

**REQUEST FOR PROPOSALS**

**for**

**CONSTRUCTION MANAGEMENT  
AT RISK SERVICES**

**for the**

**WALKER COUNTY BOARD OF EDUCATION**

**Projects:**

**Additions and Renovations to: Ridgeland High School**

**New Practice Gym for: Lafayette High School**

**Renovations to: Walker County Central Office**

**New Athletic Field for: Chattanooga Valley Middle School**

**REQUEST FOR PROPOSALS  
CONSTRUCTION MANAGEMENT AT RISK SERVICES  
WALKER COUNTY BOARD OF EDUCATION**

---

**TABLE OF CONTENTS**

- I. Proposal Conditions
  
- II. Instructions for Submitting Responses
  
- III. Qualifications for Selection and Selection Process
  
- IV. Owner's Standard Forms:
  - 1. Bid Bond
  - 2. Performance Bond
  - 3. Payment Bond
  - 4. Offeror's and Individuals' Affidavit of Noncollusion
  - 5. Form of Consent to Release Information
  - 6. Design Phase Compensation and Fee, Construction Phase Fee, and Shared Savings Proposal Form
  - 7. Sample Evaluation Form
  - 8. Immigration Affidavit
  - 9. Sample Contract for Construction Management Services including Construction for Guaranteed Maximum Price (the "Agreement" or the "Contract")

## I.

### **PROPOSAL CONDITIONS**

#### **A. CERTAIN DEFINITIONS:**

“Addenda” are written or graphic documents issued by the Owner prior to the opening of Proposals which modify or interpret the Proposal Documents by additions, deletions, clarifications, corrections or revisions.

Capitalized terms in the Proposal Documents, other than the proposed Contract Documents, that are not defined in such Proposal Documents but are defined in the proposed Contract Documents shall have the meaning ascribed to them in the proposed Contract Documents.

A “Construction Manager at Risk Contractor” (“CM”) is a person or entity who submits a Proposal, and may also sometimes be referred to as an “Offeror.”

A “Proposal” is a complete and properly executed proposal package to provide the CM services in accordance with the Proposal Documents for the sums and in the times stated in the Proposal supported by the data required by the Proposal Documents, and submitted in accordance with the Proposal Documents.

“Proposal Documents” means all of the documents included in the Request for Proposals, including without limitation such proposed Contract Documents as are included in the Request for Proposals, and any Addenda issued prior to the opening of Proposals.

#### **B. REQUEST FOR PROPOSALS CM SERVICES:**

##### **1. INTRODUCTION:**

To be eligible for consideration, Proposals must be made in accordance with the following instructions and must be received at the office of the Director of Facilities and Operations, 298 Culberson Avenue, LaFayette, Georgia 30728, not later than the date and time set forth in the “Advertisement for Sealed Proposals,” or any extension of time therefor made by an Addendum.

**A Mandatory Pre-Proposal Conference** will be held at the office of the Director of Facilities and Operations, 298 Culberson Avenue, LaFayette, Georgia 30728, at **11:00 a.m. local time on June 28, 2018.**

**The Owner reserves the right to reject any or all Proposals and to waive any technicalities and informalities.**

**2. OWNER:**

The Owner for whom the CM Services and the Work will be executed is:

Walker County Board of Education  
298 Culberson Avenue,  
LaFayette, Georgia 30728

**3. ARCHITECT:**

The Architect selected by the Owner to prepare the Design for Construction documents is: Southern A&E, LLC, 7951 Troon Circle, Austell, GA 30168, phone 770-819-7777, fax 770-819-7770, Attn: Greg Schillinger

**4. PROPOSALS:**

A total of five (5) duplicate originals of the Proposal will be received at the office of the Director of Facilities and Operations, 298 Culberson Avenue, LaFayette, Georgia 30728, not later than the date and time set forth in the "Advertisement for Sealed Proposals," or any extension of time therefor made by an Addendum.

The CM is fully responsible for timely delivery at the designated location. Proposals received after the set specified time will not be considered by the Owner. Oral, telephonic, telegraphic, electronic or facsimile proposals are invalid and will not receive consideration.

**5. DOCUMENTS:**

Proposal Documents may be obtained may be obtained from Southern A&E, LLC, 7951 Troon Circle, Austell, GA 30168, phone 770-819-7777, fax 770-819-7770, e-mail [gschillinger@southernae.com](mailto:gschillinger@southernae.com) Attn: Greg Schillinger, upon submission to the Architect of a written request for the Proposal Documents, including the requesting entity's name, address, phone number and contact person. All amendments and additional information will be e-mailed to proposers of record via Southern A&E's online plan room service @ sub-hub.com. Proposers should check this web page frequently for new information. The Proposal Documents are the property of the Owner. Any participant submitting a Proposal must procure a set of the Proposal Documents from the Architect.

The CM shall use complete sets of Proposal Documents in preparing Proposals. The Owner will not be responsible for errors or misinterpretations resulting from the use of incomplete sets of Proposal Documents.

In making copies of the Proposal Documents available, the Owner does so only for the purpose of obtaining Proposals for the Project and does not confer a license or grant permission for any other use of the Proposal Documents.

The CM is responsible for the review of the Proposal Documents, including without limitation the Owner's Standard Forms and Preliminary Design Information.

**6. ADDENDA:**

Addenda, if any, will be mailed or delivered to each CM that is known by the Architect to have paid for and received a complete set of Proposal Documents at the address furnished in the application for Proposal Documents. No Addenda will be issued later than 72 hours prior to the time for Proposal opening, except for Addenda withdrawing the Request for Proposals or Addenda which include a postponement of the date through which Proposals may be submitted. The CM shall ascertain prior to submitting a Proposal that the CM has received all Addenda issued, if any, and the CM shall acknowledge their receipt in the Proposal. Failure of a CM to receive or acknowledge any Addendum shall not relieve the CM of any obligation under the Proposal. All Addenda shall become part of the Contract Documents.

**7. INTERPRETATIONS:**

The CM firm shall carefully study and compare the Proposal Documents with each other, and with other work being bid or offered concurrently or presently under construction to the extent that it relates to the CM services for which the Proposal is submitted, shall examine the site of the Project and the local conditions, and shall at once report to the Owner any errors, inconsistencies or ambiguities in the Proposal Documents. If a CM is in doubt as to the meaning of any part of the Proposal Documents, or otherwise has questions or requires clarification or interpretation of the Proposal Documents, he or she shall request an interpretation from the Architect. Requests for such interpretations shall be made in writing addressed to the Architect not later than six (6) business days prior to the time for receiving Proposals, and failure of the successful CM to request such interpretation shall not relieve it as a CM of the obligation to execute the CM services in accordance with a later interpretation by the Architect and without additional charge to the Owner. Interpretations, corrections and changes of the Proposal Documents will be made by Addendum. No oral interpretations will be made to CM as to meaning of the Proposal Documents. Any purported interpretations, corrections and changes of the Proposal Document made in any manner other than Addendum will not be binding, and CM shall not rely upon them. Any communication, or attempted communication, by a CM or its agents concerning this Request for Proposals by any means or method other than that provided for in this Request for Proposals shall be inappropriate. In the event of such inappropriate communication, or attempted communication, the Owner shall have the right to reject such offending CM's Proposal.

**8. SUBSTITUTIONS**

Unless otherwise indicated in the Proposal Documents, the materials, products and equipment described in the Proposal Documents establish a standard of required function, dimension, appearance and quality to be met by any proposed substitution.

No substitution will be considered prior to receipt of Proposals unless written request for approval has been received by the Owner and Architect at least ten (10) days prior to the date for receiving Proposals. Such requests shall include the name of the specified product, material or equipment, and the specification section or other reference to the Proposal Documents as appropriate. The request shall provide a complete description of the proposed substitution including drawings, performance and test data, and other

information necessary for an evaluation. The request for approval shall explain fully the difference, if any, between the proposed product and the one or more named in the specifications, including difference in cost. A statement setting forth changes in other materials, equipment or other portions of the Work including changes in the work of other contracts that incorporation of the proposed substitution would require shall be included in the request. The burden of proof of the merit of the proposed substitution is upon the CM submitting the substitution. The Owner's decision of approval or disapproval of a proposed substitution shall be final.

If the Owner approves a proposed substitution prior to the date for receipt of Proposals, such approval will be set forth in an Addendum. The CM shall not rely upon approvals made in any other manner.

No substitutions will be considered after the Contract award unless specifically provided in the Contract Documents.

## **9. WITHDRAWAL OF PROPOSALS:**

Except as may be otherwise expressly provided by law, a CM's Proposal cannot be withdrawn after it has been delivered to the office of the Director of Facilities and Operations, 298 Culberson Avenue, LaFayette, Georgia 30728, for a period of sixty (60) calendar days after the date fixed for receiving said Proposals, all Proposals are subject to acceptance by the Owner during said period, and each Offeror so agrees by submitting a Proposal.

## **10. IRREGULARITIES:**

The Owner, at its sole option, may reject Proposals that contain irregularities of any kind, or Proposals that do not comply fully with the Proposal Documents.

## **11. CONSTRUCTION MANAGEMENT CONTRACT AWARD:**

Subject to the Owner's right to reject any or all Proposals, it is the intent of the Owner to award a contract, at the sole option of the Owner, in due course and after a reasonable Proposal evaluation period, within the funds available, to the responsible and responsive CM whose Proposal is determined to be the most advantageous to the Owner, provided that the Proposal otherwise fulfills the requirements of the Proposal Documents. The Owner shall have the right to waive informalities or irregularities in a Proposal. CM Proposals will be evaluated on a combination of factors. These factors, and their relative importance, are:

- 1) Firm Overview (5%);
- 2) Approach (20%);
- 3) Experience (20%);
- 4) Financial Information (20%);
- 5) Acceptance of Owner's form of Agreement and form of Performance and Payment Bonds (15%); and,
- 6) Proposed CM Design Phase Compensation and Fee, Construction Phase Fee, and Shared Savings (20%)

The successful CM shall assist and cooperate with the Owner in preparing the Agreement and related documents, and upon its presentation by the Owner, shall execute same in the number required by the Owner. If the Owner subsequently accepts the CM's proposed Guaranteed Maximum Price for the Construction Phase, the successful CM shall deliver to the Owner the requisite Performance Bond and Payment Bond on the exact forms provided by the Owner. All required forms, bonds, policies or certificates of insurance and other documents must be submitted and approved by the Owner before the Notice to Proceed may be issued.

## **12. CM'S QUALIFICATIONS:**

The Owner, before Contract award, will require CM to document that they are "responsible" to the satisfaction of the Owner. The CM will be required to show that they have the necessary facilities, technical ability, licenses, and financial resources to execute the services and the work in a satisfactory manner, and within the time specified; that they have had experience in the services and work of a similar nature; and that they have past history and references which will verify their qualifications for executing the services and the work. The Owner shall have the right to make such additional inquiry as it deems necessary to determine the ability of the CM to perform the services and the work in a prompt and efficient matter in accordance with the Contract Documents. The failure of a CM to promptly supply information in connection with the Owner's inquiry shall be grounds for a determination that such CM is not responsive, not responsible, or both. In determining the qualifications and responsibility of the CM, the Owner may take into consideration any and all relevant facts and circumstances available to it including, but not limited to, the CM's experience, capacity, facilities, previous work standing, financial standing, skill, available supervisory personnel, available labor, quality and efficiency of construction plant and equipment proposed to be utilized on the Project. The Owner shall have the right to reject the Proposal of any CM failing to show to the satisfaction of the Owner that the CM could perform the services and the work in a prompt and efficient manner in accordance with the Contract Documents. CMs may be afforded an opportunity for discussion, negotiation and revision of Proposals for the purpose of obtaining best and final offers. In the event the Owner deems it necessary or appropriate, all responsible CMs found by the Owner to have submitted Proposals reasonably susceptible of being selected for award shall be given an opportunity to participate in such discussions, negotiations and revisions.

## **13. OWNER'S CONSTRUCTION MANAGEMENT CONTRACT FORM:**

Included and made a part of this RFP is the Owner's Standard Form of Contract for Construction Management Services including Construction for a Guaranteed Maximum Price (the "Agreement" or the "Contract"). CMs are responsible for the review of this document in the preparation of their Proposals. The successful CM shall comply with all insurance requirements set forth in the Agreement and any other Contract Documents, and the CM's attention is directed to the insurance exhibit to the Agreement. These insurance requirements shall be considered in the preparation of the CM's Proposal.

**14. COMMENCEMENT, PROSECUTION, AND COMPLETION:**

The CM will be required to commence its services under the Owner's form of Agreement within five (5) days (or sooner if possible) after its receipt of a written Notice-to-Proceed from the Owner and to prosecute the effort with competence, faithfulness and energy.

**16. BID BOND:**

The CM's Proposal shall be accompanied by a Bid Bond in the exact form set forth herein. The Bid Bond shall be in an amount not less than 5% of the Owner's Stated Cost Limitation. The Owner's Combined Stated Cost Limitation for these Projects is \$13,800,000.00. The attorney-in-fact who executes the Bid Bond on behalf of the surety shall affix to the Bid Bond a current, certified and valid power of attorney. The surety must be satisfactory to the Owner and must be licensed to do business in Georgia as approved by the State Insurance Commissioner's Office. No other form of bid security will be accepted. The Owner shall have the right to retain the Bid Bond of each CM until either (a) the Agreement has been executed and a satisfactory Payment Bond and Performance Bond have been furnished, or (b) sixty (60) days after Proposal opening, or (c) all Proposals have been rejected. Except as otherwise expressly allowed by law, no Proposal may be withdrawn for a period of sixty (60) days following the closing time and date for receipt of Proposals, and all Proposals are subject to acceptance by the Owner during said period, and each CM so agrees by submitting a Proposal.

**17. AFFIDAVIT:**

Before commencing the services under the Agreement, the successful CM shall submit an affidavit in the form of the Offeror's and Individuals' Affidavit Of Noncollusion included in the Proposal Documents. If the successful CM is a partnership, all of the partners and any officer, agent, or other person who may have represented or acted for them in bidding for or procuring the Contract for the Project shall also sign the affidavit. If the successful CM is a corporation or other entity, all officers, agents, or other persons who may have acted for or represented the corporation or other entity in offering for or procuring the Contract for the Project shall also sign the affidavit.

**18. EXISTING CONDITIONS:**

The CM is responsible to visit, examine and inspect the site(s) of the proposed Project, obtain first-hand knowledge of existing conditions, the conformation of the ground, the character, quality and quantity of the products needed preliminary to and during the prosecution of the work, the general and local conditions and all other matters which can in any way affect the services or the work to be done under the Agreement, and become thoroughly familiar with all conditions under which the work is to be performed and correlate all the CM's observations and any other facts or conditions that are known to or reasonably knowable by the CM with the requirements of the proposal documents, including the proposed Contract Documents.

**19. SUBSURFACE INVESTIGATIONS:**

If soil and subsurface investigations were conducted at the site of the proposed Project, a copy of the report is available upon written request. The report shall not constitute a part



of the Contract Documents. Such information is provided for the purpose of disclosure only, and shall not relieve the CM from its obligation to investigate the soil and subsurface conditions. The Owner does not guarantee the accuracy or completeness of the data and shall not be responsible therefore. The CM shall not rely on such subsurface information and shall make its own investigation of subsurface conditions. The Owner will not be responsible in any way for additional compensation because of the reliance on or assumptions based on the soil investigation data furnished by the Owner.

## **20. FORM OF CONSENT TO RELEASE INFORMATION**

By submitting a Proposal, the CM (and in the case of a joint venture, each partner in the joint venture) authorizes the Owner, and the Owner's agents, attorneys and other representatives, to contact each and every reference, person or entity identified in the Proposal. The CM (and in the case of a joint venture, each partner in the joint venture) agrees that any information concerning the CM (and in the case of a joint venture, each partner in the joint venture) in possession of any identified reference, person or entity may be fully disclosed, and made available, to the Owner and its agents, attorneys and other representatives. The form of Consent To Release Information must be executed by the CM (and in the case of a joint venture, by each partner in the joint venture) and submitted to the Owner with the Proposal.

## **21. COMMUNICATIONS, QUESTIONS OR REQUESTS FOR INFORMATION:**

All communications, questions or requests for information shall be made in writing addressed to the Architect not later than six (6) business days prior to the time for receiving Proposals. All responses to requests will be distributed to all CMs by written Addendum no later than 72 hours prior to the time for Proposal opening.

**Except as expressly provided in, or permitted by, the Proposal Documents, from the date of issuance of the RFP until final Board action of approval of contract award, the persons or entities submitting a Proposal shall not initiate any communication or discussion concerning the Project, the RFP or the Proposal or any part thereof with any employee, agent, or representative of the Owner. Any violation of this restriction may result in the rejection of the Proposal.**

*[Continues on Next Page]*

## II.

### INSTRUCTIONS FOR SUBMITTING PROPOSALS

#### A. SUBMISSION OF PROPOSALS:

Sealed Proposals shall be submitted in six (6) sections:

- 1) Firm Overview
- 2) Approach
- 3) Experience
- 4) Financial Information (*Include Financial Statements Only in a separate sealed envelope marked "Confidential – Financial Statements Enclosed"*)
- 5) Acceptance of Owner's form of Agreement and form of Performance and Payment Bonds
- 6) Proposed CM Design Phase Compensation and Fee, Construction Phase Fee, and Shared Savings (*Include in a separate sealed envelope, utilizing Owner's form*)

Five (5) duplicate originals of the sealed Proposals shall be provided in a loose leaf, three-ring binders. All Proposals shall be clear and concise. The following information shall appear on the outside of the package:

Sealed Proposal for Construction Management at Risk Services  
Do Not Open

Walker County Board of Education  
Attn: Chris Jones, Director of Facilities and Operations  
298 Culberson Avenue, LaFayette, Georgia 30728

Projects:

Additions and Renovations to: Ridgeland High School  
New Practice Gym for: Lafayette High School  
Renovations to: Walker County Central Office  
New Athletic Field for: Chattanooga Valley Middle School

The outside of the package also shall bear the CM's name and address. The package shall be sealed and opaque.

