

# DRAFT AIA® Document B133® – 2019

## Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition

**AGREEMENT** made as of the « » day of « » in the year « »  
(In words, indicate day, month and year.)

**BETWEEN** the Architect's client identified as the Owner:  
(Name, legal status, address, and other information)

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

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

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The Construction Manager (if known):  
(Name, legal status, address, and other information)

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The Owner and Architect agree as follows.

### ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

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

This document is intended to be used in conjunction with AIA Documents A201-2017™, General Conditions of the Contract for Construction; A133-2019™ Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price; and A134-2019™ Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee without a Guaranteed Maximum Price. AIA Document A201™-2017 is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

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### ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1 and all requirements reasonably inferable from the Initial Information in this Section 1.1.

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

§ 1.1.1 The Owner's program for the Project:

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

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§ 1.1.2 The Project's physical characteristics:

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

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§ 1.1.3 The Owner's budget for the Cost of the Work, as defined in Section 6.1:

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

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

.1 Design phase milestone dates, if any:

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.2 Construction commencement date:

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.3 Substantial Completion date or dates:

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.4 Other milestone dates:

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§ 1.1.5 The Owner intends to retain a Construction Manager pursuant to the following agreement:  
(Indicate agreement type.)

[ **X** ] AIA Document A133–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price.

§ 1.1.6 The Owner's requirements for accelerated or fast-track design and construction, or phased construction are set forth below:  
(List number and type of bid/procurement packages.)

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

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

§ 1.1.8 The Owner identifies the following representative in accordance with Section 5.4:  
(List name, address, and other contact information.)

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

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§ 1.1.10 [Intentionally Deleted].

§ 1.1.11 The Architect identifies the following representative in accordance with Section 2.4:  
(List name, address, and other contact information.)

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§ 1.1.12 The Architect shall retain the consultants necessary for the full and complete performance of its services, including, but not limited to, those identified in Section 1.1.12.1 below:  
(List name, legal status, address, and other contact information.)

§ 1.1.12.1 Consultants retained under Basic Services:

.1 Structural Engineer:

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.2 Mechanical Engineer:

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.3 Electrical Engineer:

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.4 Land Surveyor:

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.5 Geotechnical Engineer:

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**.6 Civil Engineer:**



**.7 Other, if any:**

*(List any other consultants and contractors retained by the Architect.)*

**§ 1.1.13 Other Initial Information on which the Agreement is based:**

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**§ 1.2** The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that the Initial Information may materially change and, in that event, the Owner and the Architect shall evaluate whether such change requires an adjustment to the Architect's services, schedule for the Architect's services, and the Architect's compensation. The Owner may adjust the Owner's budget for the Cost of the Work and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

**§ 1.3** The parties shall agree upon written protocols governing the transmission and use of, and reliance on, Instruments of Service or any other information or documentation in digital form.

**§ 1.3.1** Any use of, or reliance on, all or a portion of a building information model without agreement to written protocols governing the use of, and reliance on, the information contained in the model shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

**ARTICLE 2 ARCHITECT'S RESPONSIBILITIES**

**§ 2.1** The Architect shall provide professional services as set forth in this Agreement. The Architect represents that it is properly licensed in the jurisdiction where the Project is located to provide the services required by this Agreement, or shall cause such services to be performed by appropriately licensed design professionals. The Architect shall provide an adequate supply of properly licensed and experienced personnel during each phase of Services described this Agreement as are necessary or required to complete the architectural and engineering services required for the Project in a professional, timely, and economical manner consistent with the Project schedule. The Architect's personnel shall not be employees of the Owner. The Architect further represents that all of the services required hereunder will be performed by the Architect or under its supervision, as applicable. All personnel so engaged shall be fully qualified and shall be authorized under State or local law to perform such services.

**§ 2.2** The Architect acknowledges and accepts the relationship of trust and confidence established between it and the Owner by this Agreement. The Architect shall perform its services consistent with the highest degree of professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances (the "Standard of Care"). The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

**§ 2.3** The Architect shall provide its services in conjunction with the services of a Construction Manager as described in the agreement identified in Section 1.1.5. The Architect shall not be responsible for actions taken by the Construction Manager.

**§ 2.4** The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project. The Architect's representative and key personnel assigned to each phase of the Project shall not be removed or replaced without the Owner's prior written consent, except in the event of death, disability, or termination of employment with the Architect. Although the Architect may assign qualified personnel of their choosing to the Project, the Owner may direct the Architect to remove, and the Architect shall remove, any personnel whom the Owner deems unsuitable in qualifications, performance, or conduct, and the Owner shall have the right to approve all replacements.

§ 2.5 Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.

§ 2.6 Insurance. The Architect shall maintain the following insurance coverages with a carrier licensed to provide such coverage in the State of Georgia and in forms and amounts satisfactory to the Owner as set forth below at all times during the performance of the Services and until expiration of a period of ten (10) years from the date of Substantial Completion of construction of the Project. Unless otherwise approved by the Owner in writing, the Architect shall ensure that any and all subconsultants engaged or employed by the Architect shall carry and maintain the same insurance for the same period as required of Architect under this Agreement. The maintenance in full current force and effect of such coverage shall be a condition precedent to the Owner's obligation to pay under this Agreement. The insurance policies shall incorporate a provision requiring written notice to the Owner at least thirty (30) days prior to any cancellation, nonrenewal, or material modification of the policies. No policies shall specify a deductible for more than \$25,000.00 per claim or occurrence.

§ 2.6.1 Commercial General Liability with policy limits of not less than « Two Million Dollars » (\$ « 2,000,000 » ) for each occurrence and « Four Million Dollars » (\$ « 4,000,000 » ) in the aggregate for bodily injury and property damage.

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

§ 2.6.3 The Architect may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 2.6.1 and 2.6.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 2.6.4 Workers' Compensation at statutory limits.

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

§ 2.6.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than « Five Million Dollars » (\$ « 5,000,000 » ) per claim and « Five Million Dollars » (\$ « 5,000,000 » ) in the aggregate. Such policy shall also include coverage for losses arising from the breach of information security or cyber liability (including Errors & Omissions, Security and Privacy Liability and Media Liability), whether combined with the Professional Liability policy or placed as a separate policy, but carrying the same limits of liability. Such coverage shall insure damage, injury and loss caused by error, omission or negligent acts, including all prior acts without limitation, related to the professional services to be provided under this Agreement. The policy shall be amended to include independent contractors or consultants providing professional services on behalf of or at the direction of the the Architect. The definition of Contractual Liability shall be amended to state that liability under a contract of professional services is covered. Further, coverage shall be afforded for fraudulent acts, misappropriation of trade secrets, internet professional services, computer attacks, personal injury, regulatory actions, wrongful acts, contractual liability, privacy policy, and insured versus insured.

§ 2.6.7 Umbrella or excess liability coverage on a follow-form basis with policy limits excess of Employer's Liability Insurance, Commercial General Liability Insurance, and Automobile Liability Insurance in an amount of not less than Five Million Dollars (\$5,000,000.00).

§ 2.6.8 Fidelity Bond (Employee Dishonesty) in the sum of not less than \$50,000.

§ 2.6.9 Additional Insured Obligations. To the fullest extent permitted by law, the Architect shall cause the primary and excess or umbrella policies for Commercial General Liability and Automobile Liability to include the Owner as an

additional insured for claims caused in whole or in part by the Architect's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to both ongoing and completed operations.

