Product Data and Samples, and delivery of products requiring long lead time procurement. Include the Owner's occupancy requirements showing portions of the Project having occupancy priority. Provide a progress update of the Project Construction Schedule on a monthly basis to show current conditions and revisions required by actual progress and experience. The furnishing by the Construction Manager of the updated Project Construction Schedule, and the required monthly updates, shall be a condition precedent to payment to the Construction Manager.

1.3.2.3 Coordinate construction to achieve proper performance from the Trade Contractors. Take appropriate actions, including termination and re-letting of Trade Contracts where appropriate, when requirements of Trade Contracts are not being fulfilled and the non-performing party will not take satisfactory corrective action.

1.3.3 Provide regular monitoring of all construction costs showing actual costs for activities in progress and estimates for uncompleted tasks. Submit Project Construction Cost reports on a monthly basis.

1.3.3.1 Maintain cost accounting records on authorized Work performed under unit prices, additional Work performed on the basis of actual costs of labor and materials, or other Work requiring accounting records.

1.3.3.2 Recommend necessary or desirable changes to the Architect and the Owner, review requests for changes, assist in negotiating Trade Contractors' change proposals, submit recommendations to the Architect and the Owner, and if they are accepted, prepare and sign Change Orders for the Architect's signature and the Owner's authorization.

1.3.3.3 Develop and implement procedures for the review and processing of applications by Trade Contractors for progress and final payments. Review schedules of value and pay applications by Trade Contractors to protect the Owner from frontloaded or imbalanced payment schedules to the Trade Contractors.

1.3.4 Review the safety programs developed by each of the Trade Contractors as required by the Trade Contracts and coordinate the safety programs for the Project. Take reasonable and customary precautions to secure and protect the Project from loss or harm due to the elements, theft, vandalism, and other causes. Take reasonable steps to secure the Project at all times so as to prevent injury to or trespass thereon.

1.3.5 Assist in obtaining and pay for building permits and special permits for permanent improvements, excluding permits required to be obtained directly by the various Trade Contractors. Verify that the

Owner has paid applicable fees and assessments. Assist in obtaining approvals from authorities having jurisdiction over the Project. Obtain and pay for all certificates, inspections, and licenses necessary and ordinary for the performance of the Work and the occupancy of the Project. Comply with all lawful requirements applicable to the Project and give and maintain any and all notices required by applicable law pertaining to the Project. In the event the Owner is fined, penalized or assessed by any governmental entity as a result of any alleged or actual violation of law by the Construction Manager, or by any Trade Contractor, the Construction Manager shall indemnify and hold Owner harmless from any such fine, penalty or assessment and any attorneys' fees or costs which result there from.

1.3.6 If required, assist the Owner in selecting and retaining the professional services of surveyors, special consultants and testing laboratories. Coordinate their services.

1.3.7 Determine that the Work of each Trade Contractor is being performed in accordance with the requirements of the Contract Documents. Guard the Owner against defects and deficiencies in the Work. As appropriate, require special inspections or testing, or make recommendations to the Architect regarding inspections or testing, of Work not in accordance with the provisions of the Contract Documents whether or not such Work is then fabricated, installed or completed. Subject to review by the Architect, reject Work which does not conform to the requirements of the Contract Documents.

1.3.8 Consult with the Architect and the Owner if any Trade Contractor requests interpretations of the meaning and intent of any of the Contract Documents, and assist in the resolution of questions which may arise.

1.3.9 Receive and review for compliance with contract requirements Certificates of Insurance from the Trade Contractors and forward them to the Owner with a copy to the Architect.

1.3.10 Receive from the Trade Contractors and review all Shop Drawings, Product Data, Samples and other submittals to confirm that same comply with the requirements of the Contract Documents. Coordinate them with information contained in related documents and transmit to the Architect those recommended for approval. In collaboration with the Architect, establish and implement procedures for expediting the processing and approval of Shop Drawings, Product Data, Samples and other submittals.

1.3.11 Record the progress of the Project. Submit written progress reports to the Owner and the Architect including information on each Trade Contractor and each Trade Contractor's Work, as well as the entire Project, showing percentages of completion and the number and amounts of Change Orders. Keeps a daily log containing a record of weather, Trade Contractors' Work on the site, number of workers, Work accomplished, problems encountered, and other similar relevant data as the Owner may require. Make the log available to the Owner and the Architect.

1.3.11.1 Maintain at the Project site, on a current basis; a record copy of all Trade Contracts, drawings, specifications, addenda, Change Orders and other modifications, in good order and marked to record all changes made during construction; Shop Drawings; Product Data; Samples; submittals; purchase orders; material data; equipment documents; applicable handbooks; maintenance and operating manuals and instructions; other related documents and revisions which arise out of the Trade Contracts or Work. Maintain records, in duplicate, of principal building layout lines, elevations of the bottom of footings, floor levels and key site elevations certified by a qualified surveyor or professional engineer. Make all records available to the Owner and the Architect. At the completion of the Project, deliver all such records to the Architect for the Owner.

1.3.12 Arrange for delivery, storage, protection and security for Owner-purchased materials, systems and equipment which are a part of the Project.

1.3.13 With the Architect and the Owner's maintenance personnel, observe the Trade Contractors' checkout of utilities, operational systems and equipment for readiness and assist in their initial start-up and testing.

1.3.14 When the Construction Manager considers each Trade Contractor's Work or a designated portion thereof Substantially Complete, the Construction Manager shall prepare for the Architect a list of incomplete or unsatisfactory items and a schedule for their completion. The Construction Manager shall assist the Architect in conducting inspections for Substantial and Final Completion. After the Architect certifies the Date of Substantial Completion of the Work, the Construction Manager shall coordinate the correction and completion of the Work and shall be fully responsible for same.

1.3.15 Following the Architect's issuance of a Certificate of Substantial Completion for the Project or designated portion thereof evaluates the completion of the Work of the Trade Contractors and make recommendations to the Architect when Work is ready for final inspection. Assist the Architect in conducting final inspections. Secure and transmit to the Owner required guarantees, affidavits, releases, bonds and waivers. Deliver all keys, manuals, record drawings and maintenance stocks to the Owner.

1.4 ADDITIONAL SERVICES

The following Additional Services shall be performed only upon authorization in writing from the Owner. Additional Services and the amount of compensation therefore, shall be negotiated as needed.

1.4.1 Consultation on replacement of Work damaged by fire or other cause during construction, and furnishing services in conjunction with the replacement of such Work.

1.4.2 Recruiting or training maintenance personnel.

1.4.3 Inspections of, and services related to, the Project after the end of the Construction Phase, except where obligations of Basic services require Post Construction Phase Services.

1.4.4 Providing any other services not otherwise included in or contemplated by this Agreement.

1.5 TIME

1.5.1 The Construction Manager shall commence the performance of Preconstruction Phase Services not later than _____ day following issuance of written notice to proceed from the Owner. The Preconstruction Phase of the Project shall be deemed to commence on the _____ day following issuance of the Notice to Proceed for such Phase.

1.5.2 The Construction Manager shall commence the performance of Construction Phase Services upon award of any applicable Trade Contract or purchase order and upon the Owner's issuance of a written notice to proceed with Construction Phase Services. The Construction Phase of the Project shall be deemed to commence on the date that such notice to proceed is issued.

1.5.3 The number of calendar days from the date on which the notice to proceed with Preconstruction Phase Services is issued by the Owner, through the required Substantial Completion date of the Project as subsequently established in the Guaranteed Maximum Price ("GMP") amendment to this contract, shall constitute the "Contract Time." In no event, however, shall the Contract Time provide for Substantial Completion of the Project later than _____. The Construction Manager warrants that the Project shall be Substantially Complete within the Contract Time, provided that there are no unreasonable and unanticipated delays in completion of the design documents, unusual and unreasonable delays in obtaining any approval from a State or local governing agency or authority, or other occurrences which would form the basis for an extension of the Contract Time in accordance with this Agreement. The Construction Manager shall notify the Owner in writing of any deadline by which the Construction Manager needs design documents, approvals, or other information sufficiently in advance of such deadline so that any delay can be avoided.