The Proposal shall be signed by the person or persons legally authorized to bind the CM to a contract. All signatures shall have the name and the title of the signatory typed below the signature.

## **B. PROPOSAL FORMAT:**

### **1. Firm Overview:**

- a. Firm name, address of firm headquarters and branch office handling this Project as well as related telephone and fax numbers.
- b. Include how many years in business under the name stated above. Describe firm ownership, structure and history. Include type of legal entity (e.g., corporation, limited liability company, etc.), state or commonwealth of formation (i.e., where incorporated) and year of formation or organization. In the case of a joint venture, provide the same information for each partner in the joint venture.
- c. List the number of permanent employees by professional discipline and provide an organization chart of the firm. Also, for each employee you intend to assign to the Project include a paragraph which outlines their role and responsibility, past relevant experience with similar type projects, and their availability for this Project. Provide an organization chart of the Project team and resumes of your key employees who you intended to assign to this Project.
- d. If a joint venture, list each firm, rationale for joint venture, and previous similar experience as a joint venture.

### **2. Approach:**

- a. Describe your firm's approach to Preconstruction and Construction Services and how you propose to expedite the construction process. Be specific in this response taking into consideration the Owner's Preliminary Design Information. Include your firm's detailed schedule for completion of the proposed Preconstruction and Construction phases of the Project.
- b. Describe your experience and technical expertise your firm will employ with regard to safety, schedule, cost, quality assurance and quality control.

### **3. Experience:**

- a. Provide a project listing of current educational projects and educational projects completed over the past five years by your firm (and, in the case of a joint venture, by each partner in the joint venture and for each project, identify whether it was a project of the joint venture or of one of the partners in the joint venture). Include in the listing, for each project, the following information;
  - Project Name
  - Project Type
  - Construction Contract Award Amount and Final Cost
  - Construction Planned Schedule and Actual Schedule Duration

- Role and Responsibility (Scope) Your Firm had on Project
  - Owner's Name and Telephone Number
  - Architect's Name and Telephone Number
  - Prime Contractor's Name and Telephone Number (if your firm was not the Prime Contractor)
- b. Identify in the listing above, projects which were completed with unusual schedule or budget constraints, with a brief explanation of the constraints.
- c. Describe any claims, mediation, litigation, arbitration or other form of dispute resolution filed by or against your company (and, in the case of a joint venture, by or against any partner in the joint venture) in the past five (5) years, including case name, number, location of court or arbitration, and, if an arbitration, the name and telephone number of at least one arbiter. This list shall also disclose any failure or failures to complete a contract, or contracts, and any instances of having defaulted or having been declared to be in default, on any contract or contracts, and any penalties imposed by reason of any contract undertaken and determined to be in noncompliance with pertinent statutes within the past five (5) years, and all such items shall be explained in detail, including without limitation, identification of the project by name and the name, address and telephone number of the owner of each such project.
- d. Include a statement as to whether or not the CM (and in the case of a joint venture, each of the partners in the joint venture) or any of its officers has been convicted or entered a guilty plea (or plea of nolo contendere) in any court within the two (2) years prior to the date of Proposal submission for a violation of any State or Federal statute concerning competitive bidding or competitive proposals or the restraint of trade.

**4. Financial Information:**

- a. Provide CM's (and, in the case of a joint venture, for each partner in the joint venture):
- Current value of work under contract,
  - Current bonding capacity,
  - Current value of bonded work.
- b. Provide a compliance letter from a bonding company indicating the bonding company's A.M. Best financial rating and whether the bonding company will provide separate Payment and Performance Bonds, each in the amount of 100% of the contract price, on the exact forms provided by the Owner, for your services as CM.
- c. Provide the most recent financial statement of the CM (and, in the case of a joint venture, for each partner in the joint venture) which financial statement(s) shall be prepared and signed by an independent Certified Public Accountant duly registered with the Georgia State Board of Accountancy, and not interested, directly or indirectly, in the business of

the CM. The financial statement(s) shall be included in a separate sealed envelope labeled “*Confidential – Financial Statements Enclosed.*” The financial statement(s) shall cover a period of at least one year ending not more than sixteen (16) months prior to the date of the opening of sealed Proposals. No financial statement(s) shall include any entity other than the CM (*e.g.*, without limitation, parent, subsidiary or sister corporations).

- d. Provide two bank references including bank names, addresses, bank contacts and telephone numbers.

**5. Acceptance of Owner’s Form of Agreement and Bonds:**

- a. Indicate your willingness to execute the Owner’s form of Agreement and to execute the Owner’s form of Performance and Payment Bonds included in this RFP. Any proposed revisions to the terms or language of these documents must be submitted in writing with the CM’s response to the RFP. If submitted or proposed thereafter, such proposed revisions to the terms or language of these documents shall not be considered by the Owner and the CM’s Proposal may be rejected. A Proposal may be rejected if proposed revisions to any of these documents are unacceptable to the Owner.

**6. Proposed Design Phase Compensation and Fee, Construction Phase Fee, and Shared Savings:** (*Include in a separate sealed envelope. Use Owner’s form included in this Request For Proposal.*)

- a. Indicate your proposed Design Phase Compensation for all pre-construction activities as contained in, and required by, the Owner’s Agreement. The sum of your Reimbursable Expenses and the Design Phase Fee (i.e., the Design Phase Compensation) is the lump sum amount that you propose to insert in Article 14.1.1 of the Agreement.
- b. Indicate your proposed Design Phase Fee portion of the Design Phase Compensation. The Design Phase Fee is the lump sum amount that you propose to insert in Article 14.1.2 of the Agreement.
- c. Indicate your proposed Construction Phase Fee as a lump sum amount to be applied to the Construction Phase Compensation per Article 14.1.3. The Construction Phase Fee is the lump sum amount that you propose to insert in Article 14.1.4 of the Agreement.
- d. Indicate your proposed shared savings percentage splits between the Owner and Construction Manager. These are the percentages that you propose to be inserted in Article 14.2 of the Agreement.
- e. Acknowledge receipt of addendum, if any.

All blanks shall be filled in, and shall be filled in by typewriter or manually and

legibly, in ink. Where so indicated on the CM Design Phase Compensation and Fee, Construction Phase Fee, and Shared Savings Proposal Form, amounts and sums shall be expressed in both words and numerals, and in case of discrepancy between the two, the amount or sum written in words shall govern. Interlineations, alterations and erasures must be initialed by the signer of the Proposal. *[Continues on Next Page]*

### **III.**

#### **QUALIFICATIONS FOR SELECTION AND THE SELECTION PROCESS**

##### **A. QUALIFICATIONS FOR SELECTION OF CM**

The evaluation of the Proposals will be based upon consideration of the six evaluation factors, and their relative importance, set forth in Part II, above, which will result in an award that is most advantageous to the Walker County Board of Education.

##### **B. SELECTION PROCESS**

An evaluation committee will perform Proposal evaluations and, following completion of the evaluations and subject to the Owner's right to reject any or all Proposals, the responsible and responsive Offeror whose Proposal is determined to be the most advantageous to the Owner will be selected for award recommendation.

Offerors may be afforded an opportunity for discussion, negotiation and revision of Proposals for the purpose of obtaining best and final offers. In the event the Owner deems it necessary or appropriate, all responsible Offerors found by the Owner to have submitted Proposals reasonably susceptible of being selected for award shall be given an opportunity to participate in such discussions, negotiations and revisions.

The Owner reserves the right to reject any or all Proposals, before or after opening, for any reason whatsoever including, but not limited to, any failure of any Proposal to be accompanied by a Bid Bond or by other data required by the Proposal Documents, any incompleteness or irregularity of any Proposal received, any evidence of collusion with the intent to defraud or other illegal practices on the part of the Offeror, failure to comply with the requirements of the Proposal Documents, or if the proposed pricing exceeds the funds available. The Owner also reserves the right to waive any technicalities or informalities.

## **BID BOND (Construction Manager at Risk)**

---

KNOW ALL PERSONS BY THESE PRESENTS, that we, \_\_\_\_\_,  
*[insert proper name of Surety]*  
a corporation duly organized and existing under the laws of the State of \_\_\_\_\_,  
as surety ("Surety"), and \_\_\_\_\_  
*[Insert proper name and address of Construction Manager/Offeror]*  
as principal ("Offeror"), enter into, execute this bond ("Bid Bond"), and firmly bind ourselves, our heirs,  
administrators, executors and successors, jointly and severally, in favor of the Walker County Board of  
Education, as obligee ("Owner"), in the penal sum of: \_\_\_\_\_ (\$\_\_\_\_\_),  
*[penal sum is 5% of the Stated Cost Limitation of \$\_\_\_\_\_]*  
as of the \_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_.

WHEREAS, the Offeror has submitted a proposal for construction management at risk services in connection with the \_\_\_\_\_ Project in Walker County, Georgia; and

WHEREAS, the Owner has required the Offeror to furnish this Bid Bond containing the terms and conditions set forth herein as a condition to submission of the proposal;

NOW THEREFORE, the Surety and the Offeror, for themselves, their heirs, administrators, executors and successors, both jointly and severally, agree that if the Owner accepts the proposal of the Offeror and within sixty (60) days of the proposal opening delivers to the Offeror a Notice of Award, and the Offeror, within ten (10) calendar days after receipt of such Notice of Award, has not executed a contract with the Owner in accordance with the terms of such proposal and furnished such bonds as are specified in the proposal documents with good and sufficient surety for the faithful performance of such contract and for the prompt payment of labor and materials furnished in the prosecution thereof, then the Surety and the Offeror shall pay to the Owner the full penal sum hereof as liquidated damages and not as a penalty.

SIGNED AND SEALED this \_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_.

OFFEROR

SURETY

\_\_\_\_\_  
*[Typed Name]* [SEAL]

\_\_\_\_\_  
*[Typed Name]* [SEAL]

BY: \_\_\_\_\_  
*[Signature]*

BY: \_\_\_\_\_  
*[Signature]*

\_\_\_\_\_  
*[Printed Name, Title and Address]*

\_\_\_\_\_  
*[Printed Name, Title and Address]*

*[A current, certified and valid Power of Attorney must be attached.]*



**PERFORMANCE BOND (Construction Manager)**

---

\_\_\_\_\_, a corporation duly  
*[Insert Proper Name of Surety]*

organized and existing under the laws of the State of \_\_\_\_\_, as surety (“Surety”), and

\_\_\_\_\_, as principal  
*[Insert Proper Name of Construction Manager]*

(“Construction Manager”), enter into, execute this bond ("Performance Bond"), and bind themselves in favor of the Walker County Board of Education as obligee (“Owner”), in the penal sum of \_\_\_\_\_ dollars (\$\_\_\_\_\_).  
*[Insert Penal Sum in words and numerals]*

WHEREAS, the Construction Manager signed a contract with the Owner on \_\_\_\_\_, \_\_\_\_\_ 2\_\_\_\_\_ (“Construction Management Contract”) for construction management services including construction for a guaranteed maximum price of \_\_\_\_\_ (\$\_\_\_\_\_ ) for construction of a Field House, Classroom Additions, New Roof and Renovations at LaFayette High School (“Project”); and,

WHEREAS, the Owner has required the Construction Manager to furnish this Performance Bond containing the terms and conditions set forth herein as a condition of the Construction Management Contract with the Construction Manager;

NOW THEREFORE, the Surety and the Construction Manager, both jointly and severally, and for themselves, their heirs, administrators, executors and successors agree:

1.

The Construction Management Contract is hereby incorporated herein and by reference made a part hereof to the same extent and effect as though it were copied verbatim herein. The Surety and the Construction Manager are bound for the full performance of the Construction Management Contract, including, without exception, all of its terms and conditions, both express and implied.

2.

If the Construction Manager is in default of the Construction Management Contract and the Owner, by written notice to the Construction Manager and the Surety, declares the Construction Manager to be in default and terminates the right of the Construction Manager to

proceed, the Surety shall thereupon promptly notify the Owner in writing as to which of the actions permitted to the Surety in Paragraph 3 it will take.

3.

Upon default and termination of the Construction Manager and notice to the Construction Manager and Surety as provided in Paragraph 2 above, the Surety shall, within 30 days, proceed to take one or, at its option, more than one of the following courses of action:

(A) Proceed itself, or through others acting on its behalf, to complete full performance of the Construction Management Contract including, without limitation, correction of defective and nonconforming work performed by or on behalf of the Construction Manager. During such performance by the Surety, the Owner shall pay the Surety from its own funds only such sums as would have been due and payable to the Construction Manager in the absence of the default and termination.

(B) Applicable law permitting, and with the prior written consent of the Owner, obtain bids or proposals from construction managers previously identified as being acceptable to the Owner, for full performance of the Construction Management Contract. The Surety shall furnish the Owner a copy of such bids or proposals upon receipt of same. The Surety shall promptly select, with the agreement of the Owner, the best responsive bid or proposal and shall promptly tender the construction manager submitting it, together with a contract for fulfillment and completion of the Construction Management Contract executed by the completing construction manager, to the Owner for the Owner's execution. Upon execution by the Owner of the contract for fulfillment and completion of the Construction Management Contract, the completing construction manager shall furnish to the Owner a performance bond and a separate payment bond, each in the form of those bonds previously furnished to the Owner for the Project by the Construction Manager. Each such bond shall be in the penal sum of the (1) fixed price for completion, (2) guaranteed maximum price for completion, or (3) estimated price for completion, whichever is applicable. The Owner shall pay the completing construction manager from its own funds only such sums as would have been due and payable to the Construction Manager under the Construction Management Contract as and when they would have been due and payable to the Construction Manager in the absence of the default and termination. To the extent that the Owner is obligated to pay the completing construction manager sums which would not have then been due and payable to the Construction Manager under the Construction Management Contract, the Surety shall provide the Owner with such sums in a sufficiently timely manner that the Owner can utilize such sums in making timely payment to the completing construction manager; or,

(C) Take any and all other acts, if any, mutually agreed upon in writing by the Owner and the Surety.

4.

In addition to those duties set forth hereinabove, the Surety shall promptly pay the Owner all loss, costs and expenses resulting from the Construction Manager's default(s), including, without limitation, fees, expenses and costs for architects, engineers, consultants, testing, surveying and attorneys, liquidated or actual damages, as applicable, for delay in completion of the Project, and fees, expenses and costs incurred at the direction, request, or as a result of the

acts or omissions of the Surety.

5.

In no event shall the Surety be obligated to the Owner hereunder for any sum in excess of the Penal Sum. As used in this Performance Bond, the term "Penal Sum" means the amount stated as the penal sum in the preamble of this Performance Bond, as that amount may be adjusted from time to time pursuant to Paragraph 6 below.

6.

The Surety waives notice of any changes to the Construction Management Contract including, without limitation, changes in the contract time, the contract price, or the work to be performed. If the total amount payable by the terms of the Construction Management Contract is increased to an amount in excess of the then current Penal Sum, then, automatically and without notice to or any action required of any party, the Penal Sum shall be increased as the total amount payable by the terms of the Construction Management Contract is increased.

7.

This Performance Bond is provided by the Surety for the sole and exclusive benefit of the Owner, together with its successors or assigns. No other party, person or entity shall have any rights against the Surety hereunder.

8.

Any and all notices to the Surety, the Construction Manager or the Owner shall be given by Certified Mail, Return Receipt Requested, to the address set forth for each party below:

Surety: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attn: \_\_\_\_\_

Construction Manager: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attn: \_\_\_\_\_

Owner: Walker County Board of Education  
298 Culberson Avenue  
LaFayette, Georgia 30728  
Attn: Chris Jones

9.

Any statutory limitation, which may be contractually superseded, to the contrary notwithstanding, any action hereon may be instituted so long as the applicable statute of limitations governing the Construction Management Contract has not run or expired.

CONSTRUCTION MANAGER:

SURETY:

\_\_\_\_\_ [Seal] \_\_\_\_\_ [Seal]  
*[Typed Name]* *[Typed Name]*

By: \_\_\_\_\_ By: \_\_\_\_\_  
*[Signature]* *[Signature]*

\_\_\_\_\_ *[Printed Name, Title and Address]* \_\_\_\_\_  
*[Printed Name, Title and Address]*

\_\_\_\_\_  
\_\_\_\_\_

**PAYMENT BOND (Construction Manager)**

---

\_\_\_\_\_, a corporation duly  
*[Insert Proper Name of Surety]*

organized and existing under the laws of the State of \_\_\_\_\_, as surety ("Surety"), and  
\_\_\_\_\_, as principal ("Construction Manager"),  
*[Insert Proper Name of Construction Manager]*

enter into, execute this bond ("Payment Bond"), and bind themselves in favor of the Walker  
County Board of Education, as obligee ("Owner") in the penal sum of \_\_\_\_\_  
\_\_\_\_\_ dollars (\$\_\_\_\_\_).  
*[Insert Penal Sum in words and numerals]*

WHEREAS, the Construction Manager signed a contract with the Owner on  
\_\_\_\_\_, \_\_\_\_\_, 20\_\_\_\_ ("Construction Management Contract") for construction  
management services including construction for a guaranteed maximum price of \_\_\_\_\_  
\_\_\_\_\_ (\$\_\_\_\_\_)  
for construction of \_\_\_\_\_ ("Project"); and,

WHEREAS, the Owner has required the Construction Manager to furnish this Payment  
Bond containing the terms and conditions set forth herein as a condition of the Construction  
Management Contract with the Construction Manager;

NOW THEREFORE, the Surety and the Construction Manager, both jointly and  
severally, and for themselves, their heirs, administrators, executors and successors agree:

1.