§ 2.6.10 The Architect shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 2.6 upon execution of this Agreement and at every date for renewal for each policy. Provision of a valid Certificate of Insurance that meets the requirements of this Agreement is a condition precedent to the payment of any amounts due to the Architect by the Owner.

**Certificate Holder should read EXACTLY:**

**The City of Doraville  
3725 Park Avenue  
Doraville, Georgia 30340**

**ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES**

§ 3.1 The Architect's Basic Services consist of those described in this Article 3, Article 4, and the attached Exhibit A, and include usual and customary structural, mechanical, geotechnical, civil, life safety, plumbing, electrical, and other engineering services of all Consultants listed in Section 1.1.12.1 above. Services not set forth in this Article 3 may be Additional Services.

§ 3.1.1 The Architect shall manage the Architect's services, research applicable design criteria, attend Project meetings, communicate with members of the Project team, and report progress to the Owner. The Architect shall attend meetings, take appropriate minutes, distribute minutes to Owner, attendees and interested parties, and otherwise explain its work product as may be necessary to its implementation.

§ 3.1.2 The Architect shall coordinate the services of all design consultants relating to the Project, including those services provided by any consultants retained by the Owner. The Architect shall also coordinate its services with those services provided by the Owner and the Construction Manager. The Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of, services and information furnished by the Owner and the Construction Manager, except to the Architect knows or should know in the exercise of the Standard of Care of any error, inconsistency, or omission in the the accuracy, completeness, or timeliness of such services or information. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware or should reasonably be aware in the exercise of the Standard of Care of any error, omission, or inconsistency in such services or information.

§ 3.1.3 Time is of the essence of this Agreement. As soon as practicable after the date of this Agreement, the Architect shall submit, for the Construction Manager's review and the Owner's approval, a schedule for the performance of the Architect's services ("Design Schedule"). The Design Schedule shall include design phase milestone dates, as well as the anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's review, for the Construction Manager's review, for the performance of the Construction Manager's Preconstruction Phase services, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not be exceeded by the Architect without the Owner's written approval. The Architect is responsible for the timely performance of its design and administrative services under this Agreement in accordance with the Design Schedule. With the Owner's written approval, the Architect may adjust the schedule, if necessary, as the Project proceeds until the commencement of construction. The Architect acknowledges and agrees, absent fault of the Owner or *force majeure*, that if the agreed-upon design milestones in the Design Schedule are not met, the Architect will, at its own expense, accelerate its work, accelerate or replace delinquent consultants, and retain such additional resources as necessary to return the Project to the Design Schedule. If the completion of the Project is delayed by reason of acts, omissions, or failures of the Architect to maintain the Design Schedule, the Architect shall further reimburse and fully indemnify the Owner against all reasonable costs, expenses, liabilities, or damages resulting from such delay.

§ 3.1.3.1 Upon approval by Owner of the Construction Schedule as contemplated by the A201-2017 General Conditions of the Owner's contract with the Construction Manager, the Design Schedule shall be amended to include the Construction Progress Schedule. The amended schedule will become the Overall Project Schedule, which shall be utilized by the Architect, Owner, and Contractor. The Architect acknowledges and agrees, absent fault of the Owner or *force majeure*, that if the agreed-upon Overall Project Schedule is delayed due to the acts, omissions, fault or failure of

the Architect, the Architect will, at its own expense, accelerate its work, accelerate or replace delinquent consultants, and retain such additional resources as necessary to return the Project to compliance with the Overall Project Schedule. If the completion of the Project is delayed by reason of acts, omissions, or failures of the Architect to maintain the Overall Project Schedule, the Architect shall further reimburse and fully indemnify the Owner against all reasonable costs, expenses, liabilities, or damages resulting from such delay.

§ 3.1.4 The Architect shall submit information to the Construction Manager and participate in developing and revising the Project schedule as it relates to the Architect's services. The Architect shall review and approve, or take other appropriate action upon, the portion of the Project schedule relating to the performance of the Architect's services.

§ 3.1.5 The Architect acknowledges and agrees that the Owner does not undertake to approve or pass upon matters of professional service and the Owner, therefore, assumes no responsibility for such. The Design Professional acknowledges and agrees that the Owner's approval or acceptance of the Design Professional's services is limited to the function of determining whether there has been compliance with the Owner's Program. The Owner does not undertake to inquire into the adequacy, fitness, or correctness of Professional Services. The Design Professional agrees that no approval of services by any person, body, or agency shall relieve the Design Professional of its responsibility for the adequacy, fitness, suitability, and/or correctness of its Professional Services.

§ 3.1.6 The Architect shall, in coordination with the Construction Manager, contact governmental authorities required to approve the Construction Documents and entities providing utility services to the Project. The Architect submit drawings, specifications, and other documents, as required, to utilities and governmental and quasi-governmental authorities and agencies having jurisdiction over the Project. The Architect shall respond to applicable design requirements imposed by those authorities and entities and make changes to the design documents that are required as a result of their review by governmental authorities or utilities having jurisdiction over the Project.

§ 3.1.7 The Architect shall assist the Owner and Construction Manager in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

§ 3.1.8 Prior to the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Architect shall consider the Construction Manager's requests for substitutions and, upon written request of the Construction Manager, provide clarification or interpretations pertaining to the Drawings, Specifications, and other documents submitted by the Architect. The Architect and Construction Manager shall include the Owner in communications related to substitution requests, clarifications, and interpretations.

§ 3.1.9 The Architect shall review all information provided by the Owner and the Owner's Consultants, and if the Architect discovers any errors or inadequacies, or if the Architect requires any additional information to perform its services, the Architect shall notify the Owner promptly in writing. The Architect shall be entitled to rely on the accuracy and completeness of services and information furnished by the Owner and the Owner's consultants, unless the Architect knows, or under the Standard of Care should have known, that such information is not complete or accurate. The Owner acknowledges that the Architect's duties do not include verification or confirmation of information, material, or data provided by the Owner, except to the extent the Architect has reasonable cause to question the completeness or accuracy of such information (in which case the Architect shall notify the Owner in writing and seek direction from the Owner as to whether to provide such verifications or confirmation as an Additional Service.)

§ 3.1.10 Throughout the course of the Project and as part of its Basic Services, the Architect in compliance with all applicable laws and the Standard of Care shall coordinate the drawings and specifications for program and code compliance and to minimize conflicts, errors, omissions, and ambiguities.

## **§ 3.2 Review of the Construction Manager's Guaranteed Maximum Price Proposal**

§ 3.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager, the Construction Manager shall prepare, for review by the Owner and Architect, and for the Owner's acceptance or approval, a Guaranteed Maximum Price proposal. The Architect shall assist the Owner in reviewing the Construction Manager's proposal. The Architect's review is not for the purpose of discovering errors, omissions, or inconsistencies; for the assumption of any responsibility for the Construction Manager's proposed means, methods, sequences, techniques, or procedures; or for the verification of any estimates of cost or estimated cost proposals. In the event that the Architect discovers any inconsistencies or inaccuracies in the information presented, the Architect shall promptly notify the Owner and Construction Manager in writing.



§ 3.2.2 Upon authorization by the Owner as part of Basic Services, the Architect shall update the Drawings, Specifications, and other documents to incorporate the agreed upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment.