1.5.4 The Construction Manager shall perform the services required herein as expeditiously as is consistent with reasonable skill and care for the orderly progress of the Work and as required by Paragraph 1.5.3 hereinabove. In the event of any delay in achieving Substantial Completion of the

Project, as that date may be extended pursuant to this Agreement, resulting from any act or omission of the Construction Manager or any Trade Contractor, the Construction Manager shall pay the Owner the sum of five hundred dollars (\$500.00) per day for each and every calendar day of such delay in achieving Substantial Completion beyond the Contract Time. Any sums due and payable hereunder by the Construction Manager shall be payable, not as a penalty, but as liquidated damages representing an estimate of delay damages likely to be sustained by the Owner, estimated at or before the time of executing this Agreement. When the Owner reasonably believes Substantial Completion will be inexcusably delayed, the Owner shall be entitled, but not required, to withhold from any amounts otherwise due the Construction Manager an amount then believed by the Owner to be adequate to recover liquidated damages applicable to such delays. If and when the Construction Manager overcomes the delay in achieving Substantial Completion, or any part thereof, for which the Owner has withheld payment, the Owner shall promptly release to the Construction Manager those funds withheld, but no longer applicable, as liquidated damages. The term "Substantial Completion" as used in this Agreement shall mean that stage in the progression of the Work, as certified in writing by the Architect, when the Project is sufficiently complete in accordance with this Agreement that the Owner can enjoy beneficial use or occupancy of the Project and can utilize it for its intended purpose. Partial use or occupancy of the Project shall not result in the Project being deemed Substantially Complete and such partial use and occupancy shall not be evidence of Substantial Completion. All limitations of time set forth in the Contract Documents are of the essence of this Agreement.

ARTICLE 2 THE OWNER'S RESPONSIBILITIES

2.1 The Owner may in its discretion provide a budget for the Project, based on consultation with the Construction Manager and the Architect, which may include contingencies for bidding, changes during construction and other costs which are the responsibility of the Owner.

2.2 The Owner shall designate one or more representatives authorized to act in the Owner's behalf with respect to the Project. The Construction Manager shall fully cooperate with all Owner representatives. The Owner, or any of its authorized representatives, shall examine documents submitted by the Construction Manager and shall render decisions pertaining thereto promptly to avoid unreasonable delay in the progress of the Construction Manager's services. The Owner's representatives shall have no authority except as may be delegated by the Owner, and said representatives are not authorized to waive, either by oral directions or by course of conduct, any term of this Agreement.

2.3 The Owner shall retain an Architect whose services, duties and responsibilities shall be described in the agreement between the Owner and the Architect. A copy of the Owner Architect Agreement will be furnished to the Construction Manager upon request.

2.4 The Owner shall furnish structural, mechanical, chemical and other laboratory tests, inspections and reports as required by law or the Contract Documents.

2.5 The Owner shall furnish the Construction Manager a sufficient quantity of Contract Documents for the efficient bidding of the Project.

2.6 The services, information and reports required by Paragraphs 2.1 through 2.5, inclusive, shall be furnished at the Owner's expense, and unless the Construction Manager has knowledge to the contrary, the Construction Manager shall be entitled to rely upon their accuracy and completeness. However, nothing in this Paragraph shall relieve the Construction Manager of any of its duties and responsibilities under this Agreement.

2.7 If the Owner observes or otherwise becomes aware of any fault or defect in the Contract Documents or the Project or any nonconformance with the Contract Documents, reasonable notice thereof shall be given by the Owner to the Construction Manager and the Architect. Notwithstanding this provision, nothing herein shall relieve the Construction Manager from any obligations set forth in this

Agreement. Likewise, if the Construction Manager observes or otherwise becomes aware of any fault or defect in the Contract Documents or the Project or of any nonconformance with the Contract Documents, reasonable notice thereof shall be given by the Construction Manager to the Owner and the Architect.

2.8 The Owner reserves the right to perform work related to the Project with the Owner's own forces, and to award contracts in connection with the Project which are not part of the Construction Manager's responsibilities under this Agreement. The Construction Manager shall cooperate fully with the Owner with respect to any such work and will coordinate the Work of the Construction Manager and the Trade Contractors with any work performed independently by the Owner or any separate Contractor. The Construction Manager shall timely notify the Owner in writing if any such independent work will in any way compromise the Construction Manager's ability to meet the Construction Manager's responsibilities under this Agreement. . The Owner shall require the separate contractor to meet the same requirements of the Trade Contractors, including those regarding insurance, safety and repair of work damaged by the separate contractor. The Owner shall ensure that its contract with the separate contractor requires the separate contractor to comply with the CM's directions regarding the scheduling of the separate contractor's work, and the access to and staging of the separate contractor's work at the Project site.

2.9 The Owner shall furnish the required information and services and shall render approvals and decisions as expeditiously as necessary for the orderly progress of the Construction Manager's services and the Work of the Trade Contractors.

2.10 The Owner may elect, in its discretion, to purchase materials, equipment or supplies for use in construction of the Project or for installation in the Project. In such event, the Construction Manager shall assist the Owner as requested in the ordering and coordination of any such materials, equipment or supplies. The furnishing of any such assistance shall be provided as part of the Construction Manager's Basic Services without further charge to the Owner.

ARTICLE 3 REMEDY OF DEFECTIVE WORK AND TRADE CONTRACTOR DEFAULTS

3.1 The Construction Manager shall remedy, or cause to be remedied, all defective Work, any default by the Construction Manager, and any Trade Contractor default.

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

3.3 The Construction Manager shall be responsible for the failure of any Trade Contractor to carry out Work in accordance with the applicable Contract Documents pertaining to such Trade Contractor's Work. The Construction Manager shall immediately cause to be corrected defective Work rejected by the Owner or by the Architect, and the responsible Trade Contractor (or if such Trade Contractor fails to do so, the Construction Manager) shall pay all costs and expenses associated with correcting such rejected Work, including any additional testing and inspections and any fees and expenses of the Architect made necessary thereby. In the event of default by a Trade Contractor, the Construction Manager shall arrange for the completion or correction of the Trade Contractor's Work and shall be fully responsible for all costs and expense incurred in such completion or correction and all other costs and expense incurred in remedying any such default.

3.4 If within one (1) year after Substantial Completion of the Work on the Project, any of the Work is found to be defective or not in accordance with the Contract Documents, the Construction Manager shall cause such Work to be corrected promptly upon receipt of written notice from the Owner. This obligation

shall survive final payment by the Owner and termination of this Agreement. With respect to Work performed between Substantial Completion and Final Completion, this one year obligation to specifically correct defective and nonconforming Work shall begin on the date of Final Completion. The duty to correct defective Work during the one year correction period provided by this Paragraph shall not establish a period of limitation with respect to any other warranty, duty, or responsibility under this Agreement.

ARTICLE 4

THE GUARANTEED MAXIMUM PRICE

4.1 The Owner, Architect, and Construction Manager shall discuss and reach an agreement as to the extent and degree of completion of final construction drawings and specifications required in order for the Construction Manager to establish and provide a Guaranteed Maximum Price ("GMP"). Within thirty (30) days after receipt from the Architect of final construction drawings and specifications, the Construction Manager shall submit in writing to the Owner and the Architect a Guaranteed Maximum Price for complete construction of the Project in accordance with such drawings and specifications. Said Guaranteed Maximum Price shall include the following: (a) The cost of all labor, equipment, material and supplies necessary for, or utilized in, construction of the Project whether performed or furnished by the Construction Manager, the Trade Contractors, vendors, suppliers or others; (b) the General Conditions costs as set forth in the Construction Manager's proposal to the Owner and as accepted by the Owner; and, (c) the Construction Manager's fee as set forth in the Construction Manager's proposal to the Owner and as accepted by the Owner. It is the intent of this provision that the Guaranteed Maximum Price shall include the complete and total cost of constructing the Project in accordance with all requirements of the Contract Documents.