The Construction Management Contract is hereby incorporated herein and by reference  
made a part hereof to the same extent and effect as though it were copied verbatim herein. The  
Surety and the Construction Manager are bound for the full performance of the Construction  
Management Contract including without exception all of its terms and conditions, both express  
and implied, and, without limitation, specifically including Construction Manager's obligation to  
pay for labor, materials, machinery, and equipment provided in connection with the Construction  
Management Contract performance.

2.

For purposes of this Payment Bond, Beneficiary is defined as any subcontractor or other  
person supplying labor, materials, machinery, or equipment in the prosecution of the work  
provided for in the Construction Management Contract, or any other person entitled to the  
protection of this Payment Bond pursuant to the provisions of Title 36, Chapter 91, Official Code

of Georgia Annotated.

3.

Every Beneficiary who has not been paid in full for labor or material furnished in the prosecution of the work on the Project before the expiration of a period of ninety (90) days after the day on which the last of the labor was done or performed by such person or the material or equipment or machinery was furnished or supplied by such person for which such claim is made, or when he or she has completed his or her subcontract for which claim is made, shall have the right to bring an action on this Payment Bond for the amount, or the balance thereof, unpaid at the time of the commencement of such action and to prosecute such action to final execution and judgment for the sum or sums due such person; provided, however, that:

(A) Any person having a direct contractual relationship with a subcontractor but no contractual relationship, express or implied, with the Construction Manager where the Construction Manager has not complied with the notice of commencement requirements in accordance with Code Section 36-91-92, Official Code of Georgia Annotated, shall have the right of action upon this Payment Bond upon giving written notice to the Construction Manager within ninety (90) days from the day on which such person did or performed the last of the labor or furnished the last of the material or machinery or equipment for which such claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the material was furnished or supplied or for whom the labor was performed or done; provided, however, that: (i) the Construction Manager's failure to supply a copy of the notice of commencement within ten calendar days of receipt of a written request from a subcontractor, materialman or person shall render the provisions of this paragraph 3(A) inapplicable to such subcontractor, materialman or person, and (ii) the Construction Manager's failure to file a notice of commencement shall render the notice to contractor requirements of this paragraph 3(A) inapplicable.

(B) Any person having direct contractual relationship with a subcontractor but no contractual relationship express or implied with the Construction Manager where the Construction Manager has complied with the notice of commencement requirements in accordance with subsection (a) of Code Section 36-91-92, Official Code of Georgia Annotated, shall have the right of action on this Payment Bond provided such person shall, within thirty (30) days from the filing of the notice of commencement or thirty (30) days following the first delivery of labor, material, machinery or equipment, whichever is later, give to the Construction Manager a written notice setting forth:

(i) The name, address and telephone number of the person providing labor, material, machinery or equipment;

(ii) The name and address of each person at whose instance the labor, material, machinery or equipment is being furnished;

(iii) The name and the location of the Project; and,

(iv) A description of the labor, material, machinery or equipment being

provided and, if known, the contract price or anticipated value of the labor, material, machinery or equipment to be provided or the amount claimed to be due, if any.

(C) Nothing contained in this Payment Bond shall limit the right of action of a Beneficiary to the ninety (90) day period referenced in paragraph 3(A) above.

The notice required under paragraph 3(A) of this Payment Bond may be served by registered or certified mail, postage prepaid, or statutory overnight delivery, duly addressed to the Construction Manager, at any place at which the Construction Manager maintains an office or conducts his or her business or at his or her residence, by depositing such notice in any post office or branch post office or any letter box under the control of the United States Postal Service; alternatively, notice may be served in any manner in which the sheriffs of the State of Georgia are authorized by law to serve summons or process.

Every action instituted on this Payment Bond shall be brought in the name of the Beneficiary, without the Owner being made a party thereto.

4.

In no event shall the Surety be obligated hereunder for sums in excess of the Penal Sum. As used in this Payment Bond, the term "Penal Sum" means the amount stated as the penal sum in the preamble of this Payment Bond, as that amount may be adjusted from time to time pursuant to paragraph 5 below.

5.

The Surety waives notice of any changes to the Construction Management Contract including, without limitation, changes in the contract time, the contract price, or the work to be performed. If the total amount payable by the terms of the Construction Management Contract is increased to an amount in excess of the then current Penal Sum, then, automatically and without notice to or any action required of any party, the Penal Sum shall be increased as the total amount payable by the terms of the Construction Management Contract is increased. No agreement, modification, or change in the Construction Management Contract, change in the work covered by the Construction Management Contract, or extension of time for the completion of the Construction Management Contract shall release the Surety of this Payment Bond.

6.

No action can be instituted hereunder after one (1) year from the completion of the Construction Management Contract and the acceptance of the Project by the Owner and any other applicable public authorities.

7.

Unless otherwise provided herein, any and all notices to the Surety or the Construction Manager shall be given by Certified Mail, Return Receipt Requested, to the address set forth for each party below, including a courtesy copy to the Owner:

Surety: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

Construction Manager: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

Owner: Walker County Board of Education  
298 Culberson Avenue  
LaFayette, Georgia 30728  
Attn: Chris Jones

8.

Notwithstanding any provision herein that may be to the contrary, this Payment Bond is intended to be a statutory payment bond under applicable laws of the State of Georgia and shall be so construed.

CONSTRUCTION MANAGER:

SURETY:

\_\_\_\_\_ [SEAL]  
*[Typed Name]*

\_\_\_\_\_ [SEAL]  
*[Typed Name]*

By: \_\_\_\_\_  
*[Signature]*

By: \_\_\_\_\_  
*[Signature]*

\_\_\_\_\_  
*[Printed Name, Title and Address]*

\_\_\_\_\_  
*[Printed Name, Title and Address]*

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_



**OFFEROR’S and INDIVIDUALS’ AFFIDAVIT OF NONCOLLUSION**

*(This affidavit to be executed in accordance with O.C.G.A. § 36-91-21(e))*

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

COMES NOW, \_\_\_\_\_ (“Offeror”),  
*[name of Offeror]*

appearing by and through \_\_\_\_\_, it’s \_\_\_\_\_  
*[insert name of individual with authority to bind Offeror]* *[title]*

(averring both individually and in his or her representative capacity on behalf of Offeror) (the “Individual And Representative Affiant”), and \_\_\_\_\_  
*[in these blanks insert the names of all those required to give the oath under O.C.G.A. § 36-91-21(e)]*

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(collectively, the “Individual Affiants”), and each of the Individual And Representative Affiant and the Individual Affiants, after first being duly sworn, deposes and says that:

1. He, she or it, as applicable, has not directly or indirectly violated subsection (d) of the Official Code of Georgia Annotated Section 36-91-21, which subsection provides as follows:

(d) Whenever a public works construction contract for any governmental entity subject to the requirements of this chapter is to be let out by competitive sealed bid or proposal, no person, by himself or herself or otherwise, shall prevent or attempt to prevent competition in such bidding or proposals by any means whatever. No person who desires to procure such work for himself or herself or for another shall prevent or endeavor to prevent anyone from making a bid or proposal therefor by any means whatever, nor shall such person so desiring the work cause or induce another to withdraw a bid or proposal for the work.

2. If the Offeror is a partnership, then the Individual And Representative Affiant, together with the Individual Affiants, constitute all of the partners and any officer, agent or other person who may have

represented or acted for them in bidding or proposing for or procuring the contract for the Walker County Board of Education Project for \_\_\_\_\_ (the "Project").

3. If the Offeror is a corporation or other entity, then the Individual And Representative Affiant, together with the Individual Affiants, constitute all officers, agents, or other persons who may have acted for or represented the corporation or other entity in bidding for or procuring the contract for the Project.

Further, the Individual And Representative Affiant and the Individual Affiants sayeth not.

This \_\_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_\_

\_\_\_\_\_  
*[insert name of Offeror]*

and \_\_\_\_\_  
*[insert name of Individual And Representative Affiant]*

By: \_\_\_\_\_, both individually and on behalf of Offeror as its  
*[signature]*

\_\_\_\_\_  
*[insert title]*

Individual Affiants' signatures and names:

x \_\_\_\_\_  
Name:

x \_\_\_\_\_  
Name:

x \_\_\_\_\_  
Name:

x \_\_\_\_\_  
Name:

x \_\_\_\_\_  
Name:

x \_\_\_\_\_  
Name:

x \_\_\_\_\_  
Name:

x \_\_\_\_\_  
Name:

x \_\_\_\_\_  
Name:

x \_\_\_\_\_  
Name:

x \_\_\_\_\_  
Name:

x \_\_\_\_\_  
Name:

Sworn to and subscribed before me this \_\_\_ day of \_\_\_\_\_, 2\_\_\_\_\_.

Notary Public: \_\_\_\_\_ My commission expires: \_\_/\_\_/\_\_.

**CONSENT TO RELEASE INFORMATION**

The undersigned, having submitted a competitive sealed Proposal to the Walker County Board of Education in respect of a local government entity public works construction project (or being a partner in a joint venture that has submitted such proposal), hereby authorizes any person or entity having in its possession, custody or control any information regarding the undersigned to fully disclose and make available such information to the Walker County Board of Education, its agents, attorneys and other representatives.

This \_\_\_ day of \_\_\_\_\_, 2\_\_\_\_.

\_\_\_\_\_  
*[Printed name of person or entity consenting to release of information]*

By: \_\_\_\_\_

Printed name: \_\_\_\_\_

Printed Title: \_\_\_\_\_

---

**Construction Management Compensation & Fee Proposal**

---

Project Name: \_\_\_\_\_  
Walker County Board of Education

Walker County Board of Education  
298 Culberson Avenue  
LaFayette, Georgia 30728

In compliance with your Advertisement for Sealed Proposals and the Request for Proposal, the undersigned Construction Manager,

\_\_\_\_\_,  
*[legal name of Construction Manager]*

\_\_\_\_\_  
\_\_\_\_\_,  
*[address of Construction Manager]*

\_\_\_\_\_,  
*[telephone number of Construction Manager]*

having carefully examined the proposed form of Contract for Construction Management Services including Construction for a Guaranteed Maximum Price (the "Agreement") and the Owner's standard forms and other documents included or referenced in the Request for Proposals, any Addenda thereto, and the Agreement for the Project, proposes and agrees, if this proposal is accepted, to enter into the Agreement with the Owner and to perform the Construction Management at Risk Services including all services, supervision, labor, equipment and material in conformance with the Contract Documents, in the time stated therein, for the compensation and fees set forth below, and submits the following proposed compensation and fees and other matters set forth below:

- a. Construction Manager's proposed Design Phase Compensation amount to insert in Article 14.1.1 of the Agreement is \_\_\_\_\_ (\$\_\_\_\_\_).
- b. Construction Manager's proposed Design Fee portion of the Design Phase Compensation amount to insert in Article 14.1.2 of the Agreement is \_\_\_\_\_ (\$\_\_\_\_\_).
- c. Construction Manager's proposed Construction Phase Fee as a lump sum amount to be applied to the Construction Phase Compensation per Article 14.1.3. of the Agreement is \_\_\_\_\_ (\$\_\_\_\_\_).

this being the amount to be inserted in Article 14.1.4 of the Agreement.

- d. Construction Manager's proposed shared savings split resulting from the final total cost of the Work being less than the Guaranteed Maximum Price, these savings shall be shared with \_\_\_\_\_ percent (\_\_\_\_%) allocated to Owner and \_\_\_\_\_ percent (\_\_\_\_%) allocated to Construction Manager, these percentages to be inserted in Article 14.2 of the Agreement.
- e. The undersigned Construction Manager hereby acknowledges receipt of the following Addenda:

---

*[insert the number and date of each Addendum; if none, insert "None"]*

The Construction Manager understands that the Owner reserves the right to reject any or all Proposals, and to waive any technicalities and informalities.

The Construction Manager agrees that this Proposal may not be withdrawn for a period of sixty (60) calendar days after the date and time fixed for receiving said Proposals.

The undersigned Construction Manager agrees that if it is notified in writing by mail, telegraph, facsimile or hand-delivery of the acceptance of this Proposal, via Notice of Award or otherwise, within sixty (60) calendar days after the date and time fixed for receiving said Proposals, the undersigned Construction Manager will execute, within three (3) business days of the date of the notice, the Agreement for the Construction Management at Risk Services in accordance with the Request for Proposal for the compensation and fees stated above, and will when necessary furnish and deliver to the Owner, at the Construction Manager's expense, a satisfactory Performance Bond and Payment Bond, both on the exact forms provided by the Owner in the Proposal Documents and each in an amount equal to one hundred percent (100%) of the Guaranteed Maximum Price, and affixed to each a certified and current power of attorney of the attorney-in-fact who executes the Performance Bond and the Payment Bond on behalf of the surety, and each issued by a surety satisfactory to the Owner and licensed to do business in Georgia as approved by the State Insurance Commissioner's Office.

The undersigned Construction Manager agrees to commence Work, as required by the Agreement, upon its receipt of a written Notice-to-Proceed from the Owner.

By submission of the Proposal, Construction Manager represents and warrants that:

- (a) Construction Manager has read and understands the Proposal Documents and this Proposal is made in accordance therewith;
- (b) Construction Manager has read and understands the bidding or proposal documents or contract documents for other portions of the Project, if any, being bid or offered concurrently or presently under construction, to the extent that such documentation

- relates to the Construction Management at Risk Services for which this Proposal is submitted;
- (c) this Proposal is based upon furnishing all of the Construction Management at Risk Services, including services, supervision, labor, materials, equipment, systems, warranties and other things required by the Proposal Documents; and,
  - (d) all facts stated in this Proposal are true and correct.

By submission of this Proposal, the Construction Manager certifies that this Proposal has been derived independently, without consultation, communication or agreement as to any matter relating to this Proposal with any other Construction Manager or with any competitor. The Construction Manager hereby certifies that this Proposal is made without prior understanding, agreement or connection with any corporation, firm or person submitting a proposal for the same Project and is in all respects fair and without collusion or fraud. If successful in its Proposal, the Construction Manager will timely submit to the Owner the Offeror's and Individuals' Affidavit of Noncollusion and the Subcontractor's Affidavit of Noncollusion in the form, manner and number, required by the Request for Proposals and applicable laws. The Construction Manager agrees to abide by all conditions of the Request for Proposal.

Respectfully submitted,

\_\_\_\_\_  
*[typed name of Construction Manager]*

By: \_\_\_\_\_ [seal]

*[signature]*

\_\_\_\_\_  
*[typed name and title]*

\_\_\_\_\_  
*[address of Construction Manager]*

(\_\_\_\_\_) \_\_\_\_\_  
*[business telephone number]*

\_\_\_\_\_  
*[date of execution]*

[If the Construction Manager is a joint venture, utilize the following page of this proposal form for signatures.]

By submission of this Proposal, the Construction Manager certifies that this Proposal has been derived independently, without consultation, communication or agreement as to any matter relating to this Proposal with any other Construction Manager or with any competitor. The Construction Manager hereby certifies that this Proposal is made without prior understanding, agreement or connection with any corporation, firm or person submitting a proposal for the same Project and is in all respects fair and without collusion or fraud. If successful in its Proposal, the Construction Manager will timely submit to the Owner the Offeror's and Individuals' Affidavit of Noncollusion and the Subcontractor's Affidavit of Noncollusion in the form, manner and number, required by the Request for Proposals and applicable laws. The Construction Manager agrees to abide by all conditions of the Request for Proposal.