### § 3.3 Schematic Design Phase Services

§ 3.3.1 The Architect shall review the program, , the physical condition of the project site, all existing structures on the Project site, and other information furnished by the Owner and Construction Manager, and shall review laws, codes, and regulations applicable to the Architect's services.

§ 3.3.2 The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

§ 3.3.3 The Architect shall present its preliminary evaluation to the Owner and Construction Manager and shall discuss with the Owner and Construction Manager alternative approaches to design and construction of the Project. The Architect shall reach an understanding with the Owner regarding the requirements of the Project.

§ 3.3.4 Based on the Project requirements agreed upon with the Owner, the Architect shall prepare and present, to the Owner and Construction Manager, for the Owner's approval, a preliminary design illustrating the scale and relationship of the Project components.

§ 3.3.5 Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for Construction Manager's review and the Owner's approval. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital representations. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

§ 3.3.5.1 The Architect shall consider sustainable design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain more advanced sustainable design services as a Supplemental Service under Section 4.1.

§ 3.3.5.2 The Architect shall consider with the Owner and the Construction Manager the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics, in developing a design for the Project that is consistent with the Owner's program, schedule, and budget for the Cost of the Work.

§ 3.3.6 The Architect shall submit the Schematic Design Documents to the Owner and the Construction Manager. The Architect shall meet with the Construction Manager to review the Schematic Design Documents.

§ 3.3.7 Upon receipt of the Construction Manager's review comments and cost estimate at the conclusion of the Schematic Design Phase, the Architect shall take action as required under Section 6.4, and request the Owner's approval of the Schematic Design Documents. If revisions to the Schematic Design Documents are required to comply with the Owner's budget for the Cost of the Work at the conclusion of the Schematic Design Phase, the Architect shall incorporate the required revisions in the Design Development Phase.

§ 3.3.8 In the further development of the Drawings and Specifications during this and subsequent phases of design, the Architect shall be entitled to rely on the accuracy of the estimates of the Cost of the Work, which are to be provided by the Construction Manager under the Construction Manager's agreement with the Owner.

### § 3.4 Design Development Phase Services

§ 3.4.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Design Development Documents for the Construction Manager's review and the Owner's approval. The Design Development Documents shall be based upon information provided, and estimates prepared by, the Construction Manager and shall

illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and other appropriate elements. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish in general their quality levels.

**§ 3.4.2** Prior to the conclusion of the Design Development Phase, the Architect shall submit the Design Development Documents to the Owner and the Construction Manager. The Architect shall meet with the Construction Manager to review the Design Development Documents.

**§ 3.4.3** Upon receipt of the Construction Manager's information and estimate at the conclusion of the Design Development Phase, the Architect shall take action as required under Sections 6.5 and 6.6 and request the Owner's approval of the Design Development Documents.

### **§ 3.5 Construction Documents Phase Services**

**§ 3.5.1** Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Construction Manager's review and the Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels and performance criteria of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that, in order to perform the Work, the Construction Manager will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.6.4.

**§ 3.5.2** The Architect shall incorporate the design requirements of governmental authorities having jurisdiction over the Project into the Construction Documents.

**§ 3.5.3** During the development of the Construction Documents, if requested by the Owner, the Architect shall assist the Owner and Construction Manager in the development and preparation of (1) the Conditions of the Contract for Construction (General, Supplementary and other Conditions) and (2) a project manual that includes the Conditions of the Contract for Construction and Specifications, and may include sample forms.

**§ 3.5.4** Prior to the conclusion of the Construction Documents Phase, the Architect shall submit the Construction Documents to the Owner and the Construction Manager. The Architect shall meet with the Construction Manager to review the Construction Documents.

**§ 3.5.5** Upon receipt of the Construction Manager's information and estimate at the conclusion of the Construction Documents Phase, the Architect shall take action as required under Section 6.7, and request the Owner's approval of the Construction Documents.

### **§ 3.6 Construction Phase Services**

#### **§ 3.6.1 General**

**§ 3.6.1.1** The Architect shall provide administration of the Contract between the Owner and the Construction Manager as set forth below and in AIA Document A201™-2017, General Conditions of the Contract for Construction, as modified by Owner and Construction Manager. The term "Contractor" as used in A201-2017 shall mean the Construction Manager.

**§ 3.6.1.2** Subject to Section 4.2, the Architect's responsibility to provide Construction Phase Services commences upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal or by a written agreement between the Owner and Construction Manager which sets forth a description of the Work to be performed by the Construction Manager prior to such acceptance or approval. Subject to Section 4.2, and except as provided in Section 3.6.6.5, the Architect's responsibility to provide Construction Phase Services terminates on the date the Architect issues the final Certificate for Payment.

**§ 3.6.1.3** The Architect shall advise and consult with the Owner and Construction Manager during the Construction Phase Services. . The Architect is not a representative or agent of the Owner, and has no authority to act on behalf of the

Owner unless otherwise specifically directed by the Owner in writing. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Construction Manager's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's acts or omissions and the acts and omissions of its Consultants..

### **§ 3.6.2 Evaluations of the Work**

**§ 3.6.2.1** The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.2.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner in writing within two (2) days of observation all (1) known or discovered deviations from the Contract Documents, (2) known or discovered deviations from the most recent Construction Schedule submitted by the Construction Manager, and (3) known or discovered defects and deficiencies observed in the Work.

**§ 3.6.2.2** The Architect has the authority to reject Work that does not conform to the Contract Documents with prior written notice to the Owner. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Construction Manager, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

**§ 3.6.2.3** The Architect shall interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Construction Manager. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

**§ 3.6.2.4** Interpretations and decisions of the Architect shall be consistent with the intent of, and reasonably inferable from, the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both Owner and Construction Manager, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith. The Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

### **§ 3.6.3 Certificates for Payment to Construction Manager**

**§ 3.6.3.1** The Architect shall review and certify the amounts due the Construction Manager and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Construction Manager's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Construction Manager is entitled to payment in the amount certified. The foregoing representations are subject to (1) an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) results of subsequent tests and inspections, (3) correction of minor deviations from the Contract Documents prior to completion, and (4) specific qualifications expressed by the Architect.

**§ 3.6.3.2** The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Construction Manager's right to payment, or (4) ascertained how or for what purpose the Construction Manager has used money previously paid on account of the Contract Sum.

**§ 3.6.3.3** The Architect shall maintain a record of the Applications and Certificates for Payment.

#### **§ 3.6.4 Submittals**

**§ 3.6.4.1** The Architect shall review the Construction Manager's submittal schedule and shall not unreasonably delay or withhold approval of the schedule. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, within five (5) business days after receipt..

**§ 3.6.4.2** The Architect shall review and approve, or take other appropriate action upon, the Construction Manager's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Construction Manager's responsibility. The Architect's review shall not constitute approval of safety precautions or construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

**§ 3.6.4.3** If the Contract Documents specifically require the Construction Manager to provide professional design services or certifications by a design professional related to systems, materials, or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review and take appropriate action on Shop Drawings and other submittals related to the Work designed or certified by the Construction Manager's design professional, provided the submittals bear such professional's seal and signature when submitted to the Architect. The Architect's review shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect shall be entitled to rely upon, and shall not be responsible for, the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals; provided however the Architect shall review such services, certificates, or approvals and the Architect shall notify the Owner in writing if the Architect becomes aware that such services, certifications or approvals are inadequate, inaccurate, or incomplete.