The sum of the cost of the Work, any previously executed Early Work Amendments as provided for by Article 6 of this Agreement, the Construction Manager's General Conditions, and the Construction Manager's Fee are guaranteed by the Construction Manager not to exceed the amount provided in the GMP Amendment, subject to additions and deductions by changes in the Work as provided in the Contract Documents. Such maximum sum as adjusted by approved changes in the Work is referred to in the Contract Documents as the Guaranteed Maximum Price. Costs which would cause the GMP to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner. All savings, including unused contingency, if any, shall be returned to the Owner. The CM's guarantee is of the overall GMP and is not a guarantee of any of the individual line items or components comprising GMP, it being understood that underruns and overruns in particular line items or components of the GMP may be used by the CM to offset each other.

4.2 Within fourteen (14) days after receipt from the Construction Manager of the Guaranteed Maximum Price, the Owner may reject same and may, in its discretion, terminate this Agreement for convenience. Notwithstanding any other provision of this Agreement, in the event of such termination, the Owner shall pay the Construction Manager the lump sum of \$25,000.00 which shall constitute the full and complete compensation due Construction Manager of every kind and nature, for work performed, or expenses incurred, prior to such termination.

4.3 Absent rejection of the Guaranteed Maximum Price by the Owner within the time set forth in Paragraph 4.2 hereinabove, the Guaranteed Maximum Price shall constitute an agreement by the Construction Manager to construct the Project in strict accordance with all requirements of the Contract Documents for a sum not to exceed the Guaranteed Maximum Price, and the Contract Price as set forth in Article 5 herein below shall not exceed such Guaranteed Maximum Price.

ARTICLE 5
THE CONTRACT PRICE AND CONTRACT PAYMENTS

5.1 After establishment of the Guaranteed Maximum Price in accordance with the provisions of Article 4 hereinabove, the Construction Manager shall promptly proceed to obtain bids, quotations, proposals and pricing for the complete construction of the Project as required by the Contract Documents. Bid packages for the purpose of bidding the Trade Contracts shall be prepared by the Construction Manager. The Construction Manager shall carefully prepare such packages prior to bid, and shall confirm that all Work (including all necessary materials and equipment) required for the complete construction of the Project in strict conformity with all requirements of the Contract Documents has been included in the bid packages. The Construction Manager shall submit all bid packages to the Owner for review before the same are released for bidding. All bids, quotations, proposals and pricing shall be subject to review by the Owner and the Architect prior to acceptance by the Construction Manager. The Construction Manager shall not contract with any Trade Contractor, vendor, supplier or other entity to which the Owner or the Architect makes reasonable objection. Upon receipt and acceptance of such bids, quotations, proposals and prices in accordance with this Paragraph, the Construction Manager shall contract with such Trade Contractors, vendors, suppliers and others as necessary for the Construction Manager to construct the Project in strict accordance with the requirements of the Contract Documents.

5.2 For the complete construction of the Project in strict accordance with the requirements of the Contract Documents, the Construction Manager shall be paid the Contract Price. The Contract Price shall be the sum of the following:

- (i) the actual amount to be paid to the Trade Contractors, vendors and suppliers for work performed, or materials or equipment furnished, pursuant to the approved Trade Contracts, vendor agreements, or supplier agreements with the Construction Manager; and,
- (ii) the General Conditions as set forth in the Construction Manager's proposal to the Owner and as accepted by the Owner; and,
- (iii) A fee in the amount as set forth in the Construction Manager's proposal to the Owner and as accepted by the Owner.

NOTWITHSTANDING THE SUM TOTAL OF SUBPARAGRAPHS (A) (B) AND (C) HEREINABOVE, IN NO EVENT SHALL THE CONTRACT PRICE EXCEED THE GUARANTEED MAXIMUM PRICE AS ESTABLISHED PURSUANT TO ARTICLE 4 HEREINABOVE. THE CONTRACT PRICE SHALL NOT BE MODIFIED EXCEPT BY CHANGE ORDER AS PROVIDED IN THIS AGREEMENT. The Contract Price, once determined as set forth hereinabove, shall be stated in writing, signed by the Owner and the Construction Manager, and attached as an amendment to this Agreement.

5.3 Within ten (10) days after determination of the Contract Price as provided by Paragraph 5.2 hereinabove, the Construction Manager shall prepare and present to the Owner and the Architect a Schedule of Values allocating the Contract Price among the different elements of the Work. The Construction Manager's Schedule of Values shall be prepared in such form, with such detail, and supported by such data as the Owner or Architect may require substantiating its accuracy. The Construction Manager shall prorate its fee in equal monthly installments over the anticipated Construction Phase of the Project. The Construction Manager shall not imbalance the Schedule of Values or artificially inflate any element thereof. The violation of this provision by the Construction Manager shall constitute a material breach of this Agreement. The Schedule of Values shall be used only as a basis for the Construction Manager's Requests for Payment and shall only constitute such basis after it has been acknowledged in writing by the Owner and Architect.

5.4 The Owner shall pay the Contract Price to the Construction Manager in accordance with the procedures set forth in this Paragraph 5.4. Based upon the Construction Manager's Requests for Payment submitted to the Architect and the Owner, and upon written Approvals for Payment

subsequently issued to the Owner by the Architect, the Owner shall make progress payments to the Construction Manager on account of the Contract Price. On or before the 1st day of each month after commencement of the Work, the Construction Manager shall submit a Request for Payment for the period ending the 25th day of the month. Said Request for Payment shall be in such form and manner, and with such supporting data and content, as the Architect or the Owner may require. Therein, the Construction Manager may request payment for ninety percent (90%) of that portion of the Contract Price properly allocable to materials or equipment properly stored at the Project site (or elsewhere if approved in advance, in writing, by the Owner), less the total amount of previous payments received from the Owner. PROVIDED, HOWEVER, that when fifty (50) percent of the contract value, including change orders and other additions to the contract value, provided for by the Contract Documents is completed, and the manner of completion of the contract Work and its progress are reasonably satisfactory to the Owner, the Owner shall withhold no more retainage. At the discretion of the Owner, and with the approval of the Construction Manager, the retainage of any Trade Contractor may be released separately as such Trade Contractor completes its work. If, however, after discontinuing the retention, the Owner determines that the Work is unsatisfactory or has fallen behind schedule, retention may be resumed at the previous level. If retention is resumed by the Owner, the Construction Manager and the Trade Contractors shall be entitled to resume withholding retainage accordingly. The rights of the Owner set forth herein to retainage are in addition to all of the other rights and remedies of the Owner as set forth in this Agreement. Payment for stored materials and equipment shall be conditioned upon the Construction Manager's proof, satisfactory to the Owner, that the Owner has title to such materials and equipment and shall include proof of required insurance. Each such Request for Payment shall be signed by the Construction Manager and shall constitute the Construction Manager's representation that the Work has progressed to the level for which payment is requested in accordance with this Agreement, and that the Construction Manager knows of no reason why payment should not be made as requested. Thereafter, the Owner and the Architect shall review the Request for Payment and may also review the Work at the Project site or elsewhere to determine whether the quantity and quality of the Work is as represented in the Request for Payment and is as required by this Agreement. The Architect shall determine and approve in writing the amount, in the opinion of the Architect, properly owing to the Construction Manager. The Owner shall make partial payments on account of the Contract Price to the Construction Manager within thirty (30) days following the Architect's written approval of each Request for Payment. The amount of each partial payment shall be the amount approved for payment by the Architect less such amounts, if any, otherwise owing by the Construction Manager to the Owner for which the Owner shall have the right to withhold as authorized by this Agreement. The Architect's approval of the Construction Manager's Requests for Payment shall not preclude the Owner from the exercise of any of its rights as set forth in Paragraph 5.7 herein below. The submission by the Construction Manager of a Request for Payment constitutes an affirmative representation and warranty that all Work for which payments have been received from the Owner is free and clear of liens, claims, security interests or other encumbrances in favor of the Construction Manager or any other person or entity whatsoever. As a condition precedent for payment, the Construction Manager shall also furnish to the Owner properly executed waivers of lien, in a form acceptable to the Owner, from all Trade Contractors, subcontractors, material men and suppliers wherein said Trade Contractors, subcontractors, material men, and suppliers shall acknowledge receipt of all sums due pursuant to all prior Requests for Payment and waive and relinquish any liens or lien rights relating thereto. Furthermore, the Construction Manager warrants and represents that upon payment of the Request for Payment submitted, title to all Work covered thereby shall immediately pass to the Owner.