Respectfully submitted \_\_\_\_\_,  
*[typed name of Joint Venture]*

By: \_\_\_\_\_  
*[typed name of Joint Venture partner]*

By: \_\_\_\_\_ [seal]  
*[signature]*

\_\_\_\_\_  
*[typed name and title]*

\_\_\_\_\_  
*[address of Joint Venture partner]*

(\_\_\_\_\_) \_\_\_\_\_  
*[business telephone number]*

\_\_\_\_\_  
*[date of execution]*

By: \_\_\_\_\_  
*[typed name of Joint Venture partner]*

By: \_\_\_\_\_ [seal]  
*[signature]*

\_\_\_\_\_  
*[typed name and title]*

*Project Name:* \_\_\_\_\_  
\_\_\_\_\_

---

*[address of Joint Venture partner]*

(\_\_\_\_) \_\_\_\_\_  
*[business telephone number]*

---

*[date of execution]*



**CM AT RISK PROPOSAL INITIAL EVALUATION FORM**

**PROJECT:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

<b>EVALUATION FACTORS</b>	<b>Offeror #1</b>	<b>Offeror #2</b>	<b>Offeror #3</b>	<b>Offeror #4</b>
Firm Overview (5%)	_____	_____	_____	_____
Approach (20%)	_____	_____	_____	_____
Experience (20%)	_____	_____	_____	_____
Financial Information (20%)	_____	_____	_____	_____
Acceptance of Owner's form of Agreement and Performance and Payment Bonds (15%)	_____	_____	_____	_____
Proposed CM/GC Design Phase Compensation and Fee, Construction Phase Fee, and Shared Savings (20%)	_____	_____	_____	_____
<b>TOTALS</b>	_____	_____	_____	_____
Bid Bond (yes or no)	_____	_____	_____	_____
Addenda Acknowledged (yes or no)	_____	_____	_____	_____

**CM AT RISK PROPOSAL SUPPLEMENTAL EVALUATION FORM**  
**(FOR ADJUSTMENTS BASED ON DISCUSSIONS, NEGOTIATIONS AND REVISIONS OF PROPOSALS)\***  
**PROJECT:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

<b>EVALUATION FACTORS</b>	<b>Offeror #1</b>	<b>Offeror #2</b>	<b>Offeror #3</b>	<b>Offeror #4</b>
Firm Overview (5%)	_____	_____	_____	_____
Approach (20%)	_____	_____	_____	_____
Experience (20%)	_____	_____	_____	_____
Financial Information (20%)	_____	_____	_____	_____
Acceptance of Owner's form of Agreement and Performance and Payment Bonds (15%)	_____	_____	_____	_____
Proposed CM/GC Design Phase Compensation and Fee, Construction Phase Fee, and Shared Savings (20%)	_____	_____	_____	_____
<b>TOTALS</b>	_____	_____	_____	_____

\*Discussions, negotiations and revisions of Proposals may be afforded to any responsible offerors found to have submitted Proposals reasonably susceptible of being selected after the Initial Evaluation for the purpose of obtaining best and final offers.

**FINAL SCORE TALLY AND RANKING BASED ON THE EVALUATION FACTORS**

**PROJECT:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

<u>RANK</u>	<u>OFFEROR</u>	<u>SCORE</u>
First	_____	_____ = The responsive and responsible offeror whose proposal is the most advantageous to the Board.
Second	_____	_____
Third	_____	_____
Fourth	_____	_____

**EVALUATION COMMITTEE:**

\_\_\_\_\_ Date: \_\_\_\_\_, 20\_\_  
Chris Jones, Director of Facilities and Operations

\_\_\_\_\_ Date: \_\_\_\_\_, 20\_\_  
[other member of evaluation committee]

\_\_\_\_\_ Date: \_\_\_\_\_, 20\_\_  
[other member of evaluation committee]

**PROJECT:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

**PROPOSAL CERTIFICATION AND RECOMMENDATION OF AWARD**

After advertising Requests for Proposals (“RFP”) as required by law, and after consideration of the evaluation factors identified in the RFP for each timely and properly submitted proposal, the undersigned hereby certify the Proposals and recommend the award of the \_\_\_\_\_ Project to \_\_\_\_\_ as the responsive and responsible offeror whose proposal is the most advantageous to the Board based on the evaluation factors.

**EVALUATION COMMITTEE:**

\_\_\_\_\_  
Chris Jones, Director of Facilities and Operations

Date: \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
[other member of evaluation committee]

Date: \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
[other member of evaluation committee]

Date: \_\_\_\_\_, 20\_\_

**SUBCONTRACTOR AFFIDAVIT**

By executing the affidavit, the undersigned subcontractor verifies its compliance with O.C.G.A. 13-10-91, stating affirmatively that the individual, firm or corporation which is engaged in the physical performance of services under a contract with \_\_\_\_\_ (name of contractor) on behalf of \_\_\_\_\_ (name of public employer) has registered with and is participating in a federal work authorization program\* [any of the electronic verification of work authorization programs operated by the United States Department of Homeland Security or any equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, pursuant to the Immigration Reform and Control Act of 1986 (IRCA), P.L. 99-603], in accordance with the applicability provisions and deadlines established in O.C.G.A. 13-10-91.

Project: \_\_\_\_\_

\_\_\_\_\_  
EEV / Basic Pilot Program\* User Identification Number

\_\_\_\_\_  
BY: Authorized Officer of Agent  
(Subcontractor Name)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title of Authorized Officer or Agent of Subcontractor

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

SUBSCRIBED AND SWORN  
BEFORE ME ON THIS THE  
\_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_

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

\_\_\_\_\_

\* As of the effective date of O.C.G.A. 13-10-91, the applicable federal work authorization program is the "EEV / Basic Pilot Program" operated by the U.S. Citizenship and Immigration Services Bureau of the U.S. Department of Homeland Security, in conjunction with the Social Security Administration (SSA).

SAMPLE CONTRACT

**PHASED PROJECT FORM OF CONTRACT FOR  
CONSTRUCTION MANAGEMENT SERVICES  
INCLUDING  
CONSTRUCTION FOR A GUARANTEED MAXIMUM PRICE  
BETWEEN  
THE WALKER COUNTY BOARD OF EDUCATION  
AND THE CONSTRUCTION MANAGER**

**Construction  
Manager:** \_\_\_\_\_

**Project Name:** \_\_\_\_\_

**Address:** \_\_\_\_\_

SAMPLE CONTRACT

TABLE OF CONTENTS

---

ARTICLE 1	DEFINITIONS .....	1
	1.1 Applicable Laws .....	1
	1.2 Architect.....	1
	1.3 Change Order .....	1
	1.4 Construction Phase.....	1
	1.5 Construction Phase Services .....	1
	1.6 Day .....	1
	1.7 Design for Construction .....	2
	1.8 Design Phase.....	2
	1.9 Design Phase Services .....	2
	1.10 Final Completion .....	2
	1.11 GMP.....	2
	1.12 Other Contractors.....	2
	1.13 Owner's Representative.....	2
	1.14 Preliminary Design .....	2
	1.15 Project .....	2
	1.16 Reimbursable Expenses .....	2
	1.17 Services .....	2
	1.18 Subcontracts.....	2
	1.19 Subcontract Costs.....	3
	1.20 Subcontractor .....	3
	1.21 Substantial Completion.....	3
	1.22 Value Engineering.....	3
	1.23 Work .....	3
ARTICLE 2	THE CONTRACT DOCUMENTS .....	3
	2.1 Contract Documents Defined.....	3
	2.2 Priority Of Documents .....	3
	2.3 Substitutions.....	4
	2.4 Design Document List .....	4
ARTICLE 3	REPRESENTATIONS AND WARRANTIES.....	4
	3.1 Specific Representations And Warranties.....	4
	3.2 Enumerated Representations And Warranties Not Exhaustive.....	5
ARTICLE 4	CONSTRUCTION MANAGER'S SERVICES AND DUTIES: GENERAL PROVISIONS .....	6
	4.1 Generally .....	6
	4.2 Standard Of Care.....	6
	4.3 Permits, Notices, And Fees .....	6
	4.4 Compliance With Applicable Laws .....	6
	4.5 Communications In Writing .....	6

SAMPLE CONTRACT

4.6 Reporting Anticipated Delays .....7  
4.7 Duty To Correct .....7  
4.8 Storm Water Discharge Permits.....7

ARTICLE 5 DESIGN REVIEW AND PROJECT PLANNING.....7  
5.1 Generally .....7  
5.2 Review Project Requirements And Site(s) Data .....8  
5.3 Verify Site(s) And Working Conditions .....8  
5.4 Consultation And Advice.....8  
5.5 Review Of Architect's Schedule .....8  
5.6 Consultants.....8  
5.7 Identify Applicable Laws And Regulations .....8  
5.8 Quality Assurance .....9  
5.9 Procurement Guidelines And Plan.....9  
5.10 Utilities, Communications And Other Infrastructure Issues .....9  
5.11 Review Of Design Documents.....9  
5.12 Systems Analyses.....9  
5.13 Control Of Design Modifications .....9  
5.14 Life Cycle Analyses .....9  
5.15 Constructability Analyses .....9  
5.16 Consultation Regarding Design Modifications.....10  
5.17 Presentations .....10  
5.18 Value Engineering.....10

ARTICLE 6 ESTIMATING AND MONITORING PROJECT COSTS.....10  
6.1 Construction Cost Estimate .....10  
6.2 Reducing Estimated Project Costs After Bidding.....10  
6.3 Monitoring Construction Costs And Comparison To Estimates .....11  
6.4 Cash Flow Forecasts .....11  
6.5 Unit Cost Records .....11

ARTICLE 7 COMPLETION DATE AND SCHEDULES.....11  
7.1 Completion Date .....11  
7.2 Preparation Of Preliminary Schedule.....11  
7.3 Preparation Of Construction Schedule.....12  
7.4 Updating Of Schedules .....12  
7.5 Owner's Approval Of Preliminary And Construction Schedules.....12  
7.6 Expediting To Maintain Schedule .....13  
7.7 Liquidated Damages .....13

ARTICLE 8 PROCUREMENT OF SUBCONTRACTS, MATERIALS, AND SERVICES ....14  
8.1 Bidding And Contract Award .....14  
8.2 Approval Of Subcontractors .....14  
8.3 Subcontract Requirements .....14  
8.4 Coordination Of The Subcontracts .....14  
8.5 Competitive Procurement .....15



SAMPLE CONTRACT

8.6 Construction Manager Responsible For Acts Of Subcontractors .....15

8.7 Copies of Bids.....15

8.8 Procurement Of Special Services.....15

8.9 Orders Of Materials And Equipment.....15

8.10 Procurement Of Materials And Equipment On Owner's Behalf.....15

ARTICLE 9 CONSTRUCTION ADMINISTRATION .....16

9.1 Construction Manager To Enter Into Subcontracts.....16

9.2 Scheduling And Coordinating Construction .....16

9.3 Preconstruction Conferences.....16

9.4 Confirmation of Insurance .....16

9.5 Review And Approval Of Subcontractor Schedules Of Values .....16

9.6 Commencement Of Construction .....17

9.7 Supervision Of Subcontractors .....17

9.8 Job Progress Meetings .....17

9.9 Requests For Information And Interpretation .....17

9.10 Submittals .....18

9.11 Liens And Subcontractor Payments .....18

9.12 Labor Relations .....18

9.13 Protection Of Persons And The Work .....18

9.14 Demolition, Removal Of Materials And Burning.....19

9.15 Site(s) Limitation .....19

9.16 Corrective Work.....19

9.17 Review And Analysis Of Claims .....19

ARTICLE 10 UNCOVERING AND CORRECTING WORK.....19

10.1 Uncovering Work Covered Contrary To Directions .....19

10.2 Option To Order Work Uncovered .....19

10.3 Correction Of Defective Work.....20

10.4 Correction During One Year Following Completion .....20

10.5 No Period Of Limitation Established.....20

10.6 Owner's Option To Accept Defective Work .....20

ARTICLE 11 INSPECTIONS AND CERTIFICATIONS OF COMPLETION.....20

11.1 Inspection Of Work.....20

11.2 Standard Of Construction And Identification Of Defective Work .....20

11.3 Equipment And Other Items .....21

11.4 Inspection Upon Arrival, During Installation, And After Installation ....21

11.5 Punch Lists And Correction Of Defective Work .....21

11.6 Construction Manager's Observation Of Testing And Start-up.....21

11.7 Transfer Of The Work And The Project To Owner.....21

11.8 Substantial Completion Of The Project.....22

11.9 Final Completion Of The Project.....22

SAMPLE CONTRACT

ARTICLE 12 PROJECT DOCUMENTATION.....22

- 12.1 Basic Project Documentation.....22
- 12.2 Daily Log .....23
- 12.3 Monthly Reports .....23
- 12.4 Review And Assignment Of Warranties.....23
- 12.5 Operations And Maintenance Documentation.....23
- 12.6 Review And Approval Of As-Built Drawings.....23
- 12.7 Availability Of Project-Related Records To Owner .....23
- 12.8 Maintenance Of Project-Related Records.....24
- 12.9 Project Videotapes And Photographs .....24

ARTICLE 13 OWNER'S DUTIES, OBLIGATIONS, AND RESPONSIBILITIES .....24

- 13.1 Provide Project Information.....24
- 13.2 Review Of Documents.....24
- 13.3 Access To The Site(s) And The Work.....24
- 13.4 Secure Permits, Licenses, Approvals, And Authorizations .....24
- 13.5 Timely Performance.....24
- 13.6 Owner's Reviews, Inspections, Approvals, And Payments.....24
- 13.7 Non-Waiver.....25

ARTICLE 14 PAYMENT TO CONSTRUCTION MANAGER .....25

- 14.1 Basis Of Compensation.....25
- 14.2 Guaranteed Maximum Price .....26
- 14.3 Schedule Of Values.....27
- 14.4 Form Of Pay Requests And Backup Documentation.....27
- 14.5 Claim Releases And Verified List Of Subcontractors .....28
- 14.6 Certification Relating To Pay Requests .....28
- 14.7 Payment Of Pay Requests .....29
- 14.8 Payment At Substantial Completion .....29
- 14.9 Payment At Final Completion.....30
- 14.10 Withholding Of Payment .....30
- 14.11 Disputed Pay Requests.....31
- 14.12 Conditions Precedent To Payment.....31
- 14.13 Non-Waiver Of Claims For Defective Work.....31

ARTICLE 15 CHANGE ORDERS .....32

- 15.1 Authority To Order Changes.....32
- 15.2 Adjustments To Construction Manager's Compensation, GMP  
And Contract Time Only By Change Order.....32
- 15.3 Adjustments To Construction Manager's Compensation And GMP .....32
- 15.4 Payment.....34
- 15.5 Extensions of Time .....34
- 15.6 Change Orders Final .....34
- 15.7 Surety Consent .....34

SAMPLE CONTRACT

ARTICLE 16 CLAIMS BY CONSTRUCTION MANAGER .....35

- 16.1 Generally .....35
- 16.2 Claims For Additional Compensation .....35
- 16.3 Separate Records.....35
- 16.4 Formal Written Claim .....35
- 16.5 Extensions of Time .....36
- 16.6 Claims For Concealed Or Unknown Conditions .....37
- 16.7 Mediation .....37

ARTICLE 17 PAYMENT AND PERFORMANCE BONDS .....38

ARTICLE 18 CONSTRUCTION MANAGER'S PERSONNEL AND SUBCONTRACTORS .38

- 18.1 Personnel.....38
- 18.2 Removal Of Personnel And Subcontractors .....38
- 18.3 Employment Taxes .....38

ARTICLE 19 OWNERSHIP OF DOCUMENTS .....39

ARTICLE 20 INDEMNITY .....39

- 20.1 General Indemnity.....39
- 20.2 Enforcement Of This Agreement.....39

ARTICLE 21 INSURANCE.....40

ARTICLE 22 SUSPENSION .....40

- 22.1 Suspension Of Work .....40
- 22.2 Ceasing Performance Upon Suspension .....40
- 22.3 Resumption Of Work After Suspension .....40
- 22.4 Claim For Costs Of Suspension.....40

ARTICLE 23 TERMINATION.....41

- 23.1 Termination For Convenience .....41
- 23.2 Ceasing Performance Upon Termination.....41
- 23.3 Submission Of Termination Claim .....41
- 23.4 Compensation For Termination For Convenience.....42
- 23.5 Termination For Cause .....42
- 23.6 Erroneous Termination For Cause .....43
- 23.7 Completion By Owner And Survival Of Obligations .....43
- 23.8 Termination By Construction Manager .....43

ARTICLE 24 ENVIRONMENTAL ISSUES .....43

- 24.1 Environmental Licenses, Certifications, & Permits.....43
- 24.2 Environmental Laws .....43
- 24.3 Termination.....43
- 24.4 Application With Other Provisions.....44

SAMPLE CONTRACT

ARTICLE 25 THE PROJECT ARCHITECT .....44  
    25.1 Architect .....44

ARTICLE 26 MISCELLANEOUS PROVISIONS .....45  
    26.1 Notices .....45  
    26.2 Successors And Assigns .....45  
    26.3 No Third Party Beneficiaries .....45  
    26.4 Employment Of Georgia Citizens And Use Of Georgia Products .....45  
    26.5 Minority Business .....46  
    26.6 Severability .....46  
    26.7 Headings .....46  
    26.8 Exhibits .....46  
    26.9 Including .....46  
    26.10 Governing Law .....46  
    26.11 Entire Agreement / Amendments In Writing .....46  
    26.12 Waiver .....47

EXHIBIT "A" SCHEDULE OF REIMBURSABLE EXPENSES  
EXHIBIT "B" MINIMUM REQUIREMENTS FOR CONSTRUCTION MANAGER'S  
    CONSTRUCTION SCHEDULE  
EXHIBIT "C" LIQUIDATED DAMAGES  
EXHIBIT "D" THE GMP  
EXHIBIT "E" CONSTRUCTION MANAGER'S PERSONNEL LIST  
EXHIBIT "F" INSURANCE REQUIRED OF CONSTRUCTION MANAGER  
EXHIBIT "G" IMMIGRATION AND SECURITY AFFIDAVITS

SAMPLE CONTRACT

**CONTRACT FOR CONSTRUCTION MANAGEMENT SERVICES**

---

This agreement (the “Agreement”) is made and entered into by and between the Walker County Board of Education (“Owner”) and \_\_\_\_\_,  
a \_\_\_\_\_ duly operating and existing under the laws of the State of  
[Form of Entity]  
\_\_\_\_\_ (“Construction Manager”).

This Agreement shall become effective on the date it is executed by the Owner (“the Effective Date”).

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

**ARTICLE 1**

**DEFINITIONS**

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

1.2 “Architect” means Neuhoff Taylor Architects, P.C., and any successor architect firm that Owner may retain in connection with the Project.