**§ 3.6.4.4** Subject to Section 4.2, the Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth, in the Contract Documents, the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise within five (5) business days of receipt of the request for information. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to the requests for information as part of Basic Services.

**§ 3.6.4.5** The Architect shall maintain a record of submittals and copies of submittals supplied by the Construction Manager in accordance with the requirements of the Contract Documents.

#### **§ 3.6.5 Changes in the Work**

**§ 3.6.5.1** The Architect with the consent of the Owner may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect shall review and submit for approval of the Owner, Change Orders to the Construction Contract, as conditions warrant, utilizing the forms provided in the A201-2017 General Conditions. If the Change Order is Owner-directed, the Architect shall coordinate the preparation of the Change Order with the Construction Manager.

**§ 3.6.5.2** The Architect shall maintain records relative to changes in the Work.

#### **§ 3.6.6 Project Completion**

**§ 3.6.6.1** The Architect shall:

- .1 conduct inspections to determine the date or dates of Substantial Completion and the date of final completion;
- .2 issue Certificates of Substantial Completion;
- .3 forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and received from the Construction Manager; and

- .4 issue a final Certificate for Payment based upon a final inspection indicating that, to the best of the Architect's knowledge, information, and belief, the Work complies with the requirements of the Contract Documents.

§ 3.6.6.2 The Architect's inspections shall be conducted with the Owner to (1) check conformance of the Work with the requirements of the Contract Documents and (2) verify the accuracy and completeness of the list submitted by the Construction Manager of Work to be completed or corrected.

§ 3.6.6.3 When Substantial Completion has been achieved, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Construction Manager, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

§ 3.6.6.4 The Architect shall forward to the Owner the following information received from the Construction Manager: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens, or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Construction Manager under the Contract Documents.

§ 3.6.6.5 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance.

§ 3.6.6.6 Within thirty (30) days after final completion, the Architect shall provide the Owner with three (3) copies of a record set of Record Construction Drawings and Specifications consisting of computer aided design and drafting ("CADD") on electronic media acceptable to Owner, on a CADD system compatible with the Autocadd-system used by the Owner, which incorporate changes in the Work made during construction based upon marked up Contractor's construction prints, drawings, and other data furnished by the Contractor. All field orders, Change Orders, Construction Change Directives, clarifications, requests for information, modifications, sketches, and any other drawing changes shall be incorporated into the CADD files by the Architect. The Architect is not responsible for the completeness or the accuracy of the information placed on the marked up prints by the Contractor, unless the Architect knows, or acting in accordance with the Standard of Care should know, that such information is inaccurate or incomplete.

#### ARTICLE 4 SUPPLEMENTAL AND ADDITIONAL SERVICES

##### § 4.1 Supplemental Services

§ 4.1.1 The services listed below are included in Basic Services. The Architect shall provide the listed Supplemental Services only if specifically designated in the table below as the Architect's responsibility. Unless otherwise specifically addressed in this Agreement, if neither the Owner nor the Architect is designated, the parties agree that the listed Supplemental Service is not being provided for the Project.

*(Designate the Architect's Supplemental Services and the Owner's Supplemental Services required for the Project by indicating whether the Architect or Owner shall be responsible for providing the identified Supplemental Service. Insert a description of the Supplemental Services in Section 4.1.2 below or attach the description of services as an exhibit to this Agreement.)*

Supplemental Services	Responsibility (Architect, Owner, or not provided)
§ 4.1.1.1 Assistance with Selection of Construction Manager	
§ 4.1.1.2 Programming	
§ 4.1.1.3 Multiple Preliminary Designs	
§ 4.1.1.4 Measured drawings	
§ 4.1.1.5 Existing facilities surveys	
§ 4.1.1.6 Site evaluation and planning	
§ 4.1.1.7 Building Information Model management responsibilities	
§ 4.1.1.8 Development of Building Information Models for post construction use	
§ 4.1.1.9 Civil engineering	
§ 4.1.1.10 Landscape design	
§ 4.1.1.11 Architectural interior design	
§ 4.1.1.12 Value analysis	
§ 4.1.1.13 Cost estimating	
§ 4.1.1.14 On-site project representation	
§ 4.1.1.15 Conformed documents for construction	
§ 4.1.1.16 As-designed record drawings	
§ 4.1.1.17 As-constructed record drawings	
§ 4.1.1.18 Post-occupancy evaluation	
§ 4.1.1.19 Facility support services	
§ 4.1.1.20 Tenant-related services	
§ 4.1.1.21 Architect's coordination of the Owner's consultants	
§ 4.1.1.22 Telecommunications/data design	
§ 4.1.1.23 Security evaluation and planning	
§ 4.1.1.24 Commissioning	
§ 4.1.1.25 Sustainable Project Services pursuant to Section 4.1.3	
§ 4.1.1.26 Historic preservation	
§ 4.1.1.27 Furniture, furnishings, and equipment design	
§ 4.1.1.28 Other services provided by specialty Consultants	
§ 4.1.1.29 Other Supplemental Services	

## § 4.1.2 Description of Supplemental Services

§ 4.1.2.1 A description of each Supplemental Service identified in Section 4.1.1 as the Architect's responsibility is provided below.

*(Describe in detail the Architect's Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit. The AIA publishes a number of Standard Form of Architect's Services documents that can be included as an exhibit to describe the Architect's Supplemental Services.)*

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§ 4.1.2.2 A description of each Supplemental Service identified in Section 4.1.1 as the Owner's responsibility is provided below.

*(Describe in detail the Owner's Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit.)*

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§ 4.1.3 If the Owner identified a Sustainable Objective in Article 1, the Architect shall provide, as a Supplemental Service, the Sustainability Services required in AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement. The Owner shall compensate the Architect as provided in Section 11.2.

## § 4.2 Architect's Additional Services

The Architect may provide Additional Services after execution of this Agreement without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.2 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule.

§ 4.2.1 Upon recognizing the need to perform any Additional Services, the Architect shall immediately notify the Owner in writing and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide any Additional Services until the Architect receives the Owner's written authorization. In the event of a dispute over whether services constitute Additional Services, the Architect shall continue to perform its services, including the services in dispute, and its sole remedy shall be to submit a claim in accordance with the dispute resolution provisions of this Agreement. The Architect shall not be entitled to suspend or refuse to perform any services required for the completion of the Project on the basis of a dispute over whether such services constitute Additional Services.

§ 4.2.2 Architect acknowledges and agrees that Owner is an agency or instrumentality of the State of Georgia and, as such, is entitled to the protection of sovereign immunity. As set forth in Article I, Section 11, Paragraph IX of the 1983 Georgia Constitution, sovereign immunity is waived "as to any action *ex contractu* for the breach of any written contract."

Architect specifically acknowledges the constitutional and contractual requirements that changes, modifications, and waivers to this Contract must be in writing and specifically executed by Owner as set forth in the Contract Documents. Accordingly, Construction Professional expressly acknowledges the constitutional prohibition of claims (including Claims) against Owner based solely upon oral statement, course of conduct, customs of the trade, quasi-contract, unjust enrichment, *quantum meruit*, or O.C.G.A. § 13-4-4 (mutual departure from contract terms).