5.5 Upon receipt of any payment or partial payment from the Owner, the Construction Manager shall promptly pay all Trade Contractors, material men, laborers, suppliers, and other such amounts as they are entitled for the Work covered by such payment or partial payment. In the event the Owner becomes informed that the Construction Manager has not paid a Trade Contractor, material men, laborer, supplier, or other entity as provided herein, the Owner shall have the right but not the duty, to issue future checks and payment to the Construction Manager of amounts otherwise due hereunder naming the Construction Manager and any such Trade Contractor, material men, laborer, supplier, or other entity as joint payees. Such joint check procedure, if employed by the Owner, shall create no rights in favor of any person or entity beyond the right of the named payees to payment of the check and shall not be deemed to commit the Owner to repeat the procedure in the future.

5.6 No progress payment, or other payment, to the Construction Manager, nor any use or occupancy of the Project by the Owner, shall be interpreted to constitute acceptance of any Work not in strict accordance with the requirements of the Contract Documents.

5.7 The Owner may decline to make payment, may withhold funds, and, if necessary, may demand the return of some or the entire amount previously paid to the Construction Manager, to protect the Owner from loss because of:

- (i) Defective Work not remedied by the Construction Manager or any Trade Contractor nor, in the opinion of the Owner, likely to be remedied by the Contractor or Trade Contractor;
- (ii) Claims, or potential claims of third parties against the Owner or the Owner's property;
- (iii) Failure by the Construction Manager to pay Trade Contractors or others in a prompt and proper fashion;
- (iv) Evidence that the Work will not be completed in accordance with this Agreement for the unpaid balance of the Contract Price;
- (v) Evidence that the Work will not be completed in the time required for Substantial or Final Completion;
- (vi) Failure or refusal by the Construction Manager or Trade Contractor to perform the Work in accordance with this Agreement; and,
- (vii) Damage to the Owner or to a third party to whom the Owner is, or may be, liable.

In the event the Owner makes written demand upon the Construction Manager for an amount previously paid by the Owner, and in the event the Owner determines the return of such amount is necessary to protect the interest of the Owner as set forth herein, the Construction Manager shall promptly comply with such demand.

5.8 If within thirty (30) days after the date established herein for payment to the Construction Manager by the Owner, the Owner, without cause or basis hereunder, fails to pay the Construction Manager any amounts then due and payable to the Construction Manager, the Construction Manager may stop the Work until payment is received after first providing ten (10) days written notice to the Owner. Any payment not made within thirty (30) days after the date due shall bear interest at the rate of seven percent (7%) per annum. The Owner and the Construction Manager expressly agree that the terms of payment, payment period, and rates of interest herein shall control to the exclusion of any provisions set forth in the Georgia Prompt Pay Act O.C.G.A. § 13-11-1 et al., and the provisions of said Act are hereby waived.

5.9 When the Construction Manager believes that the Work is Substantially Complete, the Construction Manager shall submit to the Architect a list of items to be completed or corrected. When the Architect, on the basis of an inspection, determines that the Work is in fact Substantially Complete, it will prepare a Certificate of Substantial Completion, shall state the responsibilities of the Owner and the Construction Manager for Project security, maintenance, heat, utilities, damage to the Work and insurance and shall fix the time within which the Construction Manager and Trade Contractors shall complete the items listed therein. Guarantees and equipment warranties required by this Agreement shall commence on the date of Substantial Completion of the Work. The Certificate of Substantial Completion shall be submitted to the Owner and the Construction Manager for their written acceptance of the responsibilities assigned to them in such Certificate. Upon Substantial completion of the Work, and execution by both the Owner and the Construction Manager of the Certificate of Substantial Completion, the Owner shall pay the Construction Manager an amount sufficient to increase total payments to the

Construction Manager to one hundred percent (100%) of the Contract Price less two hundred percent (200%) of the reasonable costs as determined by the Owner for completion of all incomplete Work, correcting and bringing into conformance all defective and nonconforming Work and handling all unsettled claims.

5.10 When all of the Work is finally completed and the Construction Manager is ready for a final inspection, it shall notify the Owner and the Architect thereof in writing. Thereupon, the Architect will make final inspection of the Work and, if the Work is complete in full accordance with all requirements of the Contract Documents, and this Agreement has been fully performed, the Architect will issue a final Approval for Payment certifying to the Owner that the Project is complete and the Construction Manager is entitled to the remainder of the unpaid Contract Price, less any amount withheld pursuant to this Agreement. If the Architect is unable to issue its final Approval for Payment and is required to repeat its final inspection of the Work, the Construction Manager shall bear the cost of such repeat final inspection(s), which costs may be deducted by the Owner from the Construction Manger's final payment.

5.11 If the Construction Manager fails to achieve final completion within the time fixed therefore by the Architect in its Certificate of Substantial Completion, the Construction Manager shall pay the Owner the sum of two hundred fifty dollars (\$250.00) per day for each and every calendar day of unexcused delay in achieving final completion beyond the date set forth herein for final completion of the Work. Any sums due and payable hereunder by the Construction Manager shall be payable, not as a penalty, but as liquidated damages representing an estimate of delay damages likely to be sustained by the Owner, estimated at or before the time of execution of this Agreement. When the Owner reasonably believes that final completion will be inexcusably delayed, the Owner shall be entitled, but not required, to withhold from any amounts otherwise due the Construction Manager, an amount then believed by the Owner to be adequate to recover liquidated damages applicable to such delays. If and when the Construction Manager overcomes the delay in achieving final completion, or any part thereof, for which the Owner has withheld payment, the Owner shall promptly release to the Construction Manager those funds withheld but no longer applicable as liquidated damages. It is the intent of this Agreement that the Construction Manager be fully liable to the Owner for any unexcused delay to either Substantial Completion or Final Completion caused by the Construction Manager, any Trade Contractor or any other entity for which the Construction Manager has responsibility under the Contract Documents.

5.12 As a condition precedent for final payment, the Construction Manager and all Trade Contractors shall submit to the Owner and the Architect affidavits that all sums due for labor, material, equipment, supplies and other liabilities connected with the Work or this Agreement for which the Owner or the Owner's property might be responsible have been paid in full and satisfied. As a further condition precedent for payment, the Construction Manager shall furnish to the Owner releases and waivers of lien from all Trade Contractors and from any and all other parties required by the Architect or Owner, along with consent of surety, if any, to final payment. If any third party fails or refuses to provide a release of claim or waiver of lien as required by the Architect or Owner, the Construction Manager shall furnish a bond satisfactory to the Owner to discharge any such lien and indemnify the Owner from liability. Furthermore, as a condition precedent for final payment, the Construction Manager shall furnish to the Owner all warranties, operating manuals, instruction manuals and other similar documents required by the Contract Documents.

5.13 The Owner shall make final payment of all sums due the Construction Manager within thirty (30) days of the Architect's execution of a final Approval for Payment.

5.14 Acceptance of final payment shall constitute a waiver of all claims against the Owner by the Construction Manager except for those claims previously made in writing against the Owner by the Construction Manager, pending at the time of final payment and identified in writing by the Construction Manager as unsettled at the time of its Request for Final Payment.