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

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

1.5 “Construction Phase Services” means Services rendered during the Construction Phase of the Project.

1.6 “Day,” unless otherwise stated, means calendar day.

## SAMPLE CONTRACT

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

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

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

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

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

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

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

1.14 “Preliminary Design” means all design documents constituting the preliminary design as required and defined in Owner’s contract with Architect.

1.15 “Project” means \_\_\_\_\_.

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

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

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

## SAMPLE CONTRACT

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

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

1.21 “Substantial Completion” means that stage of completion of the Project (or a discrete phase thereof), including testing, approval by any applicable regulatory authority, and receipt of the final certificate of occupancy, such that the Work and the Project (or a discrete phase thereof) are functionally and legally usable by Owner for the purpose for which it is intended.

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

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

## **ARTICLE 2**

### **THE CONTRACT DOCUMENTS**

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

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

- (1) This Agreement.
- (2) Supplemental or Special Conditions (if any).
- (3) Specifications.
- (4) Plans, and among the Plans, the following:

## SAMPLE CONTRACT

- (i) As between figures given on plans and scaled measurements, the figures shall govern;
- (ii) As between large scale plans and small scale plans, the large scale plans shall govern.

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

2.4 Design Document List. The Owner has requested the Architect to prepare a list of the plans, specifications and other documents constituting the Design for Construction (the "Design Document List"). Upon receipt, the Construction Manager shall review and study the Design Document List to confirm the Design Document List is accurate, complete and current. If requested by the Owner, the Construction Manager shall acknowledge, in writing, its receipt of the Design Document List and its agreement that the Design Document List is accurate, complete and current. Unless the Construction Manager notifies the Architect and the Owner, not later than five (5) days after Construction Manager's receipt of the Design Document List, of an error or omission in the Design Document List, the Design Document List shall be annexed hereto as part of this Agreement.

### **ARTICLE 3**

#### **REPRESENTATIONS AND WARRANTIES**

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

3.1.1 Construction Manager is professionally qualified to act as the construction manager for the Project and has, and shall maintain, any and all licenses, permits, and other authorizations necessary to act as the construction manager for the Project and to perform the Services required hereunder.

3.1.2 Construction Manager has become familiar with all design and construction documents generated to date and will become familiar with all generated hereafter, and has become familiar with the Project site(s) and the local conditions under which the Project is to be constructed.

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

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



## SAMPLE CONTRACT

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

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

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

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

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

## SAMPLE CONTRACT

### ARTICLE 4

#### **CONSTRUCTION MANAGER'S SERVICES AND DUTIES: GENERAL PROVISIONS**

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

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

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

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

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

## SAMPLE CONTRACT

4.6 Reporting Anticipated Delays. Should Construction Manager, at any time during the course of the Project, have reason to believe that Construction Manager, Architect, or any Subcontractor will be unable to meet a completion date of any activity which is on the critical path of the Project or which may delay Construction Manager, any Subcontractor, the Architect, or the progress of the Project, Construction Manager shall immediately notify Owner's Representative in writing, stating the reason for the delay, describing steps being taken to remedy the delay, and recommending steps for eliminating or reducing the extent and impact of such delays.

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

4.8 Storm Water Discharge Permits. Any provision of this Agreement to the contrary notwithstanding, and unless otherwise directed in writing by the Owner, the provisions of this paragraph 4.8 shall apply and the Construction Manager shall have and perform the duties, obligations and responsibilities of the Construction Manager set forth herein. The Owner has contracted with the Architect to: (i) prepare the Erosion, Sedimentation and Pollution Control Plan in accordance with the State of Georgia Department of Natural Resources Environmental Protection Division storm water discharge permit (the "DNREPDSWD Permit"); (ii) perform the initial inspection of the installation of the control measures set forth in the Erosion, Sedimentation and Pollution Control Plan in accordance with the DNREPDSWD Permit; (iii) perform the weekly inspections and inspections after rain (or other precipitation) as are required by the DNREPDSWD Permit; and (iv) perform the duties, obligations and responsibilities of the "design professional" under the DNREPDSWD Permit. As used in the immediately preceding sentence, the term "design professional" shall have the meaning ascribed to it in the DNREPDSWD Permit. Excepting only the foregoing items (i) through (iv) performed by the Architect, the Construction Manager shall provide, satisfy or otherwise comply with all applicable requirements and conditions of the DNREPDSWD Permit, including, without limitation, all notices, fees, plan implementation, monitoring, sampling, inspections, reports, record keeping, submittals and any other requirements and conditions of the DNREPDSWD Permit. The Construction Manager's duties and obligations shall not be relieved by any duties of the Architect. The Construction Manager shall timely notify the Architect of any rain or other precipitation requiring the inspections referred to in item (iii) above so as to facilitate the Architect's timely performance of such inspections. The Construction Manager shall timely notify the Owner and Architect of any failure by the Architect to timely perform the inspections referred to in item (iii) above.

## ARTICLE 5

### DESIGN REVIEW AND PROJECT PLANNING

5.1 Generally. During the Design Phase of the Project, and continuing during the Construction Phase where necessary or appropriate to further the interests of Owner and the Project, Construction Manager shall render Services which support the services to be rendered by Architect, including design review, Project planning, and the specific Services described in this Article 5.

## SAMPLE CONTRACT

5.2 Review Project Requirements And Site(s) Data. Construction Manager shall review and study all background data, specifications and other related materials made available by Owner as to requirements, criteria, priorities, feasibility, and physical and financial limitations with regard to the Project, and shall review with Owner's Representative and Architect site(s) data (such as access, location of services and utilities, security, surveys, and soils information) and other relevant information.

5.3 Verify Site(s) And Working Conditions. Promptly after execution of this Agreement, and as necessary thereafter, Construction Manager shall visit the Project site(s), review all information related to the site(s) and to the conditions under which the Work will be performed. Construction Manager shall notify Owner's Representative in writing of any conditions that would adversely affect the progress, quality, or cost of the Work, recommend means of addressing such conditions, and suggest additional testing or services reasonably required in connection therewith.

5.4 Consultation And Advice. Construction Manager shall consult with and advise Architect and Owner's Representative concerning cost, schedule, constructability, and other issues relevant to the completion of the Project, including, but not limited to, Value Engineering, advantages and disadvantages of proposed materials, building systems, and equipment, construction feasibility, availability of materials and labor, time requirements for installation, construction scheduling alternatives, future expandability of the Project, Life Cycle Costs, ease of maintenance, longevity of service, economy of operation, operational capabilities in the case of extended loss of external utility services, and means of achieving conformance with the Owner's Project objectives and the Design for Construction.

5.5 Review Of Architect's Schedule. Construction Manager shall review and study all schedules and updates thereof submitted by Architect concerning the schedule for performance of Architect's services. Within ten (10) days after receipt of any such schedule or update, Construction Manager shall submit to Owner's Representative a written analysis of same describing any anticipated problems or delays to the Project related to Architect's schedule, the cause and extent of such problems or delays, the projected impact on the ability to complete the phases of the Project by the established date(s) of Substantial Completion, and recommendations for eliminating or reducing the extent of such delays. Construction Manager shall consult with Owner's Representative and Architect to determine means of improving the anticipated schedule for the performance by Owner, Architect, and Construction Manager during the Design Phase and to facilitate phased construction of the Project where appropriate.

5.6 Consultants. Construction Manager shall assist Owner as needed in selecting and contracting with consultants and professionals, if any, to provide specialized services relating to the Design Phase.

5.7 Identify Applicable Laws And Regulations. Construction Manager shall identify and review with Owner's Representative and Architect, and, if requested by Owner's Representative, assist Owner in complying with, the Applicable Laws which will affect the Services, the Work, and the Project.

## SAMPLE CONTRACT

5.8 Quality Assurance. Construction Manager shall submit to Owner's Representative for approval a written quality assurance program for the Project, including a program for review of design and construction documents, cost estimates, schedules, and the Work.

5.9 Procurement Guidelines And Plan. Construction Manager shall prepare and submit, for Owner's Representative's approval, procurement guidelines and a procurement plan for the Project.

5.10 Utilities, Communications And Other Infrastructure Issues. Construction Manager shall advise and assist Architect and represent Owner, if requested, in dealing appropriately with local utilities, communications, and other related infrastructure issues.

5.11 Review Of Design Documents. Construction Manager shall review and study, on a continuing basis through the Design and Construction Phases, all design and construction documents prepared by Architect for accuracy, completeness, clarity, and consistency. Construction Manager shall notify Owner's Representative and Architect in writing of any errors, omissions, conflicts, inconsistencies or ambiguities discovered, identify potential design changes before the bidding cycle and Construction Phase begin, and recommend alternatives when design details affect construction feasibility, constructability, quality, or the Project schedule. Construction Manager shall assure through such review and study that all Project construction requirements are met in the Design for Construction and the Subcontracts. The Owner has requested the Architect to only prepare documents for the Project, including the plans and specifications for the Project, which are accurate, adequate, consistent, coordinated and sufficient for construction. However, the Owner makes no representation or warranty of any nature whatsoever to the Construction Manager concerning such documents. The Construction Manager hereby acknowledges and represents that it has not, does not, and will not rely upon any representations or warranties by the Owner concerning such documents, as no such representations or warranties have been or are hereby made.

5.12 Systems Analyses. Construction Manager shall consult with Architect and Owner during all stages of the Project in the preparation of building systems studies and analyses and any other engineering studies and analyses that may be required.

5.13 Control Of Design Modifications. Construction Manager shall implement, in consultation with Architect and Owner, a system to minimize and control design modifications. The system shall document modifications and the reasons for the modifications.

5.14 Life Cycle Analyses. Construction Manager shall assist Owner and Architect in preparing comparative life cycle studies of ownership, operating, and maintenance costs for design alternatives prepared by Architect.

5.15 Constructability Analyses. When requested by Owner's Representative, Construction Manager shall provide written constructability analyses of the Project, including items to be addressed with Architect such as accessibility, construction methods, assembly, installation, materials handling, expandability, phasing and other Construction Phase-related activities. The analysis of constructability issues shall be performed on an ongoing basis during the Design Phase.

## SAMPLE CONTRACT

5.16 Consultation Regarding Design Modifications. If Owner directs Architect to modify any design or construction documents, Construction Manager shall consult with Owner's Representative regarding the impact of such modifications on the then current Project cost estimate and the Project schedules and suggest means and methods of minimizing any adverse impact of such modifications.

5.17 Presentations. When requested by Owner's Representative, Construction Manager shall assist Owner and Architect in making one or more presentations of design concepts, cost studies, site(s) evaluation, and other data developed in relation to the Project.

5.18 Value Engineering. Construction Manager shall perform Value Engineering studies and propose to the Owner design, construction and systems alternatives for reducing the cost of the Project, or elements thereof. Construction Manager shall provide Owner with an estimate of the cost of, and the savings that will result from, implementing such Value Engineering alternatives. Construction Manager shall implement any Value Engineering alternatives approved by Owner and the GMP shall be adjusted by Change Order to reflect the savings to be achieved by implementing such Value Engineering alternatives.

### **ARTICLE 6**

#### **ESTIMATING AND MONITORING PROJECT COSTS**

6.1 Construction Cost Estimate. Within ten (10) days after the Architect's completion of the Preliminary Design, Construction Manager shall prepare an estimate (the "Construction Cost Estimate") of the cost of constructing the Project in accordance with the requirements of the Preliminary Design and shall provide same to Owner's Representative. The Construction Cost Estimate shall be broken down and itemized in such detail, and supported by such backup and supporting documentation, as Owner's Representative may require, and shall include a recommended contingency for each element of the Work. Construction Manager shall revise the Construction Cost Estimate monthly until the GMP is established and shall provide such revised estimates, together with such itemization and supporting documentation as Owner's Representative may require, to Owner's Representative as part of the Monthly Reports required by paragraph 12.3 of this Agreement and as provided in the immediately succeeding sentence. If the foregoing monthly revisions of the Construction Cost Estimate do not coincide with the Architect's 65%, 95% and 100% completion of the Design for Construction, then Construction Manager shall also provide revised estimates to the Owner's Representative at such stages of the design. The Construction Manager shall advise the Owner of any adjustments to previous estimates indicated by changes in Project requirements or general market conditions. If at any time the Construction Manager's Construction Cost Estimate exceeds the Owner's budget, the Construction Manager shall make appropriate recommendations to the Owner to adjust the Project's size, quality or budget.

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

## SAMPLE CONTRACT

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

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

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

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

### ARTICLE 7

#### **COMPLETION DATE AND SCHEDULES**

7.1 Completion Date. Construction Manager shall achieve Substantial Completion of the Project in phases by the date established for Substantial Completion of each phase in the Owner-approved Preliminary Schedule ("Phased Substantial Completion Dates"). The time for achieving Substantial Completion may sometimes be referred to in the Contract Documents as the "Contract Time." Construction Manager shall achieve Final Completion of each phase of the Project within thirty (30) days after the Phased Substantial Completion Date. Neither the Phased Substantial Completion Dates nor the time for Final Completion shall be changed except by Change Order issued in accordance with the terms of this Agreement.

7.2 Preparation Of Preliminary Schedule. Within ten (10) days after the later of (i) the Effective Date of this Agreement or (ii) the completion of Architect's Preliminary Design, and taking into account Owner's desired occupancy and use as well as Architect's schedule for completion of the Design for Construction, Construction Manager shall provide to Owner's Representative and the Architect, in a summary form, a proposed schedule for the completion of the Project including milestone dates appropriate to the Project but at a minimum including dates for completion of the Design for Construction, applicable permitting requirements, long lead time items to be acquired by Owner or others, site(s) work, work by major trades, fabrication and installation of all systems,

## SAMPLE CONTRACT

Substantial Completion dates for each phase of the Project, testing, and start-up (the “Preliminary Schedule”). The Preliminary Schedule shall be subject to Owner’s approval. Construction Manager shall update the Preliminary Schedule monthly throughout the remainder of the Design Phase, but after approval by the Owner the Phased Substantial Completion Dates shall not be changed except by Change Order.

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

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

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



## SAMPLE CONTRACT

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

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

7.7.1 For Delay In Substantial Completion. Construction Manager shall pay Owner for each and every calendar day of unexcused delay in achieving Substantial Completion of any phase one-third (1/3) of the sum indicated at Exhibit "C" attached hereto and by reference made a part hereof. Any sums due and payable hereunder by Construction Manager shall be payable, not as a penalty, but as liquidated damages representing an estimate of delay damages likely to be sustained by Owner, estimated at the time of executing this Agreement. When Owner reasonably believes that Substantial Completion of any phase will be inexcusably delayed, Owner shall be entitled, but not required, to withhold from any amounts otherwise due Construction Manager an amount then believed by Owner to be adequate to recover liquidated damages applicable to such delays. If and when Construction Manager overcomes the delay in achieving Substantial Completion, or any part thereof, for which Owner has withheld payment, Owner shall promptly release to Construction Manager those funds withheld, but no longer applicable, as liquidated damages.

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

## SAMPLE CONTRACT

### ARTICLE 8

#### **PROCUREMENT OF SUBCONTRACTS, MATERIALS, AND SERVICES**

8.1 Bidding And Contract Award. Construction Manager shall provide all necessary Services related to the bidding of Subcontracts for the construction of the Project, including: (a) preparing lists of prospective bidders; (b) preparing appropriate bid documents, including proposed forms of contract and purchase orders; (c) establishing bid schedules; (d) advertising for bids and developing bidder interest; (e) furnishing information concerning the Project to prospective bidders; (f) conducting pre-bid conferences; (g) receiving and analyzing bids and making recommendations to Owner regarding bid awards; (h) investigating the acceptability and responsibility of sub-subcontractors or suppliers proposed by any Subcontractor and advising Owner of such evaluations; (i) negotiating with Subcontractors concerning any matter related to the Project; and (j) such other services required by Owner with respect to the bidding process.

8.2 Approval Of Subcontractors. Construction Manager shall not subcontract for any part of the Services or Work with any Subcontractor or consultant (including affiliates and subsidiaries of Construction Manager) who is not properly licensed or against whom Owner has a reasonable objection. Construction Manager shall provide Owner's Representative with such written information as Owner deems necessary in order to determine whether to object to the Construction Manager's hiring of any Subcontractor or consultant, including proof of license. If no objection is interposed by the Owner within fourteen (14) days of its receipt of such information, Owner shall be deemed to have no such objection and Construction Manager may execute such Subcontract and shall furnish Owner a copy of same.

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

8.4 Coordination Of The Subcontracts. Neither Owner nor Architect assumes any responsibility for defining the limits on any Subcontracts on account of the arrangement of the specifications or plans. As part of the bidding and award of Subcontracts, Construction Manager shall ensure that the Subcontracts are coordinated so that all of the Work is properly and clearly allocated among, and assigned to, Construction Manager and Subcontractors without omission, conflict, or duplication. Construction Manager shall carefully review all Subcontracts to ensure: (a) that all subcontracted parts of the Work are assigned to appropriate Subcontractors; (b) that, unless provided for by Construction Manager, provisions are made for temporary facilities and utilities necessary for the performance of the Work and for Project site(s) facilities necessary for Construction Manager, Owner, and Architect to perform their duties in the management, inspection, and supervision of the Work; (c) that responsibility for Project safety programs is properly assigned;

## SAMPLE CONTRACT

(d) that they are in compliance with Applicable Laws; and (e) that they are in compliance with Owner's Construction Managers' guidelines, if any.