§ 4.2.3 Owner's Representative identified in this Agreement shall only be authorized to approve and execute orders for Additional Services that do not exceed \$25,000.00 individually or \$50,000.00 in the aggregate. Any orders for Additional Services under this Agreement exceeding these limits must be submitted to and approved by Mayor and Council prior to being performed by the Architect and documented in written order for Additional Services executed by Owner.

## ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives; schedule; constraints and criteria, including space requirements and relationships; flexibility; expandability; special equipment; systems; and site requirements.

§ 5.2 The Owner shall retain a Construction Manager to provide services, duties, and responsibilities as described in the agreement selected in Section 1.1.5.

§ 5.3 The Owner shall establish the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. The Owner shall update the Owner's budget for the Project as necessary throughout the duration of the Project until final completion. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect and Construction Manager. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 5.4 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project, subject to the limitations set forth in this Agreement. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

§ 5.5 The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as

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

[Intentionally Deleted].

§ 5.6 The Owner shall provide prompt written notice to the Architect and Construction Manager if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service.

§ 5.7 The Owner shall include the Architect in all communications with the Construction Manager that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Construction Manager otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect.

§ 5.8 The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall obligate the Construction Manager to provide the Architect access to the Work wherever it is in preparation or progress.

## ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include the Construction Manager's general conditions costs, overhead, and profit. The Cost of the Work also includes the reasonable value of labor, materials, and equipment, donated to, or otherwise furnished by, the Owner. The Cost of the Work does not include the compensation of the Architect; the compensation of the Construction Manager for Preconstruction Phase services; the costs of the land, rights-of-way, financing, or contingencies for changes in the Work; or other costs that are the responsibility of the Owner.

§ 6.2 The Owner's budget for the Cost of the Work is provided in the Initial Information, and may be adjusted throughout the Project as required under Sections 5.3 and 6.4. Evaluations of the Owner's budget for the Cost of the Work represent the Architect's judgment as a design professional.

§ 6.3 The Owner shall require the Construction Manager to include appropriate contingencies for design, bidding or negotiating, price escalation, and market conditions in estimates of the Cost of the Work. The Architect shall be entitled to rely on the accuracy and completeness of estimates of the Cost of the Work the Construction Manager prepares as the Architect progresses with its Basic Services. The Architect shall prepare, as an Additional Service, revisions to the Drawings, Specifications or other documents required due to the Construction Manager's inaccuracies or incompleteness in preparing cost estimates, or due to market conditions the Architect could not reasonably anticipate. The Architect shall review the Construction Manager's estimates for the Architect's guidance in completion of its services, and the Architect shall report to the Owner any inaccuracies and inconsistencies noted or discovered during any such review.

§ 6.4 If, prior to the conclusion of the Construction Document Phase, the Construction Manager's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect, in consultation with the Construction Manager, shall make appropriate recommendations to the Owner to adjust the Project's size, quality or budget for the Cost of the Work, and the Owner shall cooperate with the Architect in making such adjustments. If so directed by the Owner in writing, the Architect shall, at no additional cost to the Owner, revise or redraft any and all documents necessary to bring the estimate of the Cost of the Work within the Owner's budget.

§ 6.5 If the Construction Manager's estimate of the Cost of the Work at the conclusion of the Construction Document Phase exceeds the Owner's budget for the Cost of the Work, the Owner shall

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 terminate in accordance with Section 9.5;



- .3 in consultation with the Architect and Construction Manager, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or
- .4 implement any other mutually acceptable alternative.

§ 6.6 If the Owner chooses to proceed under Section 6.5.3, the Architect, without additional compensation, shall incorporate the revisions in the Construction Documents Phase as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Construction Document Phase Services, or the budget as adjusted under Section 6.5.1.

§ 6.7 After incorporation of modifications under Section 6.6, the Architect shall, as an Additional Service, make any required revisions to the Drawings, Specifications or other documents necessitated by the Construction Manager's subsequent cost estimates, the Guaranteed Maximum Price proposal, or Control Estimate that exceed the Owner's budget for the Cost of the Work, except when the excess is due to changes initiated by the Architect in scope, basic systems, or the kinds and quality of materials, finishes or equipment.

## ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project.

§ 7.2 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants.

§ 7.3 Upon execution of this Agreement, the Architect grants to the Owner an irrevocable, unconditional, royalty-free, and exclusive license to use the Architect's Instruments of Service for purposes of constructing, expanding, using, maintaining, altering, modifying, repairing, replacing, and adding to the Project, for purposes of creating derivative works, or for any other purpose desired by the Owner, provided that the Owner substantially performs its obligations under this Agreement, including prompt payment of all undisputed sums due, pursuant to Article 9 and Article 11. The Architect shall obtain similar irrevocable, unconditional, royalty-free, and exclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Construction Manager, Subcontractors, Sub-subcontractors, and suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service, subject to any protocols established pursuant to Section 1.3, solely and exclusively for use in performing services or construction for the Project.

§ 7.3.1 In the event the Owner uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses; provided, however, that this release does not apply to liabilities arising from the original Instruments of Service and the buildings, improvements, and structures of the Project that have not been altered, added to, subtracted from, or modified subsequent to completion of construction of the Project by the Owner, its successors, or assigns. The above release also shall not apply in the event the Architect suspends its services or otherwise defaults on its obligations under this Agreement.

§ 7.4 Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

§ 7.5 Except as otherwise stated in Section 7.3, the provisions of this Article 7 shall survive the termination of this Agreement.

## ARTICLE 8 CLAIMS AND DISPUTES

### § 8.1 General

§ 8.1.1 The Owner and Architect shall commence all claims and causes of action against the other and arising out of or related to this Agreement, whether in contract, tort, or otherwise, in accordance with the requirements of the binding

dispute resolution method selected in this Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1.

**§ 8.1.2** To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201–2017, General Conditions of the Contract for Construction. The Owner or the Architect, as appropriate, shall require of the Construction Manager, contractors, consultants, agents and employees of any of them, similar waivers in favor of the other parties enumerated herein.

**§ 8.1.3** The Architect shall indemnify and hold the Owner and the Owner's representatives and employees harmless from and against all claims, causes of action, damages, losses, costs, expenses, and judgments arising from claims by third parties, including reasonable attorneys' fees and expenses recoverable under applicable law, but only to the extent they are caused by the negligent acts or omissions, willful misconduct, breach of contract, or violation of applicable law of the Architect, its employees and its consultants in the performance of professional services under this Agreement. The Architect's obligation to indemnify and hold the Owner and the Owner's officers and employees harmless does not include a duty to defend.

**§ 8.1.4** The Architect shall defend, indemnify and hold the Owner and the Owner's representatives and employees harmless from and against all claims, causes of action, damages, losses, judgments, costs and expenses arising from claims by third parties, including reasonable attorneys' fees and expenses recoverable under applicable law, but only to the extent they are caused by the negligent acts or omissions, willful misconduct, breach of contract, or violation of applicable law of the Architect, its employees and its consultants other than in the performance of any professional services under this Agreement. This indemnity is separate from and in addition to the indemnity provided for professional services in Section 8.1.3 above.