ARTICLE 6 **CHANGES**

6.1 Changes in the Work within the general scope of the Contract Documents, consisting of additions, deletions, revisions or any combination thereof, may be ordered by the Owner by written Change Order without invalidating this Agreement. Changes in the Work consistent with the intent of the design documents and not affecting the Contract Time, the Construction Manager's compensation, or the Contract Price of any Trade Contract may be ordered by the Architect by a written Field Order. In the event the Construction Manager takes exception to any Field Order issued by the Architect, the Construction Manager shall submit any claim for an extension of the Contract Time or adjustment to the Contract Price in accordance with the provisions set forth in Article 9 herein below. The Construction Manager shall then proceed with the work directed in the Field Order and any change in the Contract Price resulting from same shall be determined in accordance with the provisions of Paragraph 6.4 herein below. The Construction Manager shall cause such changes ordered by the Owner or the Architect to be performed by the Trade Contractors, and the Construction Manager shall proceed diligently to provide all services necessary in connection with any changes and same shall be accomplished in strict accordance with the terms and conditions of the Contract Documents.

6.2 The Construction Manager shall maintain, and cause the Trade Contractors to maintain, separate records reflecting costs, savings, and impacts related to any ordered change in the Work until the adjustment in the Contract Time or the Contract Price, if any, have been agreed upon as evidenced by a Change Order executed by both parties. The Construction Manager shall make such records available to the Owner or Architect upon request.

6.3 "Change Order" shall mean a written order to the Construction Manager executed by the Owner and the Architect, issued after execution of this Agreement, authorizing and directing a change in the Work or an adjustment in the Contract Price or the Contract Time, or any combination thereof. The Contract Price and the Contract Time may be changed only by Change Order. The execution of a Change Order by the Construction Manager shall constitute conclusive evidence of the Construction Manager's agreement to the ordered changes in the Work, this Agreement as thus amended, and the adjustments to the Contract Price and the Contract Time, if any. The Construction Manager, by executing the Change Order, waives and releases any claim against the Owner for additional time or compensation for matters relating to or arising out of or resulting from the Work included within or effected by the executed Change Order save and except for any claims which the Construction Manager has identified in writing to the Owner as being unresolved at the time of such execution.

6.4 Any change in the Contract Price resulting from a Change Order shall be determined by mutual agreement between the Owner and the Construction Manager as evidenced by the change in the Contract Price being set forth in a Change Order executed by both parties. If no agreement is reached, then the change shall be determined by the actual and reasonable increases or decreases in the Construction Manager's and Trade Contractor's costs of performance resulting from revisions in the Work attributable to the change. The Construction Manager and Trade Contractor shall be entitled to mark-up(s) for direct job site overhead, profit, and additional General Conditions as a result of changed or extra Work in an amount not to exceed a combined total of 15%. The Construction Manager shall determine a reasonable apportionment of the total mark-up by percentage between the Trade Contractor and the Construction Manager, not to exceed a combined total of 15%, and shall notify the Owner of such determination. Insurance and bond premiums shall be added on top of the 15% combined total markup. The Construction Manager shall maintain, and cause the Trade Contractors to maintain, separate records evidencing any such expenditures or savings, which records shall be made available to the Owner and Architect. Furthermore, the Construction Manager and Trade Contractors shall verify the accuracy and completeness of any such expenditures or savings if so requested by the Owner or Architect.

6.5 Early Work.

Early Work shall mean Construction Phase Services authorized by Amendment that the parties agree should be performed in advance of establishment of the GMP. Permissible Early Work shall be limited to early procurement of materials and supplies; early release of bid or proposal packages for site development and related activities; and any other advance work related to critical components of the project for which performance prior to establishment of the GMP will materially affect the critical path schedule of the project.

An Early Work Amendment shall mean an Amendment to the Agreement for Construction Management/General Contractor Services executed by and between the parties to authorize work under an Early Work Package.

The Early Work Price shall mean the sum of the Early Work (lump sum), the applicable Construction Manager fee, and the cost of any applicable bonds and insurance.

The parties may execute one or more Early Work Amendments identifying specific Construction Phase Services that must be performed in advance of establishment of the GMP, without exceeding a not-to-exceed budget, a maximum not-to-exceed price, or a fixed price (Early Work Price) to be stated in such Amendment, with such Amendment including all necessary State of Georgia approvals where required. If the Early Work Price is a not-to-exceed budget, then Construction Manager shall be obligated to perform the Early Work only to the extent that the Cost of Work therefore, together with the Construction Manager fee, does not exceed the Early Work Price; however, if Construction Manager performs Early Work with a maximum not-to-exceed price or fixed price, and incurs cost in excess of that maximum not-to-exceed price or fixed price, respectively, the Construction Manager shall complete the Early Work and pay such excess cost without reimbursement. If one or more Early Work Amendments are executed, the Construction Manager shall diligently continue to work toward development of a GMP Amendment acceptable to Owner, which shall incorporate the Early Work Amendments.

If the Owner and Architect require the implementation of one or more early construction packages (Early Work), the Owner and Construction Manager shall execute a separate contract amendment (Early Work Amendment) setting forth the scope of work and price of each early construction package. Each Early Work Amendment shall state the price for the scope of early work required by the Early Work Amendment, which shall include the cost of the work, the general conditions and construction manager's fee. All Early Work shall be subject to the trade contractor selection process set forth in this Agreement. In the event that a GMP cannot be successfully negotiated between the Owner and the Construction Manager, trade contractor agreements between the Construction Manager and any trade contractors performing Early Work shall, at the election of the Owner, be assigned to the Owner or to another Construction Manager designated by the Owner, without the assent of the trade contractor. The Owner's designated replacement Construction Manager and the trade contractor shall be bound by the terms of the original trade contractor agreement.

Upon execution of an Early Work Amendment or GMP Amendment, the Construction Manager shall provide Construction Phase Services as provided in the Contract Documents, including without limitation providing and paying for all materials, tools, equipment, labor and professional and non-professional services, and performing all other acts and supplying all other things necessary to fully and properly perform and complete the Work, as required by the Contract Documents, to furnish the Owner a complete, fully functional Project, capable of being legally occupied and fully used for its intended purposes upon completion of the Contract (or, as to an Early Work Amendment, to furnish such Work as is described in the Early Work Amendment).

ARTICLE 7 **TERMINATION OF AGREEMENT**

7.1 If Work on the Project is consecutively stopped for a period of ninety (90) days by an order of any court or other public authority, or as a result of any act of the Government, through no fault of the Construction Manager or any person or entity working directly or indirectly for the Construction Manager,

the Construction Manager may, upon ten (10) days' written notice to the Owner and the Architect, terminate performance of this Agreement.

7.2 If the Owner shall persistently or repeatedly fail to perform any material obligation to the Construction Manager for a period of thirty (30) days after receiving written notice from the Construction Manager of its intent to terminate hereunder, the Construction Manager may, by written notice to the Owner and the Architect, terminate performance of this Agreement.

7.3 The Owner may, by written notice, and for any reason whatsoever, terminate performance by the Construction Manager under this Agreement for convenience. The Construction Manager shall, as the Owner may direct, terminate outstanding orders and Trade Contracts relating to this Agreement and settle the liabilities and claims arising out of the termination of such Trade Contracts and orders. The Construction Manager shall transfer, assign, and deliver title to the Owner of all completed or partially completed Work, materials, fixtures, equipment to be incorporated in the Work, and Trade Contract rights as the Construction Manager has in connection with the terminated Work.