8.5 Competitive Procurement. Unless otherwise directed by Owner, Construction Manager shall use competitive procurement methods in conformance with Owner's procurement policies and the rules and regulations of the Georgia Department of Education.

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

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

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

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

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

## SAMPLE CONTRACT

### ARTICLE 9

#### CONSTRUCTION ADMINISTRATION

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

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

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

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

9.5 Review And Approval Of Subcontractor Schedules Of Values. Construction Manager shall procure, and carefully review, all schedules of values from each Subcontractor, together with any supporting documentation or data which Owner or Construction Manager may require from the Subcontractors. The purpose of such review and examination shall be to protect Owner from front-end loading and an unbalanced schedule of values which allocates greater value to certain elements

## SAMPLE CONTRACT

of the Work than is indicated by such supporting documentation or data or than is reasonable under the circumstances. If any Subcontractor schedule of values is found not to be appropriate, or if the supporting documentation or data is deemed to be inadequate, Construction Manager shall negotiate with the Subcontractor to establish a balanced schedule of values. After making its review and examination, if the Subcontractor schedules of values are found by Construction Manager to be appropriate as submitted, or if necessary, as revised, Construction Manager shall sign and deliver same to Owner's Representative thereby indicating Construction Manager's informed belief that such schedules of values constitute a reasonable, balanced basis for payment to the Subcontractors. Construction Manager shall not sign a Subcontractor schedule of values in the absence of such belief unless directed to do so, in writing, by Owner's Representative.

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

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

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

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

## SAMPLE CONTRACT

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

9.11 Liens And Subcontractor Payments. Construction Manager shall promptly pay when due all indebtedness for labor, materials, services, tools and equipment, and for any other items used in the performance of the Work. Construction Manager shall not permit any notice of lien or charge to attach to the Work or the premises upon which the Work is being performed. If any lien does so attach, Construction Manager shall promptly procure its discharge and hold Owner harmless from any losses, costs, damages or expenses (including attorneys' fees) incidental thereto.

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

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

## SAMPLE CONTRACT

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

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

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

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

### **ARTICLE 10**

#### **UNCOVERING AND CORRECTING WORK**

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

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

## SAMPLE CONTRACT

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

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

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

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

### **ARTICLE 11**

#### **INSPECTIONS AND CERTIFICATIONS OF COMPLETION**

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

11.2 Standard Of Construction And Identification Of Defective Work. Construction Manager shall cause the Project to be constructed in strict compliance with the requirements of the Contract Documents and Applicable Laws. Construction Manager acknowledges that strict compliance is a more exacting standard than substantial compliance and Construction Manager agrees that its fee takes into consideration the more exacting standard. Owner will not accept Work



## SAMPLE CONTRACT

which fails to comply with such standards, unless the departure from such standards is specifically identified to, and thereafter authorized in writing by, Owner's Representative. Unless so authorized by Owner's Representative, Construction Manager shall correct all Work that does not meet the requirements of the Contract Documents and Applicable Laws.

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

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

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

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

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

## SAMPLE CONTRACT

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

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

## **ARTICLE 12**

### **PROJECT DOCUMENTATION**

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

## SAMPLE CONTRACT

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

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

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

12.5 Operations And Maintenance Documentation. Construction Manager shall obtain and transmit to Owner's Representative all documentation required by the Contract Documents regarding the operation and recommended maintenance programs relating to the various elements of the Project. Such documentation shall be furnished to Owner's Representative in uniform three-ring binders labeled with the Project name and number.

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

12.7 Availability Of Project-Related Records To Owner. All records relating directly or indirectly to the Project which are in the possession or control of Construction Manager shall be made available to Owner, its designee, and any governmental authority for audit, inspection, and copying upon request of Owner's Representative. Such records include, without limitation: all

## SAMPLE CONTRACT

drawings, specifications, Submittals, subcontractor bids, the Daily Log, correspondence, the Request Log, the Submittal Log, minutes, memoranda, tape or videotape recordings, or other writings or things which document the Project, its design, and its construction.

12.8 Maintenance Of Project-Related Records. Construction Manager shall maintain and protect all Project-related records, other than those required to be returned to Owner, for no less than six (6) years after Final Completion of the Project and for any longer period of time as may be required by law or good construction management practice.

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

### **ARTICLE 13**

#### **OWNER'S DUTIES, OBLIGATIONS, AND RESPONSIBILITIES**

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

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

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

13.4 Secure Permits, Licenses, Approvals, And Authorizations. Owner shall secure all necessary licenses, permits (other than building and other permits required for construction of the Project), approvals or other necessary authorizations of governmental authorities for the construction and operation of the Project; provided, however, that Construction Manager shall obtain and maintain all licenses, permits and other authorizations necessary to act as the construction manager for the Project.

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

13.6 Owner's Reviews, Inspections, Approvals, And Payments. Owner's review, inspection, or approval of any design document, Work, or any documents prepared or submitted by Construction Manager shall be solely for the purpose of determining whether such Work and such documents are generally consistent with Owner's construction program and requirements, and

## SAMPLE CONTRACT

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

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

### **ARTICLE 14**

#### **PAYMENT TO CONSTRUCTION MANAGER**

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

14.1.1 Design Phase Compensation. Owner shall pay Construction Manager "Design Phase Compensation" consisting of: the Reimbursable Expenses Construction Manager incurs in performance of Design Phase Services, plus the Design Phase Fee; provided, however, that the total of such Reimbursable Expenses and the Design Phase Fee shall not exceed \_\_\_\_\_ (\$\_\_\_\_\_).

14.1.2 Design Phase Fee. The "Design Phase Fee" shall be \_\_\_\_\_ (\$\_\_\_\_\_). The Design Phase Fee shall be invoiced and paid in accordance with paragraphs 14.4 and 14.7; provided, however, that at no time shall the cumulative percentage of the Design Phase Fee invoiced or paid exceed the cumulative percentage of completion of the Design for Construction, such percentage of completion to be determined by the Architect.

14.1.3 Construction Phase Compensation. For Construction Manager's performance of the Work and all Construction Phase Services in strict conformance with the Contract Documents, and subject to the GMP, Owner shall pay Construction Manager "Construction Phase Compensation" consisting of: Subcontract Costs, plus Reimbursable Expenses incurred in performance of Construction Phase Services and the Work, plus the Construction Phase Fee.

## SAMPLE CONTRACT

14.1.4 Construction Phase Fee. The "Construction Phase Fee" shall be \_\_\_\_\_ (\$ \_\_\_\_\_). The Construction Phase Fee shall be invoiced and paid in accordance with paragraphs 14.4 and 14.7; provided, however, that at no time shall the cumulative percentage of the Construction Phase Fee invoiced or paid exceed the cumulative percentage of the Work actually complete, as measured against the Construction Manager's schedule of values and as certified by Architect.

14.2 Guaranteed Maximum Price. Within fourteen (14) days after the Architect's completion of the Design for Construction, Construction Manager shall submit to the Owner a proposed GMP. If and when accepted by Owner, and subject to the Construction Manager providing payment and performance bonds in accordance with Article 17, the proposed GMP shall become the GMP for the Project and shall be entered in subparagraph 14.2.1 herein and the Owner and the Construction Manager shall initial subparagraph 14.2.1. The GMP shall be the maximum amount that Construction Manager shall receive for achieving Final Completion in strict accordance with the Contract Documents and performance of all the Work and the Services required by the Contract Documents, subject to additions and deductions by written Change Order. All Subcontract Costs, Reimbursable Expenses, or other costs of any kind incurred by Construction Manager in connection with the Project in excess of the GMP shall be paid by Construction Manager without reimbursement by Owner unless otherwise compensable by written Change Order pursuant to the Contract Documents. Should the combined sum of final Subcontract Costs, Reimbursable Expenses, Construction Phase Fee, and Design Phase Fee be less than the GMP, the resulting savings shall be shared with \_\_\_\_\_ percent (\_\_\_%) allocated to Owner and \_\_\_\_\_ percent (\_\_\_%) allocated to Construction Manager.

14.2.1 Amount Of GMP. The amount of the GMP, if accepted and agreed to by the Owner, shall be set forth in Exhibit "D" and properly signed by the Owner and the Construction Manager.

14.2.2 Lack Of Agreement On GMP. In the event Construction Manager and Owner do not agree, in writing, on a GMP pursuant to paragraph 14.2 above, not later than 30 days after the submission of such proposed GMP by the Construction Manager, Construction Manager's performance under this Agreement shall, without any action required by either party, automatically terminate unless otherwise directed in writing by the Owner in its sole discretion. In the event of such termination, Owner's liability to Construction Manager shall be limited to that portion of the Design Phase Fee actually earned and the Reimbursable Expenses actually and reasonably incurred by Construction Manager in the performance of Design Phase Services up to the date of termination pursuant to this subparagraph 14.2.2; provided, however, that in no event shall the amount payable hereunder exceed the amount entered in subparagraph 14.1.1.

14.3 Schedule Of Values. Construction Manager shall prepare and present to Owner's Representative within ten (10) days after commencement of the Construction Phase, a proposed schedule of values allocating the actual cost of the Work (which shall include all Subcontract Costs and Reimbursable Expenses to be incurred during the Construction Phase) among the different elements of the Work. The Construction Phase Fee and any contingencies shall be shown as separate items. Construction Manager's schedule of values shall be prepared in such form, with such detail, and supported by such data as the Architect or the Owner's Representative may require to

## SAMPLE CONTRACT

substantiate its accuracy. Construction Manager shall not front-end load its schedule of values by imbalancing it or by increasing any element thereof in excess of the actual cost, and such acts shall constitute a material breach of this Agreement. Construction Manager's proposed schedule of values shall be used in determining the amounts payable to Construction Manager hereunder, but only after it has been acknowledged in writing by the Architect and the Owner's Representative. The schedule of values may be amended when so acknowledged in writing by Architect and Owner's Representative, as and when Subcontracts are awarded and reasonable schedules of values in connection with such Subcontracts are received and agreed upon by Construction Manager as provided by paragraph 9.5.

14.4 Form Of Pay Requests And Backup Documentation. As soon as practicable after the last business day of each month, Construction Manager shall submit a notarized invoice to Owner's Representative, with a copy to the Architect, requesting payment ("Pay Request") for ninety percent (90%) of the Reimbursable Expenses and Subcontract Costs actually and reasonably incurred by Construction Manager and that portion of the Design Phase Fee, the Construction Phase Fee, or, if applicable, both, earned by Construction Manager, in the performance of Services and the Work during the preceding month. Any payment on account of stored materials or equipment will be subject to the Construction Manager providing written proof that the Owner has title to such materials or equipment and that they are suitably stored at the Project site(s) and fully insured against loss or damages. Moreover, any sums approved for stored materials shall be at actual costs and shall not include markup by Subcontractors or subcontractors or Construction Manager's Fees. As used in the immediately preceding sentence, actual costs means costs charged by the manufacture or the distributor for the manufacturer and the Pay Request shall include copies of invoices from the manufacturer or the distributor. Upon payment of fifty percent (50%) of the GMP, as it may be adjusted, and satisfactory, timely completion of fifty percent (50%) of the Work, as certified by Architect, Owner shall not retain additional retainage and Construction Manager's Pay Requests may thereafter request payment for one hundred percent (100%) of Reimbursable Expenses and Subcontract Costs incurred, and Fees earned, during the pay period; provided, however, that if, after discontinuing such retainage, Owner's Representative or Architect determines that the Work is unsatisfactory or has fallen behind schedule, Owner may resume withholding retainage at the previous level. At no time shall the cumulative sum invoiced or paid exceed an amount equal to the sum of: (i) the product of that portion of the GMP attributable solely to Design Phase Compensation multiplied by the cumulative percentage of completion of the Design for Construction, such percentage of completion to be determined by the Architect; plus; (ii) the product of that portion of the GMP attributable solely to Construction Phase Compensation multiplied by the cumulative percentage of the Work actually and satisfactorily complete, such percentage of completion to be measured against the Construction Manager's schedule of values and as certified by the Architect. Each Pay Request shall separately show the amounts of Construction Manager's Design Phase Fee and Construction Phase Fee being claimed in connection with such Pay Request and any amounts claimed in connection with a Change Order. Pay Requests shall also indicate Construction Manager's estimate of the percentage of completion of the Project and each element thereof according to the line items established in the schedule of values. Unless otherwise directed by Owner's Representative, Pay Requests shall be submitted in triplicate, bearing the appropriate job numbers designated by Owner's Representative, to Architect and to Owner's Representative for approval. Pay Requests shall be in such form and accompanied by such documentation, including documentation in support of Subcontract Costs and Reimbursable Expenses, if any, as Architect or

## SAMPLE CONTRACT

Owner's Representative may require. Pay Requests and supporting documentation shall describe with reasonable particularity each Service rendered, the date thereof, the time expended in performing such Service, and the persons rendering such Service. Upon Architect or Owner's Representative's request, Construction Manager shall submit certified time sheets relating to such persons who have performed Services on the Project. All documents and records in the possession of Construction Manager and its Subcontractors relating to Reimbursable Expenses and Subcontract Costs shall be made available to Owner or its designee for audit, inspection and copying immediately upon request by Owner's Representative. Strict compliance with the requirements of this paragraph 14.4 shall be a condition precedent to any payment, including Final Payment, under this Agreement.

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

14.6 Certification Relating To Pay Requests. Each Pay Request shall bear the signature of Construction Manager's project manager, which signature shall constitute Construction Manager's representation to Owner that the Services and the Work indicated in the Pay Request have progressed to the level represented, have been properly and timely performed as required herein, that no Work has been covered contrary to the request of the Owner's Representative or the Architect, or contrary to any provision of the Contract Documents, that the Reimbursable Expenses and Subcontract Costs claimed in the Pay Request have been actually, necessarily, and reasonably incurred, that all obligations of Construction Manager covered by prior Pay Requests have been paid in full, and that, to the best of Construction Manager's knowledge, information and informed belief, the amount requested is currently due and owing, there being no reason known to Construction Manager that payment of any portion thereof should be withheld. Submission of Construction Manager's Pay Request for Final Payment shall further constitute Construction Manager's representation to Owner that, upon receipt from Owner of the amount requested, all obligations of Construction Manager to others incurred in connection with the Project will be paid in full within seven (7) days of such receipt. In the event that Owner becomes informed that any of the foregoing representations by Construction Manager are wholly or partially inaccurate, Owner may withhold payment of sums then or in the future otherwise due to Construction Manager until the inaccuracy, and the cause thereof, is corrected to Owner's reasonable satisfaction.

14.7 Payment Of Pay Requests. Subject to the limits imposed by the GMP and other terms and conditions of the Contract Documents, and within thirty (30) days of approval of Construction Manager's Pay Request by Owner, Architect and, if so required, the Georgia Department of Education, and in no event later than forty-five (45) days after receipt of the Pay Request, Owner shall make payment to Construction Manager of all sums properly requested under the provisions of



## SAMPLE CONTRACT

this Article and payable under the terms of this Agreement, provided that the Pay Request is in proper order and is supported by all required documentation. If the Pay Request is not in proper order or is not supported by all required documentation, then Owner's Representative, or the Architect, shall notify Construction Manager of such deficiency and the time for payment of such Pay Request, or any applicable part thereof, shall be extended by the amount of time required to cure such deficiencies.

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

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

## SAMPLE CONTRACT

14.9 Payment At Final Completion. Subject to the limitations of the GMP, and provided that all conditions precedent have been satisfied, within thirty (30) days after execution of the Certificate of Final Completion of the final phase of the Project, Owner shall, after the approval of the Georgia Department of Education if so required, pay Construction Manager all unpaid sums due Construction Manager under this Agreement, less any amount properly withheld pursuant to this Agreement (“Final Payment”). Construction Manager’s acceptance of Final Payment shall constitute an unconditional waiver and release of all claims by Construction Manager for additional compensation beyond that provided in the Final Payment. Final Payment by Owner shall not, however, constitute a waiver by Owner of its rights or claims arising from Construction Manager’s failure to perform in strict accordance with the requirements of the Contract Documents. As a condition precedent to Final Payment, Construction Manager shall deliver to Owner’s Representative consent(s) of surety to final payment in form and manner acceptable to Owner together with an original current power of attorney with current certificate attached thereto.

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

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

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

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

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

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

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

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

## SAMPLE CONTRACT

14.10.8 Damage to Owner or to a third-party to whom Owner is, or may be, liable.

14.10.9 Any situation or condition exists which, as set forth elsewhere herein or in the Contract Documents, justifies the withholding of payments.

In the event that any of the foregoing conditions exist, Owner shall be entitled to withhold from any sum then due or thereafter to become due, including from retained sums, an amount sufficient in the sole judgment of Owner's Representative to satisfy, discharge, and defend against such claims and to make good any losses, prospective losses, costs, attorneys' fees, and other expenses which may result from the existence of such conditions.

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

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

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

## SAMPLE CONTRACT

### ARTICLE 15

#### CHANGE ORDERS

15.1 Authority To Order Changes. Owner may by written Change Order, and without affecting the validity or enforceability of this Agreement, direct changes in the Work and the Services within the general scope of the Contract Documents, including changes, additions, deletions, modifications, and revisions thereto, or changes to the time for the Construction Manager's performance, or any combination thereof. Construction Manager shall promptly proceed, and cause all Subcontractors to proceed, with the performance of the Services and the Work in accordance with Owner's direction, and failure to agree on the terms of a Change Order shall not excuse Construction Manager from continued performance of the Services or the Work in an expeditious fashion or from proceeding with any directed change.