## **§ 8.2 Mediation**

**§ 8.2.1** Any claim, dispute, or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.

**§ 8.2.2** The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation, which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of this Agreement. A request for mediation shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

**§ 8.2.3** The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

**§ 8.2.4** If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:

*(Check the appropriate box.)*

☐ **Arbitration pursuant to Section 8.3 of this Agreement**

☒ **Litigation in a court of competent jurisdiction in the County where the Project is located. The Architect consents to and expressly waives all objections to venue and personal jurisdiction in the state and federal courts having jurisdiction over the County where the Project is located.**

[ « » ] Other: (Specify)

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

## ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make undisputed payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a proper and justified suspension of services in accordance with this Section, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Owner shall pay the Architect all undisputed sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services.

§ 9.2 If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services.

§ 9.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than seven days' written notice.

§ 9.4 The Owner may terminate this Agreement upon not less than seven days' written notice should the Architect fail substantially to perform in accordance with the terms of this Agreement through no fault of the Owner.

§ 9.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

§ 9.6 If the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall only be required to compensate the Architect for services performed prior to termination, Reimbursable Expenses incurred, and reasonable costs directly caused by the termination which could not have otherwise been avoided or mitigated by the Architect, including the costs attributable to the Architect's termination of consultant agreements.

## ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201–2017, General Conditions of the Contract for Construction, except as modified in this Agreement. The term "Contractor" as used in A201–2017 shall mean the Construction Manager.

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns, and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement, including any payments due to the Architect by the Owner prior to the assignment.

§ 10.4 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all

such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Architect for review at least 14 days prior to execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services, or responsibilities beyond the scope of this Agreement.

§ 10.5 Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either the Owner or Architect.

§ 10.6 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

§ 10.7 [Intentionally Deleted].

§ 10.8 If the Architect or Owner receives information specifically designated as “confidential” or “business proprietary,” the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except as set forth in Section 10.8.1. This Section 10.8 shall survive the termination of this Agreement.

§ 10.8.1 The receiving party may disclose "confidential" or "business proprietary" information after 7 days' notice to the other party, when required by law, arbitrator's order, or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or to the extent such information is reasonably necessary for the receiving party to defend itself in any dispute. The receiving party may also disclose such information to its employees, consultants, or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of such information as set forth in this Section 10.8.

§ 10.9 The invalidity of any provision of the Agreement shall not invalidate the Agreement or its remaining provisions. If it is determined that any provision of the Agreement violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Agreement shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Agreement.

## ARTICLE 11 COMPENSATION

§ 11.1 For the Architect's Basic Services described under Article 3, the Owner shall compensate the Architect as follows:

- .1 Stipulated Sum  
(Insert amount)

« »

§ 11.2 [Intentionally Deleted].

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.2, the Owner shall compensate the Architect as follows:  
(Insert amount of, or basis for, compensation.)

« See Schedule of Hourly Rates attached as Exhibit B »

§ 11.4 Compensation for Supplemental and Additional Services of the Architect's consultants when not included in Sections 11.2 or 11.3, shall be the amount actually and reasonably invoiced to the Architect with no additional markup permitted.

§ 11.5 When compensation for Basic Services is based on a stipulated sum or a percentage basis, the proportion of compensation for each phase of services shall be as follows:

Schematic Design Phase

« »

percent (

« »

%)

Design Development Phase	« »	percent (	« »	%)
Construction Documents Phase	« »	percent (	« »	%)
Construction Phase	« »	percent (	« »	%)
Total Basic Compensation	one hundred	percent (	100	%)

The Owner acknowledges that with an accelerated Project delivery, multiple bid package process, or Construction Manager as constructor project delivery method, the Architect may be providing its services in multiple Phases simultaneously. Therefore, the Architect shall be permitted to invoice monthly in proportion to services performed in each Phase of Services, as appropriate.

§ 11.6 [Intentionally Deleted].

§ 11.7 The hourly billing rates for services of the Architect and the Architect's consultants are set forth below. The rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review practices.  
(If applicable, attach an exhibit of hourly billing rates or insert them below.)

« See Schedule of Hourly Rates attached as Exhibit B. »

## § 11.8 Compensation for Reimbursable Expenses

§ 11.8.1 Reimbursable Expenses are in addition to compensation for Basic, Supplemental, and Additional Services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

- .1 Transportation and authorized out-of-town travel and subsistence;
- .2 Long distance services, dedicated data and communication services, teleconferences, Project web sites, and extranets;
- .3 Permitting and other fees required by authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, and standard form documents;
- .5 Postage, handling, and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner or required for the Project;
- .8 If required by the Owner, and with the Owner's prior written approval, the Architect's consultants' expenses of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits in excess of that normally maintained by the Architect's consultants;
- .9 All taxes levied on professional services and on reimbursable expenses;
- .10 Site office expenses;
- .11 Registration fees and any other fees charged by the Certifying Authority or by other entities as necessary to achieve the Sustainable Objective; and
- .12 Other similar Project-related expenditures.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses actually and reasonably incurred by the Architect and the Architect's consultants with not additional markup..

§ 11.9 [Intentionally Deleted].

## § 11.10 Payments to the Architect

### § 11.10.1 Initial Payments

§ 11.10.1.1 No initial payment shall be made upon execution of this Agreement.

### § 11.10.2 Progress Payments

§ 11.10.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice and an interim or final lien waiver, as appropriate, for such amounts using the Georgia statutory lien waiver form. Amounts unpaid « sixty » ( « 60 » ) days after the invoice date shall bear interest at the rate entered below.

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

« 1 » % « per annum »

§ 11.10.2.2 The Owner shall be entitled to withhold amounts from the Architect's compensation that are in dispute and to offset against such amounts any claims, damages, costs, or expenses suffered by the Owner caused by the Architect's breach of this Agreement, violation of applicable law, willful misconduct, or negligent acts or omissions, including sums requested by or paid to contractors for the cost of changes in the Work.

§ 11.10.2.3 Any failure by the Architect to comply with its obligations under this Agreement, as inclusive of time of performance and completeness of performance, shall be deemed a default under the terms of this Agreement and shall authorize Owner to exercise any of the following non-exclusive remedies (all other remedies provided by this Agreement, law or equity are reserved and not waived):

- A. Withhold sufficient amounts from this Agreement until Architect achieves compliance with this Agreement;
- B. Require Architect to utilize, at its own expense, overtime labor (including Saturday and Sunday work) to overcome Architect's default;
- C. Supplement the work of Architect to overcome the default and backcharge Architect for these costs;
- D. Recover from Architect, all losses, damages, penalties, fines and consequential damages associated with Architect's default.

The foregoing remedies shall be considered separate and cumulative and shall be in addition to any other remedy in this Agreement, at law or in equity.

§ 11.10.2.4 Records of Reimbursable Expenses, expenses pertaining to Supplemental and Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

§ 11.10.3 **Access and Audit.** The Owner shall have reasonable access to all books, documents, papers, and records of the Architect concerning the Project in order to make audit examinations, excerpts, and transcripts relative to this Agreement. Records of reimbursable expenses and expenses pertaining to services performed shall be kept on the basis of generally accepted accounting principles and shall be available to the Owner's representative at mutually convenient times, but in no event more than 72 hours after a written request from Owner.

§ 11.10.4 **Open Records.** The Architect acknowledges the application of the Georgia Open Records Act (*See* O.C.G.A. §50-18-70) to the Architect's records concerning this Project and agrees to comply with all requirements thereunder and require same of all consultants. The Architect must promptly advise Owner in writing within 24 hours of a request for records falling under the Act.