7.4 The Owner may, for cause, terminate this Agreement if the Construction Manager refuses or fails to (a) cause the Work to be prosecuted in a timely manner, (b) cause defective or nonconforming Work to be timely corrected, (c) make prompt payment to Trade Contractors, (d) obey laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or (e) properly perform any other material obligation it has under any of the Contract Documents. Such termination shall be by written notice to the Construction Manager and shall be without prejudice to any other right or remedy of the Owner. If the Owner terminates the employment of the Construction Manager for cause, the Owner may take possession of the site and of all the Work and materials thereon and may finish the Project by whatever methods it deems expedient. In the event of a termination for cause, the Construction Manager hereby assigns to the Owner all outstanding subcontracts, Trade Contracts and purchase orders, such assignment to be effective after termination of this Agreement and Owner's written acceptance of said assignment. In the event of a termination for cause, the Construction Manager shall not be entitled to receive any payment on amounts otherwise due under this Agreement until the Work on the Project is finally complete. If the reasonable cost to complete the Work exceeds the unused balance of the Contract Price, the Owner shall have such rights and remedies as are provided by law.

7.5 In the event of termination by either party not the fault of the Construction Manager, save and except for a termination pursuant to Paragraph 4.2 hereinabove, the Construction Manager shall be paid any portion of the Contract Price then earned and due the Construction Manager. The total sum to be paid the Construction Manager under this Paragraph shall not exceed the total Contract Price reduced by the amount of payments previously made, and shall in no event include duplication of payment, or anticipated profit or consequential damages of any kind or nature.

7.6 Notwithstanding any other provision of this Agreement, prior to termination by either party for cause, the defaulting party shall have seven (7) days (or such longer period as may be provided elsewhere in this Agreement) in which to cure its default.

ARTICLE 8

INSURANCE AND BONDS

8.1 The Construction Manager shall purchase and maintain insurance for protection from claims under workers' or workmen's compensation acts; from claims for damages because of bodily injury, including personal injury, sickness, disease or death of any of the Construction Manager's employees or of any person; from claims for damages because of injury to or destruction of tangible property including loss of use resulting there from; and from claims arising out of the performance of this Agreement and caused by negligent acts for which the Construction Manager is legally liable. The minimum insurance coverage required to be maintained by the Construction Manager is set forth in the attached Exhibit "A" which is incorporated herein by reference. The Construction Manager shall furnish proof of such coverage to the Owner and the Architect prior to commencement of any work under this Agreement.

8.2 The Construction Manager shall provide separate payment and performance bonds within ten (10) days after establishment of the Contract Price and prior to the commencement of any construction on the Project. The penal sum of each bond shall be an amount not less than the Contract Price. Each bond furnished by the Construction Manager shall incorporate by reference the terms of this Agreement as fully as though they were set forth verbatim in such bonds. In the event the Contract Price is adjusted by Change Order executed by the Construction Manager, the penal sum of both the performance bond and the payment bond shall be deemed increased by like amount. The performance and payment bonds furnished by the Construction Manager shall be in such form as may be required by the Owner, or in such other form suitable to the Owner in its sole discretion, and shall be executed by a surety, or sureties, reasonably acceptable to the Owner. All such bonds must conform to all requirements of Georgia Law and must be executed by a surety authorized to do business in the State of Georgia.

If an Early Work Amendment is executed, the Construction Manager shall provide bond in the amount of the Early Work Price under the Early Work Amendment. Construction Manager shall provide to Owner additional or replacement bonds at the time of execution of any subsequent Early Work Amendment or GMP Amendment, in each case prior to execution of the Amendment and the supplying of any labor or materials for the prosecution of the Work covered by the Amendment, and in each case in a sufficient amount so that the total bonded sum equals or exceeds the total Early Work Price or the GMP, as the case may be. In the event of a Change Order that increases the GMP, the Construction Manager shall provide to Owner an additional or supplemental bond in the amount of such increase prior to performance of the additional Work.

8.3 This Agreement contemplates that changes will be made in the Work, and the Surety shall be deemed to have consented to such changes in the Work, as well as to changes in the Contract Time and the Contract Price. However, at the Owner's sole election, the Owner may require the Construction Manager to notify and obtain the written consent and approval of the Construction Manager's surety with reference to any Change Order or other desired action of the Owner.

ARTICLE 9 **CLAIMS**

9.1 All claims by the Construction Manager, including claims for extensions of time and adjustments to the Contract Price, shall be initiated by written notice submitted to the Owner and the Architect. Such written notice must be furnished within seven (7) days after occurrence of the event, or the first appearance of the condition, giving rise to the claim, and same must set forth all facts and circumstances supporting the claim. Pending resolution of any claim of the Construction Manager, the Construction Manager shall diligently proceed with performance of this Agreement and shall maintain separate records documenting the impacts and costs of the occurrence or condition giving rise to the claim, and the Owner shall continue to make payments to the Construction Manager in accordance with this Agreement. The resolution of any claim shall be reflected by a Change Order executed by the Owner, the Architect and the Construction Manager.

9.2 Should concealed and unknown conditions encountered in performance of the Work (a) below the surface of the ground or (b) in an existing structure be at variance with the conditions indicated by the Contract Documents, or should unknown conditions of an unusual nature differing materially from those ordinarily encountered in the area and generally recognized as inherent in Work of the character provided for in the Contract Documents, be encountered, the Contract Price shall be equitably adjusted by Change Order upon the written notice and claim by either party made within seven (7) days after the first observance of the condition. As a condition precedent to the Owner having any liability to the Construction Manager for concealed or unknown conditions, the Construction Manager must give the Owner and the Architect timely written notice of, and an opportunity to observe, the condition prior to disturbing it. The failure by the Construction Manager to make the written notice and claim as provided by this Paragraph shall constitute a waiver by the Construction Manager of any claim arising out of or relating to such concealed or unknown condition.

9.3 If the Construction Manager wishes to make a claim for an increase in the Contract Price, as a condition precedent to any liability of the Owner therefore, the Construction Manager shall give the Owner and the Architect written notice of such claim within seven (7) days after the occurrence of the event, or the first appearance of the condition, giving rise to such claim. Such notice shall be given by the Construction Manager before proceeding to execute any additional or changed Work. The notice required by this Paragraph is a condition precedent to an adjustment in the Contract Price, and the failure to give such notice, prior to executing the Work, shall constitute a waiver of any claim for an adjustment to the Contract Price.

9.4 In connection with any claim by the Construction Manager against the Owner for compensation in excess of the Contract Price, any liability of the Owner for the Construction Manager's cost shall be strictly limited to direct costs incurred by the Construction Manager or applicable Trade Contractor. The Owner shall not be liable to the Construction Manager for claims of third parties, including Trade Contractors, except when such liability is acknowledged by the Owner in writing or unless and until liability of the Construction Manager has first been established therefore in a court of competent jurisdiction. The Construction Manager agrees that it shall not make any claim for an adjustment to the Contract Price resulting from any delay in the completion of the Project if (1) such delay is not caused by a negligent act or breach of this Agreement by the Owner or its agents or (2) the Construction Manager completes the Project on or before the Contract Time. Any acceleration of the performance of the Work shall be first authorized in writing by the Owner. Furthermore, in connection with any claim by the Construction Manager against the Owner for cost or expense in excess of the Contract Price, any liability of the Owner shall be strictly limited to direct cost incurred by the Construction Manager or applicable Trade Contractor and shall in no event include indirect cost or consequential damages of the Construction Manager or Trade Contractor, including but not limited to, home office overhead or expense, loss of efficiency, lost profits, loss of use of capital, or loss of bonding capacity.