15.2 Adjustments To Construction Manager's Compensation, GMP And Contract Time Only By Change Order. Changes in the Work (excepting only changes required by the Architect pursuant to paragraph 25.1.9 of this Agreement), Construction Manager's compensation, adjustments to the GMP, and extensions of time for the performance of this Agreement may only be made by a Change Order issued in accordance with the terms of this Article. Owner shall not be responsible for any change in the Work involving extra cost unless approval in writing is furnished by Owner before such Work is begun. Architect does not have authority to order changes in the Work that involve changes in cost or time.

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

## SAMPLE CONTRACT

GMP, up or down, shall be an amount equal to the actual, reasonable Subcontract Costs and Reimbursable Expenses incurred or saved by Construction Manager on account of the change plus five percent (5%) of such Subcontract Costs and ten percent (10%) of such Reimbursable Expenses; and (ii) subject to the GMP, as adjusted, the amount of any adjustment to the combined sum of the Design Phase Fee plus the Construction Phase Fee, up or down, shall be an amount equal to five percent (5%) of the actual, reasonable Subcontract Costs incurred or saved by Construction Manager on account of the change plus five percent (5%) of the actual, reasonable Reimbursable Expenses incurred or saved by Construction Manager on account of the change, provided that the Owner's Representative may allocate the adjustment set forth in this clause (ii), in whole or in part, to the Design Phase Fee, the Construction Phase Fee, or both, in such portions as may be determined by Owner's Representative in its reasonable discretion. Notwithstanding the definitions of Reimbursable Expenses and Subcontract Costs contained elsewhere in this Agreement, for purposes of calculating the actual, reasonable Subcontract Costs and Reimbursable Expenses saved by Construction Manager on account of a change, the savings achieved shall be deemed to include amounts that would be Reimbursable Expenses or Subcontract Costs if incurred or paid, even though such amounts are not incurred or paid.

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

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

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

## SAMPLE CONTRACT

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

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

15.5 Extensions of Time. Any extension of the time for the Construction Manager's performance requested by Construction Manager for performance of any change ordered by Owner may be granted by mutual agreement and then set forth in the Change Order. Otherwise, extensions of the time for the Construction Manager's performance shall be requested by Construction Manager pursuant to the terms and conditions of Article 16 of this Agreement and any such request for extension of time shall be subject to paragraph 15.6 of this Agreement. The failure of Construction Manager to provide notice in writing to Owner in accordance with Article 16 of this Agreement of any request for extension of time, or the Construction Manager's execution of a Change Order, shall constitute a waiver by Construction Manager of any entitlement to an extension of time arising out of or relating to such Change Order.

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

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

## SAMPLE CONTRACT

### **ARTICLE 16**

#### **CLAIMS BY CONSTRUCTION MANAGER**

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

16.2 Claims For Additional Compensation. In the event Construction Manager seeks to make a claim for an increase in its compensation, or an adjustment to the GMP, or both, then as a condition precedent to any liability of Owner therefor, Construction Manager shall strictly comply with the requirements of paragraph 16.1 and such claim shall be made by Construction Manager before proceeding to execute any additional or changed work. Failure to satisfy this condition precedent shall constitute a waiver by Construction Manager of any claim for additional compensation. Any liability of Owner for additional costs to Construction Manager shall be strictly limited to actual and reasonable direct costs incurred by Construction Manager and shall in no event include indirect costs or consequential damages of Construction Manager or others. Such indirect costs or consequential damages, as referred to herein and elsewhere in this Agreement, that are not recoverable by the Construction Manager shall include loss of financing, loss or impairment of bonding, loss of business, loss of profit and overhead on Work not yet performed and loss of future or anticipated profits from other work. The Owner's limitation of liability for such indirect or consequential damages shall not apply to the Owner's liability to the Construction Manager, if any, for claims arising out of bodily injury to persons, death or damage to property caused by or resulting from the sole negligence of the Owner, or its officers, agents or employees. Absent a Change Order, Owner shall not be liable to Construction Manager for claims of third parties, including Subcontractors, unless and until liability of the Construction Manager has been established therefor in a court of competent jurisdiction. No change in Construction Manager's compensation, nor adjustment of the GMP, shall be made except by Change Order issued in accordance with the terms of this Agreement.

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

16.4 Formal Written Claim. No later than ten (10) days after the date of the written notice of claim, Construction Manager shall submit a formal written claim which shall include at least the following information: (1) a concise statement of the occurrence(s) supporting the claim; (2) identification of the facts giving rise to the claim; (3) the date Construction Manager discovered the occurrence(s); (4) a detailed schedule of values identifying all costs resulting from the claim; (5) documentation supporting the schedule of values; (6) identification of any impact the claim has on

## SAMPLE CONTRACT

the critical path schedule; and (7) all correspondence, internal memoranda, progress notes, and other documentation relating to the events which form the basis of the claim. In the event the claim relates to a Change Order, Construction Manager's formal written claim shall also include Construction Manager's good faith estimate of the change in the Construction Manager's compensation or the GMP, the time for the Construction Manager's performance, or any combination thereof as applicable, determined in accordance with Article 15 in respect of the Change Order. Other information or documents shall be submitted to Owner and Architect within ten (10) days after written request by Owner or Architect. The failure to provide a claim as set forth herein, or the failure to provide such other documents or information requested by Owner or Architect within ten (10) days after the written request, shall constitute a waiver of any claim for additional compensation or time extension related thereto.

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

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

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



## SAMPLE CONTRACT

16.5.2 The Phased Substantial Completion Date or, as applicable, the date for achieving Final Completion will not be extended due to unusually severe weather (excepting unusually severe weather which precludes access to the Project site) after the Project is enclosed or due to normal severe weather. For the purpose of this subparagraph, the term “enclosed” is defined to mean when the building is sufficiently sealed, either temporarily or permanently, to permit the structure to be heated and the roof dried in to permit finishing trades to work. There shall be no extension of the time for completion due to any lost days that are not weekday working days (based on a Monday through Friday work week). No change in the Construction Manager’s compensation or the GMP shall be due because of weather.

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

16.7 Mediation. 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 the institution of legal or equitable proceedings by either party. If such matter relates to or is the subject of a lien arising out of the Construction Manager’s services, the Construction Manager may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation. The Owner and Construction Manager shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect. Request for mediation shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. The request may be made concurrently with the filing of a civil action but, in such event, mediation shall proceed in advance of legal or equitable proceedings, which may 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 a court order. 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. Subject to the express approval of the Walker County Board of Education, agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

## SAMPLE CONTRACT

### ARTICLE 17

#### **PAYMENT AND PERFORMANCE BONDS**

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

### ARTICLE 18

#### **CONSTRUCTION MANAGER'S PERSONNEL AND SUBCONTRACTORS**

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

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

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

## SAMPLE CONTRACT

### **ARTICLE 19**

#### **OWNERSHIP OF DOCUMENTS**

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

### **ARTICLE 20**

#### **INDEMNITY**

20.1 **General Indemnity.** The Construction Manager shall indemnify and hold the Owner harmless from any and all claims, liability, damages, loss, cost and expense of every type whatsoever including, without limitation, attorneys' fees and expenses, in connection with the Construction Manager's performance of this Agreement, provided that such claim, liability, damage, loss, cost or expense is due to sickness, bodily injury, disease or death, or to loss or destruction of tangible property (other than the Work itself), including loss of use resulting therefrom, to the extent caused by the Construction Manager, or anyone for whose acts the Construction Manager is or may be responsible or liable, regardless of whether such liability, claim, damage, loss, cost or expense is caused in part by the Owner. The Construction Manager shall not indemnify or hold harmless the Owner against claims for damages, losses, or expenses, including attorneys' fees, arising out of sickness, bodily injury, disease or death, or to loss or destruction of tangible property caused by or resulting from the sole negligence of the Owner, or its officers, agents or employees; provided, however, the preceding limitation concerning the sole negligence of the Owner or its officers, agents or employees shall not limit or affect any obligation of the Construction Manager under workers' compensation or coverage or insurance specifically relating to workers' compensation, nor any requirement that one party to this Agreement purchase a project specific insurance policy, including owner's or contractor's protective insurance, builder's risk insurance, installation coverage, project management protective liability insurance, an owner controlled insurance policy, or a contractor controlled insurance policy.

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

## SAMPLE CONTRACT

### **ARTICLE 21**

#### **INSURANCE**

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

### **ARTICLE 22**

#### **SUSPENSION**

22.1 Suspension Of Work. Owner may for any reason whatsoever suspend, in whole or in part, performance of the Work and Construction Manager's performance under this Agreement. Owner's Representative shall give written notice of such suspension to Construction Manager specifying when such suspension is to become effective and the scope of the Work and the Services affected by such suspension.

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

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

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

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

## SAMPLE CONTRACT

- (d) any other items directly related to the suspended part of the Services or the Work.

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

### **ARTICLE 23**

#### **TERMINATION**

23.1 Termination For Convenience. Owner may for any reason whatsoever terminate performance of the Services, the Work, this Agreement, or any part of any of them, for Owner's convenience. Owner shall give written notice of such termination to Construction Manager specifying when termination becomes effective and the scope thereof.

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

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

## SAMPLE CONTRACT

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

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

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

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

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

## SAMPLE CONTRACT

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

23.7 Completion By Owner And Survival Of Obligations. Following any termination, whether for convenience or for cause and whether in whole or in part, Owner may complete the terminated portion of the Work and the Services by whatever means Owner deems most expedient. Construction Manager's obligations and all provisions of this Agreement shall continue in full force and effect as to all Work or Services performed prior to the effective date of the termination and as to that portion of the Work and Services not affected by the termination.

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

## **ARTICLE 24**

### **ENVIRONMENTAL ISSUES**

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

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

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

## SAMPLE CONTRACT

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

### **ARTICLE 25**

#### **THE PROJECT ARCHITECT**

25.1 Architect. The Architect for this Project is identified in paragraph 1.2. In the event the Owner should find it necessary or convenient to replace the Architect, the Owner shall retain a replacement architect and the role of the replacement architect shall be the same as the role of the Architect. Unless otherwise directed by the Owner in writing, the Architect will perform those duties and discharge those responsibilities allocated to the Architect in this Agreement. The duties, obligations and responsibilities of the Architect shall include, but are not limited to, the following:

25.1.1 Unless otherwise directed by the Owner in writing, the Architect shall act as the Owner's agent from the effective date of this Agreement until final payment has been made, to the extent expressly set forth in this Agreement.

25.1.2 Unless otherwise directed by the Owner in writing, the Owner and the Construction Manager shall communicate with each other in the first instance through the Architect.

25.1.3 When requested by the Construction Manager in writing, the Architect shall render interpretations necessary for the proper execution or progress of the Work.

25.1.4 The Architect shall draft proposed Change Orders.

25.1.5 The Architect shall approve, or respond otherwise as necessary concerning shop drawings or other submittals received from the Construction Manager.

25.1.6 The Architect shall be authorized to refuse to accept Work which is defective or otherwise fails to comply with the requirements of this Agreement. If the Architect deems it appropriate, the Architect shall be authorized to call for extra inspection or testing of the Work for compliance with requirements of this Agreement.

25.1.7 The Architect shall review the Construction Manager's Pay Requests and shall approve in writing those amounts which, in the opinion of the Architect, are properly owing to the Construction Manager as provided in this Agreement.

25.1.8 The Architect shall, upon written request from the Construction Manager, perform those inspections required of the Architect in this Agreement.

25.1.9 The Architect shall be authorized to require the Construction Manager to make changes which do not involve a change in the Construction Manager's compensation or the GMP or the time for the Construction Manager's performance of this Agreement consistent with the intent of this Agreement.



SAMPLE CONTRACT

25.1.10 The duties, obligations and responsibilities of the Construction Manager under this Agreement shall in no manner whatsoever be changed, altered, discharged, released, or satisfied by any duty, obligation or responsibility of the Architect. The Construction Manager is not a third-party beneficiary of any contract by and between the Owner and the Architect. It is expressly acknowledged and agreed that the duties of the Construction Manager to the Owner are independent of, and are not diminished by, any duties of the Architect to the Owner.

**ARTICLE 26**

**MISCELLANEOUS PROVISIONS**

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

To Owner: Walker County Board of Education  
298 Culberson Avenue  
LaFayette, Georgia 30728  
Attention: Chris Jones

To Construction  
Manager: \_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_

All notices shall be effective upon receipt.

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

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

26.4 Employment Of Georgia Citizens And Use Of Georgia Products. To the fullest extent possible, materials and equipment manufactured or produced in the State of Georgia shall be used in the Work and citizens of the State of Georgia shall be employed in the Work, and paid wages consistent with those being paid in the general area in which the Work is to be performed; provided, however, that these requirements shall not apply if their effect would be to restrict or limit competitive bidding or to increase the cost of the Work. These requirements shall not excuse, nor

## SAMPLE CONTRACT

shall they be asserted as an excuse for, any noncompliance with, or failure to fulfill, any requirement of the Contract Documents.

26.5 Minority Business. It is Owner's desire that minority businesses be given the opportunity to bid on the various parts of the Work. This desire, however, is not intended to restrict or limit competitive bidding or to increase the cost of the Work. Owner supports a healthy, free market system that seeks to include responsible businesses and provide ample opportunity for business growth and development.

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

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

26.8 Exhibits. Exhibits "A" through "G" annexed hereto are incorporated by reference and made a part of this Agreement.

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

26.10 Governing Law. This Agreement shall be construed, interpreted, and enforced in accordance with the laws of the State of Georgia. Each and every provision required by law to be inserted in this Agreement shall be deemed to be inserted herein and the Agreement shall be read and enforced as though it were included herein. The Construction Manager and its Surety(ies) irrevocably consent to the non-exclusive venue and jurisdiction of the Superior Court of Walker County, Georgia, regarding any matter arising out of or relating to this Agreement. The Construction Manager and all subcontractors shall comply with all state and federal immigration laws, rules and regulations, and the Construction Manager and all subcontractors shall provide the Owner with a completed and signed Immigration and Security affidavits, in the form attached hereto as Exhibit "G" as a condition precedent to Final Payment.

26.11 Entire Agreement / Amendments In Writing. This Agreement represents the entire agreement between Owner and Construction Manager and supersedes all prior communications, negotiations, representations, or agreements, either written or oral. Subject only to the provisions of Article 15, this Agreement may be amended only by written instrument signed by both Owner and Construction Manager.

SAMPLE CONTRACT

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

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

WALKER COUNTY BOARD  
OF EDUCATION

CONSTRUCTION MANAGER:

\_\_\_\_\_  
*[Typed Name]*

By: \_\_\_\_\_  
*[Signature]* [SEAL]

By: \_\_\_\_\_  
*[Signature]* [SEAL]

\_\_\_\_\_  
*[Printed Name]*

\_\_\_\_\_  
*[Printed Name]*

Board Chair  
\_\_\_\_\_  
*[Printed Title]*

\_\_\_\_\_  
*[Printed Title]*

By: \_\_\_\_\_  
*[Signature]* [SEAL]

\_\_\_\_\_

\_\_\_\_\_  
*[Printed Name]*

\_\_\_\_\_  
*[Printed Address]*

Superintendent  
\_\_\_\_\_  
*[Printed Title]*

\_\_\_\_\_  
*[Date of Execution]*

\_\_\_\_\_  
*[Date of Execution]*

## SAMPLE CONTRACT

### EXHIBIT "A"

#### SCHEDULE OF REIMBURSABLE EXPENSES

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

- (2) Transportation, lodging and meals in connection with travel for the Project (however, Owner will not reimburse for first-class air travel or higher than business-class lodging).
- (2) The direct costs of maintaining an office on the job site(s).
- (3) Long-distance communications.
- (4) Fees paid for securing approvals and certifications of authorities having jurisdiction or regulatory power over the Project or its operations.
- (5) Actual costs of reproduction, postage, and handling of drawings, specifications and other documents.
- (6) Surety bonds and insurance required by this Agreement, to the extent such insurance is not ordinarily carried by Construction Manager.
- (7) Construction Manager's reasonable cost of job site(s) mobilization.
- (8) Material, supplies and equipment actually incorporated into the Project or suitably stored, insured, and protected at the job site(s).
- (9) Job site(s) utilities.
- (10) Cost of removal of garbage and debris.
- (11) Cost incurred due to an emergency affecting safety of persons or property (including the Project), provided such emergency is not caused by, or a result of, acts or omissions on the part of Construction Manager or any Subcontractor.
- (12) Wages actually paid to full-time hourly rate workers directly employed by Construction Manager, at the base hourly wage rate of each such employee, for time actually spent in performance of Services and the Work, plus mark-up thereon of ten percent (10%) for the cost of mandatory and customary contributions, payroll taxes, overhead and benefits ordinarily paid or provided by Construction Manager related to such wages.
- (13) Salaries paid to salaried personnel of Construction Manager performing Services and Work for the Project on a full-time basis, plus mark-up thereon of ten percent (10%) for the cost of mandatory and customary contributions, payroll taxes, overhead and

## SAMPLE CONTRACT

benefits ordinarily paid or provided by Construction Manager related to such salaries. Salary costs for Construction Manager's personnel not performing Services and Work for the Project on a full-time basis shall be deemed included in the Design Phase Fee, the Construction Phase Fee, or both.