## ARTICLE 12 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:  
(*Include other terms and conditions applicable to this Agreement.*)

« § 12.1 Architect's acceptance of Final Payment shall constitute (i) a waiver of all claims made by Architect, except for those previously made in writing and identified as unsettled at the time of final Application of Payment and (ii) Architect's agreement to indemnify, defend and hold Owner harmless from and against any and all claims for payment by the Architect's Subcontractors, laborers, suppliers, materialmen and mechanics and against all costs and expenses incurred by Owner, including reasonable and actually incurred attorney's fees, arising out of or in connection with such claims. Architect's obligations under this provision expressly survive final completion of the Project.

§ 12.2 Prior to the award of any Subconsultant subcontract, the Architect shall consult the Owner and shall submit the name of the proposed Subconsultant to the Owner for review and approval, and the Architect shall not contract with any Subconsultant to whom the Owner reasonably rejects. The Owner reserves the right to reject any proposed Subconsultant and subcontract form for any reason based upon reasonable objections. Copies of executed Subconsultant subcontract shall be provided to the Owner upon request. The Architect shall bind each and every Subconsultant to the terms stated herein and shall determine that all persons rendering services under this Agreement are properly licensed to provide such services in the jurisdiction in which the Project is located. All Subconsultants shall perform their services in accordance with the Standard of Care. The Architect hereby affirms that it shall be fully responsible for the errors, omissions, and negligent acts of its Subconsultants.

**§12.3** No action, failure to act, or failure to require strict compliance with any term of this Agreement by the Owner or Architect shall constitute a waiver of a right or duty afforded them under this Agreement, nor shall any such action, failure to act, or failure to require strict compliance with any term of this Agreement constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

**§ 12.4** The Architect will send written notice to the Owner when a mechanic's lien is placed against the Project by any its Subcontractors, Sub-subcontractors, or suppliers within forty-eight (48) hours of when the Architect becomes aware of the lien. Unless the lien is due to nonpayment of undisputed amounts by the Owner and such nonpayment was not due to the fault of the Architect (or its Subcontractors), the Architect shall cause the lien to be discharged by bond or otherwise released of record promptly following the lien's initial recordation and shall indemnify the Owner from any and all damages resulting from failure to discharge the lien. The Architect expressly agrees that if it fails to secure such bond or otherwise discharge the lien, the Owner may, at its sole discretion, discharge the lien and deduct the cost of discharging the lien from any future sum due the Architect. No sums shall be due to the Architect until the lien has been discharged. Architect's obligations under this provision expressly survive final completion of the Project.

**§ 12.5** Contemporaneously with its execution of this Agreement, the Architect shall complete, execute, and provide the Owner with each of the certifications and/or affidavits attached to this Agreement as Exhibits D - G

»

## ARTICLE 13 SCOPE OF THE AGREEMENT

**§ 13.1** This Agreement represents the entire and integrated agreement between the Owner and the Architect 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 Architect.

**§ 13.2** This Agreement is comprised of the following documents identified below:

- .1 AIA Document B133™–2019, Standard Form Agreement Between Owner and Architect, Construction Manager as Constructor Edition
- .2 Building Information Modeling Exhibit, if completed:

« N/A »

- .3 Exhibits:  
(Check the appropriate box for any exhibits incorporated into this Agreement.)

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

« »

[ ☐ ] Other Exhibits incorporated into this Agreement:  
(Clearly identify any other exhibits incorporated into this Agreement, including any exhibits and scopes of services identified as exhibits in Section 4.1.2.)

« Exhibit A – Scope of Basic Services  
Exhibit B – Fee Schedule & Schedule of Hourly Rates  
Exhibit C – Certificate of Insurance  
Exhibit D – Certification of Contractor - Georgia Security and Immigration Compliance Act  
Exhibit E – Certification of Sponsor Drug-Free Workplace  
Exhibit F – Affidavit Verifying Status of City Public Benefit Application  
Exhibit G – Contractor Affidavit under O.C.G.A. § 13-10-91(b)(1)  
Exhibit H – Notice to Contractors Compliance with Title VI of the Civil Rights Act of 1964  
»

- 4 Other documents:  
(List other documents, if any, forming part of the Agreement.)

« »

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

OWNER (Signature)

« »« »

(Printed name and title)

ARCHITECT (Signature)

« »« »

(Printed name, title, and license number, if required)





**EXHIBIT D**

**CERTIFICATION OF CONTRACTOR  
GEORGIA SECURITY AND IMMIGRATION COMPLIANCE ACT**

I hereby certify that I am a principle and duly authorized representative of \_\_\_\_\_  
\_\_\_\_\_, ("Contractor"), whose address is \_\_\_\_\_  
\_\_\_\_\_.

Contractor hereby agrees to comply with all applicable provisions and requirements of the Georgia Security and Immigration Compliance Act of 2006 (the "Act"), as codified in O.C.G.A. Sections 13-10-90 and 13-10-91 and regulated in Chapter 300-10-1 of the Rules and Regulations of the State of Georgia, "Public Employers, Their Contractors and Subcontractors Required to Verify New Employee Work Eligibility Through a Federal Work Authorization Program," accessed at <http://www.dol.state.ga.us>, as further set forth below.

Contractor agrees to verify the work eligibility of all of newly hired employees through the U.S. Department of Homeland Security's *Employment Eligibility Verification (EEV) / Basic Pilot Program*, accessed through the Internet at <https://www.vis-dhs.com/EmployerRegistration>, in accordance with the provisions and timeline found in O.C.G.A. 13-10-91 and Rule 300-10-1-.02 of the Rules and Regulations of the State of Georgia. As of July 1, 2007, the verification requirement applies to contractors and subcontractors with five-hundred (500) or more employees.

Contractor understands that the contractor and subcontractor requirements of the Act apply to contracts for, or in connection with, the physical performance of services within the State of Georgia.

Contractor understands that the following contract compliance dates set forth in the Act apply to the Agreement, pursuant to O.C.G.A. 13-10-91:

On or after July 1, 2007, to public employers, contractors, or subcontractors of 500 or more employees;

On or after July 1, 2008, to public employers, contractors, or subcontractors of 100 or more employees; and

On or after July 1, 2010, to all other public employers, their contractors, and subcontractors.

To document the date on which the Act is applicable to Contractor, and to document Contractor's compliance with the Act, the undersigned agrees to initial one of the three (3) lines below indicating the employee number category applicable to Contractor, and to submit the indicated affidavit with the Agreement if the Contractor has 500 or more employees.

Contractor has:

\_\_\_\_\_ 500 or more employees [Contractor must register with the *Employment/Eligibility Verification/Basic Pilot Program* and begin work eligibility verification on July 1, 2007];

\_\_\_\_\_ 100-499 employees [Contractor must register with the *Employment Eligibility Verification/Basic Pilot Program* and begin work eligibility verification by July 1, 2008]; or

\_\_\_\_\_ 99 or fewer employees [Contractor must begin work eligibility verification by July 1, 2010].

Contractor further agrees to require O.C.G.A. Sections 13-10-90 and 13-10-91 compliance in all written agreements with any subcontractor employed by Contractor to provide services connected with the Agreement, as required pursuant to O.C.G.A. 13-10-91.

Contractor agrees to obtain from any subcontractor that is employed by Contractor to provide services connected with the Agreement, the subcontractor's indication of the employee number category applicable to the subcontractor.