9.5 If the Construction Manager or any Trade Contractor is delayed in progressing any task which at the time of the delay is then critical, or which during the delay becomes critical, as the sole result of any act or neglect to act by the Owner or someone acting in the Owner's behalf, or by changes ordered in the Work, unreasonable and unanticipated delays in completion of the design documents, unusual and unreasonable delays in obtaining any approval from a State or local governing agency or authority, unusual delay in transportation, unusually adverse weather conditions not reasonably anticipatable, fire or any causes beyond the Construction Manager's or Trade Contractor's control, then the Contract Time shall be extended upon the written notice and claim of the Construction Manager to the Owner and the Architect, for such reasonable time as the Owner may determine. For purposes of this Agreement, and for purposes of extensions of the Contract Time, the Construction Manager agrees that it anticipates adverse weather sufficient to prevent Work in accordance with the schedule set for herein below, and the Construction Manager further agrees that unless it encounters actual adverse weather in excess of those days set forth herein below, it shall not make, nor shall it be entitled to, any extension of the Contract Time:

January - 22 days	May - 4 days	September - 4 days
February - 16 days	June - 6 days	October - 5 days
March - 11 days	July - 8 days	November - 9 days
April - 7 days	August - 6 days	December - 15 days

The loss of Project float will not be cause for an extension of the Contract Time, and all such float shall be owned by the Project and used to avoid, or compensate for, any delays. Any notice and claim for an extension of time by the Construction Manager shall be made not more than seven (7) days after the occurrence of the event or the first appearance of the condition giving rise to the claim and shall set forth in detail the Construction Manager's basis for requiring additional time in which to complete the Project. The notice required herein is a condition precedent to an adjustment in the Contract Time, and if the Construction Manager fails to make such claim as required in this Paragraph any claim for an extension of time shall be waived.

ARTICLE 10
OTHER GENERAL CONDITIONS OF AGREEMENT

10.1 The Construction Manager accepts the relationship of trust and confidence established between the Construction Manager and the Owner by this Agreement. The Construction Manager covenants with the Owner to furnish its best professional skill and judgment and to cooperate with the Architect in furthering the interest of the Owner. The Construction Manager agrees to furnish efficient business administration and superintendence and to use its best efforts to furnish at all times an adequate supply of manpower and materials, and to perform the Work in the best and soundest way and in the most expeditious and economical manner consistent with the interests of the Owner.

10.2 The Construction Manager agrees to make available for inspection and copying by the Owner or the Owner's designated representative all records held by the Construction Manager pertaining to the Project at the Construction Manager's office. Such documents include, but are not limited to, all drawings, plans, specifications, submittals, correspondence, minutes, memoranda, tape recordings, videos, or other writings or things which document the Project, its design and construction, and the construction costs associated therewith. The Construction Manager shall maintain and protect these documents for no less than three (3) years after final completion of the Project, or for any longer period of time as may be required by law. The requirements of this Paragraph shall be incorporated into all contracts with any Trade Contractor. Records of construction costs shall be kept on the basis of generally accepted accounting principles.

10.3 The Construction Manager agrees to cause errors and omissions in the Work to be promptly corrected so that the progress of the Project will not be impeded.

10.4 Ten (10) sets of the plans and specifications required for cost estimates, reviews, and bid procurement shall be provided to the Construction Manager, free of charge. Additional sets may be purchased by the Construction Manager at its sole cost and expense.

10.5 Prior to the submission of its Guaranteed Maximum Price in accordance with Paragraph 4.1 hereinabove, the Construction Manager shall read, carefully study and compare each of the Contract Documents and shall give written notice to the Owner and the Architect of any inconsistency, ambiguity, error or omission which the Construction Manager may discover with respect to such documents. The issuance, or the express or implied approval by the Owner or the Architect, of the Contract Documents, shall not relieve the Construction Manager of its duties imposed hereby, nor shall any such approval be evidence of the Construction Manager's compliance with this Agreement. The Owner makes no representation or warranties of any nature to the Construction Manager concerning the Contract Documents. By submission of its Guaranteed Maximum Price, the Construction Manager acknowledges and represents that it has received, reviewed and carefully examined such documents, has found them to be reasonably complete, accurate, adequate, consistent, coordinated and sufficient for construction.

10.6 In the event of any conflict, discrepancy, or inconsistency, among any of the Contract Documents, the following hierarchy shall control: (a) as between figures given on drawings and the scaled measurements, the figures shall govern; (b) as between large scale drawings and small scale drawings, the large scale shall govern; (c) as between drawings and specifications, the requirements of the specifications shall govern; and, (d) as between this Agreement and the specifications, the requirements of this Agreement shall govern. As set forth hereinabove, any and all conflicts, discrepancies, or inconsistencies shall be immediately reported to the Architect in writing by the Construction Manager.

10.7 If the Construction Manager, or any Trade Contractor, persistently fails or refuses to perform Work in accordance with the requirements of the Contract Documents, the Owner may order the Construction Manager, or such Trade Contractor, to stop the Work, or any described portion thereof, until the cause for stoppage has been corrected, no longer exists, or the Owner orders that Work be resumed. In such event, the Construction Manager or Trade Contractor shall immediately obey such order.

10.8 In the event the Construction Manager or any of the Trade Contractors fails to diligently prosecute any Work, or fails to correct any deficient or defective work, the Owner, after first providing three (3) days notice to the Construction Manager, may, without prejudice to any other rights or remedies the Owner may have against the Construction Manager, proceed to carry out the subject Work. In such situation, an appropriate Change Order shall be issued deducting from the Contract Price the cost of performing or correcting the subject Work, plus compensation for the Architect's additional services and expenses necessitated thereby, if any. If the unpaid portion of the Contract Price is insufficient to cover the amount due the Owner, the Construction Manager shall pay the difference to the Owner.

10.9 The Construction Manager shall employ and maintain at the Project site only competent supervisory personnel. Absent written instruction from the Construction Manager to the contrary, the Construction Manager's superintendent shall be deemed the Construction Manager's authorized representative at the site and shall be authorized to receive and accept any and all communications from the Owner or the Architect. Key supervisory personnel assigned by the Construction Manager to this Project are as follows:

NAME	FUNCTION
_____	_____
_____	_____
_____	_____
_____	_____

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

10.10 The Construction Manager shall be responsible for keeping the site reasonably clean during the performance of the Work. Upon final completion of the Work, the Construction Manager shall clean the site and the Project and shall remove all waste, together with all of the Construction Manager's property there from.

10.11 In the event the Construction Manager breaches any of its obligations as set forth in this Agreement, and in the further event the Owner is required to retain legal counsel as a result of such breach, the Construction Manager shall be liable to the Owner for any and all legal fees thus incurred and any and all court costs, expert witness fees, or other expenses of litigation arising out of, or resulting from, such breach.

10.12 The Owner and Architect shall have access to the Work at all times from commencement of the Work through final completion. The Construction Manager shall take whatever steps necessary to provide access when requested.

10.13 THE DUTIES, OBLIGATIONS AND RESPONSIBILITIES OF THE CONSTRUCTION MANAGER UNDER THIS AGREEMENT SHALL IN NO MANNER WHATSOEVER BE CHANGED, ALTERED, DISCHARGED, RELEASED OR SATISFIED BY ANY DUTY, OBLIGATION OR RESPONSIBILITY OF THE ARCHITECT. THE CONSTRUCTION MANAGER IS NOT A THIRD-PARTY BENEFICIARY OF ANY AGREEMENT BY AND BETWEEN THE OWNER AND ARCHITECT. IT IS EXPRESSLY ACKNOWLEDGED AND AGREED THAT THE DUTIES OF THE CONSTRUCTION MANAGER TO THE OWNER ARE INDEPENDENT OF, AND ARE NOT DIMINISHED BY, ANY DUTIES OF THE ARCHITECT TO THE OWNER.

10.14 If any of the Work is covered contrary to the Architect's request or to any provisions to this Agreement, it shall, if required by the Architect or the Owner, be uncovered for the Architect's inspection and shall be properly replaced at the Construction Manager's expense without change in the Contract Time.

10.15 If the Owner chooses to accept defective or nonconforming Work, the Owner may do so. In such event, the Contract Price shall be reduced by the lesser of (a) the reasonable cost of removing and correcting the defective or nonconforming Work, or (b) the difference between the fair market value of the Project as constructed and the fair market value of the Project had it not been constructed in such a manner as to include defective or nonconforming Work. If the remaining portion of the unpaid Contract Price, if any, is insufficient to compensate the Owner for its acceptance of defective or nonconforming Work, the Construction Manager shall, upon written demand from the Owner, pay the Owner such remaining compensation for accepting defective or nonconforming Work.

10.16 The Owner shall have the right at any time to direct the Construction Manager and the Trade Contractors to suspend performance, or any designated part thereof, for any reason whatsoever, or without reason, for a cumulative period of up to thirty (30) calendar days. If any such suspension is directed by the Owner, the Construction Manager and Trade Contractors shall immediately comply with same. In the event the Owner directs a suspension of performance under this Paragraph, through no fault of the Construction Manager or any Trade Contractor, the Owner shall pay the Construction Manager as full compensation for such suspension Construction Manager's reasonable costs, actually incurred and paid, of:

- A. Demobilization and remobilization, including such costs paid to Trade Contractors;
- B. Preserving and protecting Work in place;
- C. Storage of materials or equipment purchased for the Project, including insurance thereon; and,
- D. Performing in a later, or during a longer, time frame than contemplated by this Agreement.

ARTICLE 11 MISCELLANEOUS PROVISIONS

11.1 This Contract shall be governed, construed and enforced in accordance with Georgia law. All actions arising out of, or in any way connected with this Agreement shall be litigated and decided in the Superior Court of Bibb County, which court shall have exclusive jurisdiction of same, and the Construction Manager hereby submits itself to the jurisdiction and venue of that court and waives any rights to insist upon venue or jurisdiction elsewhere or raise any such defenses in any such action. At the sole discretion of the Owner, it is agreed that any claim or dispute between the parties may be submitted to non-binding Mediation.

11.2 To the fullest extent permitted by law, the Construction Manager shall indemnify and hold harmless the Owner from and against liability, claims, damages, losses and expenses, including attorneys' fees and expenses, and fees and expenses of experts, arising out of or resulting from any breach of this Agreement or from any performance of the Work, including but not limited to, such liability, claims, damage, loss or expense attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property including loss of use resulting there from, but only to the extent caused in whole or in part by any breach of contract or any negligent acts or omissions of the Construction Manager, a Trade Contractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such liability, claim, damage, loss or expense is caused in part by the party indemnified hereunder. In claims against any person or entity indemnified under this Paragraph by an employee of the Construction Manager, a Trade Contractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Paragraph shall not be limited by any limitation on amount or type of damages, compensation or benefits

payable by or for the Construction Manager or Trade Contractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

11.3 The Owner and the Construction Manager, respectively bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement, and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. The Construction Manager shall not assign, sublet or transfer any interest in this Agreement without the written consent of the Owner.

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

This Agreement is entered on the date of the last party to execute same.

Executed this _____ day of _____, 20_____.

Samuel F. Hart, Sr.
Chairman, Bibb County Board of Commissioners

Attest: Shelia Thurmond
Clerk, Bibb County Board of Commissioners

Construction Manager

Sworn to and subscribed before me this _____
day of _____, 20____

Name

Notary Public

Title

[SEAL]

EXHIBIT A
INSURANCE REQUIREMENTS

Insurance Certificates. The Construction Manager shall, in accordance with 2.1.2.2, procure the insurance coverages identified below at the Construction Manager's expense (e.g. within the bid price and Contract Sum) and shall furnish the Owner an insurance certificate listing the Owner as the certificate holder and as an additional insured. Evidence of the insurance coverages shall be provided on the form shown in Section 7 or on a form acceptable to the Owner. The insurance certificate must provide the following:

- (a) Name and address of authorized agent
- (b) Name and address of insured
- (c) Name of insurance company(ies)
- (d) Description of policies
- (e) Policy Number(s)
- (f) Policy Period(s)
- (g) Limits of liability
- (h) Name and address of 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 nonpayment).

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 shall contain the following provisions:

The insurance company agrees that the policy shall not be canceled, changed, allowed to lapse or allowed to expire until thirty (30) days after the Owner has received written notice thereof, as evidenced by return receipt of certified mail or statutory mail, or until such time as other insurance coverage providing protection equal to protection called for in this Contract shall have been received, accepted and acknowledged by the Owner. Such notice shall be valid only as to the Project as shall have been designated by Project Number and Name in said notice.

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

Each Insurer is hereby noticed 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 Construction Manager 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.

All deductibles shall be paid for by the Construction Manager.

Required Insurance Coverages. The Construction Manager also agrees to purchase and have the authorized agent state on the insurance certificate that the Construction Manager has purchased the following types of insurance coverages, consistent with the policies and requirements of O.C.G.A. 50-21-37.

The minimum required coverages and liability limits are as follows:

1. Workers' Compensation Insurance. The Construction Manager 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 contractor qualifies to pay its own workers' compensation claims. The Construction Manager shall require all Trade Contractors/Subcontractors performing work under this Contract to obtain an insurance certificate showing proof of Workers' compensation Coverage and shall submit a certificate on the letterhead of the Construction Manager in the following language:

This is to certify that all trade contractors/subcontractors performing work on this Project are covered by their own workers' compensation insurance or are covered by the Construction Manager's workers' compensation insurance.

2. Employers' Liability Insurance. The Construction Manager shall also maintain Employer's Liability Insurance Coverage with limits of at least:

(i)	Bodily Injury by Accident	\$1,000,000 each accident
(ii)	Bodily Injury by Disease	\$1,000,000 each employee; and
(iii)	Bodily Injury/Disease Aggregate	\$1,000,000 each accident

The Construction Manager shall require all Trade Contractors/Subcontractors performing work under this Contract to obtain an insurance certificate showing proof of Employers Liability Insurance Coverage and shall submit a certificate on the letterhead of the Construction Manager in the following language;

This is to certify that all trade contractors/subcontractors performing work on this Project are covered by their own Employers Liability Insurance Coverage or are covered by the Construction Manager's Employers Liability Insurance Coverage.

3. Commercial General Liability Insurance. The Construction Manager shall provide Commercial General Liability Insurance (2001 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, lasting 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	Limits
1.	Premises and Operations	\$1,000,000 per Occurrence
2.	Products and Completed Operations	\$1,000,000 per Occurrence
3.	Personal Injury	\$1,000,000 per Occurrence
4.	Contractual	\$1,000,000 per Occurrence
5.	General Aggregate	\$2,000,000 per Project

Additional Requirements for Commercial General Liability Insurance are as follows:

4. Commercial business Automobile Liability Insurance. The Construction Manager 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 accident.

Additional Requirements for Commercial Business Automobile Liability Insurance are as follows:

5. Commercial Umbrella Liability Insurance. The Construction Manager 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:

For contract Amounts Less Than \$5,000,000:

\$2,000,000 per Occurrence
\$4,000,000 Aggregate

For Contract Amounts Equal to or Greater than \$5,000,000:

\$2,000,000 per Occurrence
\$10,000,000 Aggregate

Additional Requirements for Commercial Umbrella Liability Insurance are as follows:

Additional Requirements for Commercial Policies

- (a) The policy shall name as additional Insureds the officers, members, and employees of the Owner and the Using Agency.
- (b) The policy must be on an "occurrence" basis.

6. Builders Risk Insurance. Construction Manager shall provide a Builder's Risk Policy to be made payable to the Owner and contractor, as their interests may appear. The policy amount should be equal to 100% of the Contract Sum, 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 that 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 Contractors of the Owner or Using Agency.*

In the event that the contract is for renovation, addition or modification of an existing structure and Builders Risk Insurance is not available, the Owner will accept an Installation Floater Insurance Policy with the above endorsement in lieu of the Builders' Risk Insurance Policy. Such floater must insure loss to materials and equipment prior to acceptance by Owner and must be on an ALL RISK BASIS with the policy written on a specific job site.

Disposition of Insurance Documents. One original certificate of insurance with all endorsements attached must be deposited with Owner for each insurance policy required.

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 has executed the Certificate of Material Completion.

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