Contractor agrees to secure from any subcontractor engaged to perform services under this Agreement an executed "Subcontractor Affidavit," as required pursuant to O.C.G.A. 13-10-91 and Rule 300-10-1-.08 of the Rules and Regulations of the State of Georgia, which rule can be accessed at <http://www.dol.state.ga.us>.

**24.** Contractor agrees to maintain all records of the subcontractor's compliance with O.C.G.A. Sections 13-10-90 and 13-10-91 and Chapter 300-10-1 of the Rules and Regulations of the State of Georgia.

Signature: \_\_\_\_\_

Name Printed: \_\_\_\_\_

Dated: \_\_\_\_\_

**EXHIBIT E**

**CERTIFICATION OF SPONSOR  
DRUG-FREE WORKPLACE**

I hereby certify that I am a principle and duly authorized representative of \_\_\_\_\_  
\_\_\_\_\_ ("Contractor"), whose address is \_\_\_\_\_  
\_\_\_\_\_ and I further certify that:

- (1) The provisions of Section 50-24-1 through 50-24-6 of the Official Code of Georgia Annotated, relating to the "Drug-Free Workplace Act" have been complied with in full; and
- (2) A drug-free workplace will be provided for Contractor's employees during the performance of the Agreement; and
- (3) Each Subcontractor hired by Contractor shall be required to ensure that the subcontractor's employees are provided a drug-free workplace. Contractor shall secure from that subcontractor the following written certification: "As part of the subcontracting agreement with Contractor, \_\_\_\_\_  
\_\_\_\_\_ certifies to Contractor that a drug-free workplace will be provided for the Subcontractor's employees during the performance of this Agreement pursuant to paragraph (7) of subsection (b) of the Official Code of Georgia Annotated, Section 50-24-3"; and
- (4) The undersigned will not engage in unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana during the performance of the Agreement.

Signature: \_\_\_\_\_

Name Printed: \_\_\_\_\_

Dated: \_\_\_\_\_

**EXHIBIT F**

**AFFIDAVIT VERIFYING STATUS  
FOR CITY PUBLIC BENEFIT APPLICATION**

By executing this affidavit under oath, as an applicant for a City of Doraville, Georgia, Business License or Occupation Tax Certificate, Alcohol License, Taxi Permit or other public benefit as referenced in O.C.G.A. Section 50-36-1, I am stating the following with respect to my application for a City of Doraville license/permit for:

1) \_\_\_\_\_ I am a United States citizen **(Must include copy of either Georgia Driver's License, Passport, or Military ID)**

**OR**

2) \_\_\_\_\_ I am a legal permanent resident 18 years of age or older or I am an otherwise qualified alien or non-immigrant under the Federal Immigration and Nationality Act 18 years of age or older and lawfully present in the United States.\* **(Must include either a copy of your Permanent Resident Card or Employment Authorization Card as well as another form of government issued identification such as Georgia Driver's License, Military ID, or Passport)**

In making the above representation under oath, I understand that any person who knowingly and willfully makes a false, fictitious, or fraudulent statement or representation in an affidavit shall be guilty of a violation of Code Section 16-10-20 of the Official Code of Georgia.

**Signature of Applicant:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Printed Name:** \_\_\_\_\_

**\*Alien Registration number for non-citizens:** \_\_\_\_\_

**SUBSCRIBED AND SWORN BEFORE ME**

ON THIS THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 2024

**Notary Public:** \_\_\_\_\_ **My Commission Expires:** \_\_\_\_\_

\*Note: O.C.G.A. § 50-36-1(e)(2) requires that aliens under the federal Immigration and Nationality Act, Title 8 U.S.C., as amended, provide their alien registration number. Because legal permanent residents are included in the federal definition of "alien", legal permanent residents must also provide their alien registration number. Qualified aliens that do not have an alien registration number may supply another identifying number: \_\_\_\_\_

**EXHIBIT G**

**CONTRACTOR AFFIDAVIT UNDER O.C.G.A. § 13-10-91(B) (1)**

By executing this affidavit, the undersigned contractor verifies its compliance with O.C.G.A. § 13-10-91, stating affirmatively that the individual, firm or corporation which is engaged in the physical performance of services on behalf of the City of Doraville has registered with, is authorized to use and uses the federal work authorization program commonly known as E-Verify, or any subsequent replacement program, in accordance with the applicable provisions and deadlines established in O.C.G.A. § 13-10-91. Furthermore, the undersigned contractor will continue to use the federal work authorization program throughout the contract period and the undersigned contractor will contract for the physical performance of services in satisfaction of such contract only with subcontractors who present an affidavit to the contractor with the information required by O.C.G.A. § 13-10-91(b). Contractor hereby attests that its federal work authorization user identification number and date of authorization are as follows:

\_\_\_\_\_  
Federal Work Authorization User Identification Number

\_\_\_\_\_  
Date of Authorization

\_\_\_\_\_  
Name of Contractor

\_\_\_\_\_  
Name of Project

\_\_\_\_\_  
Name of Public Employer

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

Executed on \_\_\_\_\_ in \_\_\_\_\_ (city), \_\_\_\_\_ (state).

\_\_\_\_\_  
Signature of Authorized Officer or Agent

\_\_\_\_\_  
Printed Name and Title of Authorized Officer or Agent

SUBSCRIBED AND SWORN BEFORE ME ON THIS THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 2024.

\_\_\_\_\_  
NOTARY PUBLIC (seal)

## **EXHIBIT H**

### **NOTICE TO CONTRACTORS COMPLIANCE WITH TITLE VI OF THE CIVIL RIGHTS ACT OF 1964**

During the performance of this Contract, the Contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "Contractor"), agrees as follows:

1. Compliance with Regulations: The Contractor will comply with the Regulations of the Department of Transportation relative to nondiscrimination in Federally-assisted programs of the Department of Transportation (Title 49, Code of Federal Regulations, Part 21, hereinafter referred to as the "Regulations"), which are herein incorporated by reference and made a part of the Contract.
2. Nondiscrimination: The Contractor, with regard to the work performed by it afterward and prior to completion of the contract work, will not discriminate on the ground of race, color, sex, or national origin in the selection and retention of subcontracts including procurements of materials and leases of equipment. The Contractor will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when contract covers a program set forth in Appendix B of the Regulations. In addition, the Contractor will not participate either directly or indirectly in discrimination prohibited by 23 CFR 710.405 (b).
3. Solicitations for Subcontracts, including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials or equipment, each potential subcontractor or supplier shall be notified by the Contractor of the Contractor's obligations under this Contract and the Regulations relative to nondiscrimination on the ground of race, color, national origin or sex.
4. Information and Reports: The Contractor will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Department of Transportation or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to the Department of Transportation, or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.
5. Sanctions for Noncompliance: In the event of the Contractor's noncompliance with the nondiscrimination provisions of this Contract, the Department of Transportation shall impose such Contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:

(a) Withholding of payments to the Contractors under the Contract until the Contractor complies, and/or

(b) Cancellation, termination or suspension of the Contract, in whole or in part.

6. Incorporation of Provisions: The Contractor will include the provisions of paragraph (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, orders or instruction issued pursuant thereto. The Contractor will take such action with respect to any subcontract or procurement as the Department of Transportation or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as result of such direction, the Contractor may request the State to enter into such litigation to protect the interests of the State, and, in addition, the Contractor may request the United States to enter into such litigation to protect the interest of the United States.