- (14) Overtime wages actually paid, plus mark-up of ten percent (10%). Only those hours worked by an individual in excess of forty (40) hours per week shall be deemed overtime hours, provided that all hours worked by such individual during the week are in performance of Services and the Work for the Project. Overtime hours shall be paid at not more than one and one half (1.5) times the base hourly wage rate of such employee, except that such hours shall be billed at the straight time base hourly wage rate for all exempt personnel. No time charges for overtime hours will be reimbursed if the individual is not paid at an overtime rate for the overtime worked. Except for overtime hours worked due to emergencies, overtime wages shall not be chargeable to Owner unless the overtime hours are authorized in writing in advance by Owner's Representative. Only events or circumstances posing a threat to persons or property (including the Project) or to Owner's interests shall be deemed emergencies for purposes of this paragraph. Insufficient planning or scheduling, or untimely performance, by Construction Manager or its Subcontractors shall not qualify as an emergency. Construction Manager shall provide appropriate documentation, including relevant time sheets or logs, to support overtime charges.
- (15) Any and all other expenses as may be agreed upon in writing by Owner.

All sums billed and paid as Reimbursable Expenses shall be at prices and rates consistent with those prevailing in Walker County, Georgia during the scheduled time for performance of this Agreement.

END OF EXHIBIT

## SAMPLE CONTRACT

### EXHIBIT "B"

#### MINIMUM REQUIREMENTS FOR CONSTRUCTION MANAGER'S CONSTRUCTION SCHEDULE

##### PART 1 – GENERAL

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

## SAMPLE CONTRACT

- H. Major Area: A story of construction, a separate building, or a similar significant construction element.
- 2. Milestone: A key or critical point in time for reference or measurement.
- J. Network Diagram: A graphic diagram of a network schedule, showing activities and activity relationships.
- K. Resource Loading: The allocation of manpower and equipment necessary for the completion of an activity as scheduled.

### 1.2 SUBMITTALS

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

## SAMPLE CONTRACT

3. Total Float Report: List of all activities sorted in ascending order of total float.
  4. Earnings Report: Compilation of Construction Manager's total earnings from commencement of the Work until most recent Application for Payment.
- E. Submittal of the preliminary construction schedule, the initial Construction Manager's Schedule of Construction and updates thereto are for Architect's and Owner's information. No action or inaction by the Architect or Owner shall constitute or be deemed to constitute an approval of Construction Manager's Construction Schedule.

### 1.3 QUALITY ASSURANCE

2. Scheduling Consultant Qualifications: An experienced specialist in CPM scheduling and reporting, with capability of producing CPM reports and diagrams within 24 hours of Architect's or Owner's request.
- B. Prescheduling Conference: Conduct conference to review methods and procedures related to the preliminary Construction Schedule and Construction Manager's Construction Schedule, including, but not limited to, the following:
2. Review software limitations and content and format for reports.
  2. Verify availability of qualified personnel needed to develop and update schedule.
  3. Discuss constraints, including, if applicable, phasing, work stages, area separations, interim milestones, and partial Owner occupancy.
  4. Review delivery dates for Owner-furnished products, if any.
  5. Review schedule for work of Owner's separate contracts, if any.
  6. Review time required for review of submittals and resubmittals.
  7. Review requirements for tests and inspections by independent testing and inspecting agencies.
  8. Review time required for completion and startup procedures.
  9. Review and finalize list of construction activities to be included in schedule.
  10. Review submittal requirements and procedures.



## SAMPLE CONTRACT

11. Review procedures for updating schedule.

### 1.4 COORDINATION

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

## PART 2 – PRODUCTS

### 2.1 CONSTRUCTION MANAGER'S CONSTRUCTION SCHEDULE, GENERAL

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

## SAMPLE CONTRACT

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

## SAMPLE CONTRACT

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

## SAMPLE CONTRACT

H. Computer Software: Prepare schedules using a program that has been developed specifically to manage construction schedules.

2. Use software, version and operating system required by Owner.

### 2.2 CONSTRUCTION MANAGER'S CONSTRUCTION SCHEDULE (CPM SCHEDULE)

2. General: Prepare network diagrams using AON (activity-on-node) format.

B. Preliminary Network Diagram: Submit diagram not later than 7 days prior to commencement of the Construction Phase. Outline significant construction activities for the first 60 days of construction. Include skeleton diagram for the remainder of the Work and a cash requirement prediction based on indicated activities.

C. CPM Schedule: Prepare Construction Manager's Construction Schedule using a computerized, cost-loaded and resource-loaded, time-scaled CPM network analysis diagram for the Work.

2. Submit CPM schedule prior to commencement of the Construction Phase.

2. Failure to include any Work item required for performance of the Contract Documents shall not excuse Construction Manager from completing all Work within applicable completion dates.

2. Conduct educational workshops to train and inform key Project personnel, including subcontractors' personnel, in proper methods of providing data and using CPM schedule information.

3. Establish procedures for monitoring and updating CPM schedule and for reporting progress. Coordinate procedures with progress meeting and payment request dates.

4. Use "one workday" as the unit of time. Include list of nonworking days and holidays incorporated into the schedule.

D. CPM Schedule Preparation: Prepare a list of all activities required to complete the Work. Using the preliminary network diagram, prepare a skeleton network to identify probable critical paths.

2. Activities: Indicate the estimated time duration, sequence requirements, and relationship of each activity in relation to other activities. Include estimated time frames for the following activities:

- a. Preparation and processing of submittals.
- b. Mobilization and demobilization.
- c. Purchase of materials.
- d. Delivery.

## SAMPLE CONTRACT

- e. Fabrication.
  - f. Utility interruptions.
  - g. Installation.
  - h. If applicable, work by Owner that may affect or be affected by Construction Manager's activities.
  - i. Testing and start up.
2. Critical Path Activities: Identify critical path activities, including those for interim completion dates. Scheduled start and completion dates shall be consistent with contract milestone dates.
  3. Processing: Process data to produce output data on a computer-drawn, time-scaled network. Revise data, reorganize activity sequences, and reproduce as often as necessary to produce the CPM schedule within the limitations of the time for Construction Manager's performance.
  4. Format: Mark the critical path. Locate the critical path near center of network; locate paths with most float near the edges.
    2. Subnetworks on separate sheets are permissible for activities clearly off the critical path.
- E. Initial Issue of Schedule: Prepare initial network diagram from a list of straight "early start-total float" sort. Identify critical activities. Prepare tabulated reports showing the following:
2. Construction Manager or subcontractor and the Work or activity.
  2. Description of activity.
  3. Principal events of activity.
  4. Immediate preceding and succeeding activities.
  5. Early and late start dates.
  6. Early and late finish dates.
  7. Activity duration in workdays.
  8. Total float or slack time.
  9. Average size of workforce.
  10. Dollar value of activity (coordinated with the schedule of values).

## SAMPLE CONTRACT

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

### PART 3 – EXECUTION

#### 3.1 CONSTRUCTION MANAGER'S CONSTRUCTION SCHEDULE

2. Scheduling Consultant: Engage a consultant to provide planning, evaluation, and reporting using CPM scheduling.
  2. In-House Option: Owner may waive the requirement to retain a consultant if Construction Manager employs skilled personnel with experience in CPM scheduling and reporting techniques. Submit qualifications.

## SAMPLE CONTRACT

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

END OF EXHIBIT

SAMPLE CONTRACT

EXHIBIT "C"

LIQUIDATED DAMAGES

Liquidated damages applicable to paragraph 7.7.1 of this Agreement shall be the amount stated in the right column below which is directly opposite the applicable Guaranteed Maximum Price (GMP) range stated in the left column below.

If The Original GMP Is:

Daily Liquidated Damages Shall Be:

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

END OF EXHIBIT



SAMPLE CONTRACT

EXHIBIT "D"  
THE GUARANTEED MAXIMUM PRICE ("GMP")

The amount of the GMP shall be: \_\_\_\_\_  
\_\_\_\_\_ (\$\_\_\_\_\_).

IN WITNESS WHEREOF, the parties hereto have executed this Exhibit "D" on the date(s) indicated below.

WALKER COUNTY BOARD  
OF EDUCATION

CONSTRUCTION MANAGER:

\_\_\_\_\_  
*[Typed Name]*

By: \_\_\_\_\_  
*[Signature]* [SEAL]

By: \_\_\_\_\_  
*[Signature]* [SEAL]

\_\_\_\_\_  
*[Printed Name]*

\_\_\_\_\_  
*[Printed Name]*

Board Chair  
\_\_\_\_\_  
*[Printed Title]*

\_\_\_\_\_  
*[Printed Title]*

By: \_\_\_\_\_  
*[Signature]* [SEAL]

\_\_\_\_\_

\_\_\_\_\_  
*[Printed Name]*

\_\_\_\_\_  
*[Printed Address]*

Superintendent  
\_\_\_\_\_  
*[Printed Title]*

\_\_\_\_\_  
*[Date of Execution]*

\_\_\_\_\_  
*[Date of Execution]*

END OF EXHIBIT



SAMPLE CONTRACT

**EXHIBIT “F”**

**INSURANCE REQUIRED OF CONSTRUCTION MANAGER**

(1) The Construction Manager shall purchase and maintain such insurance as will protect it from claims set forth below which may arise out of or result from the Construction Manager’s operations under the Contract, whether such operations be by itself or by any Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

(a) claims under workers’ or workmen’s compensation disability benefit or other similar employees benefit acts;

(b) claims for damages because of bodily injury, occupational sickness or disease or death of its employees;

(c) claims for damages because of bodily injury, sickness or disease, or death of any person other than its employees;

(d) claims for damages insured by usual personal injury liability coverage which are sustained (1) by any person as a result of an offense directly or indirectly related to the employment of such person by the Construction Manager, or (2) by any other person;

(e) claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom; and

(f) claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.

(2) The insurance required by Paragraph 1 shall be written for not less than any limits of liability specified within this exhibit, or required by law, whichever is greater.

(3) The insurance required by Paragraph 1 shall include contractual liability insurance.

(4) The Construction Manager shall be responsible from the time of signing the Contract or from the time of the beginning of the Work, whichever shall be earlier, for all bodily injury (including death) or damage to property of any kind resulting from the Work under this Contract to persons or property.

The Construction Manager assumes the obligation to save the Owner, the Walker County School District and the Architect harmless and to indemnify them from every expense, liability or payment arising out of or through bodily injury (including death) to any person or persons or damage to property of any person arising out of any act of the Construction Manager, any subcontractor or anyone either directly or indirectly employed by or under the supervision of any of them in the prosecution of the Work included in the Contract.

All liability policies shall name the Owner, the Walker County School District and the Architect as an additional insured. All liability policies shall be issued on a primary and non-contributory basis over any other liability insurance which may be available to the Owner, the Walker County School

## SAMPLE CONTRACT

District and Architect to fully insure the indemnity obligations made herein and in any other portion of this contract.

(5) The Construction Manager agrees to comply with the provisions of the Workman's Compensation laws of the State of Georgia and to require all Subcontractors likewise to comply. Construction Manager shall secure the following insurance at his own expense and prior to starting any Work shall file Certificates of Insurance with the Owner except that on the Owner's Protective Insurance, original policies shall be filed with the Owner.

- (a) Workmen's Compensation - Statutory Limits, Employer's Liability -\$1,000,000.00
- (b) Comprehensive General Liability (including Premises-Operations; Independent Contractors Protective; Products and Completed Operations; Broad Form Property Damage and Broad Form General Liability Endorsement; Explosion & Collapse).
  - 1. Bodily Injury: \$1,000,000.00 Each Occurrence; \$2,000,000.00 Aggregate, Products and Completed Operations (Umbrella).
  - 2. Property Damage: \$500,000.00 Each Occurrence; \$1,000,000.00 Aggregate.
  - 3. Products and Completed Operations Insurance shall be maintained for a minimum period of three (3) years after completion of the work and Construction Manager shall continue to provide evidence of such coverage to Owner on an annual basis during the aforementioned period.
  - 4. Property Damage Liability Insurance shall include coverage for Explosion, Collapse, and Underground.
  - 5. Contractual Liability (Hold Harmless Coverage): Bodily Injury: \$1,000,000.00 Each Occurrence; Property Damage: \$500,000.00 Each Occurrence, \$500,000.00 Aggregate.
  - 6. Personal Injury, with Employment Exclusion deleted: \$1,000,000.00 Each Occurrence, \$1,000,000 Aggregate.
  - 7. If the Comprehensive General Liability policy provides that the general aggregate limit for items (5)(b) 1-6 above apply separately to each project, then the Owners Protective Liability policy in item (8) (a)-(c) shall not be required.
- (c) Comprehensive Automobile Liability (owned, non-owned, leased, hired):
  - 1. Bodily Injury: \$1,000,000.00 Each Person, \$1,000,000.00 Each Accident;
  - 2. Property Damage: \$1,000,000.00 Each Occurrence;
  - 3. or \$1,000,000 Combined Single Limit.

SAMPLE CONTRACT

(d) Commercial Umbrella

- 1. Umbrella limits shall be the amount stated in the right column below which is directly opposite the applicable Contract Price range stated in the left column below:

Contract Price	Required Umbrella Limit
Less than \$1,000,000	\$1,000,000
\$1,000,000 to \$10,000,000	\$5,000,000
Greater than \$10,000,000	\$10,000,000

- 2. In the event that the Contract Price is increased by Change Order, the umbrella limits shall automatically be increased to the limits stated in the foregoing table in (5)(d)1.
- 3. Umbrella coverage must include as insureds all entities that are additional insureds on the Commercial General Liability policy.
- 4. Umbrella coverage for such additional insureds shall apply as primary before any other insurance or self insurance, including any deductible, maintained by or provided to the additional insured by the Owner, the Walker County School District and Architect.

(6) Certificates of Insurance (2 copies) shall be filed with Owner before commencement of Work. These Certificates shall contain a provision that coverages afforded under the policies will not be canceled, changed or allowed to expire until thirty (30) days after the Owner has received written notice evidenced by return receipt of registered letter.

(7) Insurance will not be acceptable unless written by a Company authorized by the State of Georgia Insurance Department to do business in Georgia at the time the policy is issued and the company must in addition be acceptable to the Owner.

(8) Construction Manager shall purchase and maintain Owner’s Protective Liability Policy with minimum limits of:

- (a) Bodily Injury: \$1,000,000.00 Each Occurrence, \$2,000,000.00 Aggregate.
- (b) Property Damage: \$2,000,000.00 Each Occurrence, \$2,000,000.00 Aggregate.
- (c) Personal Injury, with Employment Exclusion deleted: \$1,000,000.00 Aggregate.

This policy shall be issued in the name of the Walker County Board of Education and delivered to Owner along with Certificates of Insurance. Employees of the Walker County Board of Education shall be included as an additional insured. Policy shall also name the Walker County School District and the Architect as an additional insured.

## SAMPLE CONTRACT

(9) Construction Manager shall purchase and maintain BUILDER'S RISK INSURANCE payable to the Construction Manager and Owner, as their interest may appear, upon the entire structure and all materials in or adjacent thereto which are to be made a part of the insured structure of 100% of the insurable value thereof covering fire, theft, extended coverage, vandalism and malicious mischief. There shall be attached to and made a part of the insurance policy for Builder's Risk an endorsement of the Insurance Company that is subject to the Owner's approval.

(10) The Construction Manager may, at its option, purchase insurance policies having a "deductible" feature provided that:

- (a) Deductible amount does not exceed \$10,000.00.
- (b) Construction Manager agrees in written letter to the Owner (through the Architect) to be responsible for payment of any such deductibles, in the event that such payment should become necessary.

END OF EXHIBIT

SAMPLE CONTRACT

**EXHIBIT "G"**  
**IMMIGRATION AND SECURITY AFFIDAVITS**  
**CONSTRUCTION MANAGER AFFIDAVIT**

By executing the 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 under a contract with \_\_\_\_\_ (name of contractor) on behalf of \_\_\_\_\_ (name of public employer) has registered with and is participating in a federal work authorization program\* [any of the electronic verification of work authorization programs operated by the United States Department of Homeland Security or any equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, pursuant to the Immigration Reform and Control Act of 1986 (IRCA), P.L. 99-603], in accordance with the applicability provisions and deadlines established in O.C.G.A. 13-10-91.

Project: \_\_\_\_\_

\_\_\_\_\_  
EEV / Basic Pilot Program\* User Identification Number

\_\_\_\_\_  
BY: Authorized Officer of Agent  
(Contractor Name)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title of Authorized Officer or Agent of Contractor

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

SUBSCRIBED AND SWORN  
BEFORE ME ON THIS THE  
\_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_

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

\* As of the effective date of O.C.G.A. 13-10-91, the applicable federal work authorization program is the "EEV / Basic Pilot Program" operated by the U.S. Citizenship and Immigration Services Bureau of the U.S. Department of Homeland Security, in conjunction with the Social Security Administration (SSA).

SAMPLE CONTRACT

SUBCONTRACTOR AFFIDAVIT

By executing the affidavit, the undersigned subcontractor verifies its compliance with O.C.G.A. 13-10-91, stating affirmatively that the individual, firm or corporation which is engaged in the physical performance of services under a contract with \_\_\_\_\_ (name of contractor) on behalf of \_\_\_\_\_ (name of public employer) has registered with and is participating in a federal work authorization program\* [any of the electronic verification of work authorization programs operated by the United States Department of Homeland Security or any equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, pursuant to the Immigration Reform and Control Act of 1986 (IRCA), P.L. 99-603], in accordance with the applicability provisions and deadlines established in O.C.G.A. 13-10-91.

Project: \_\_\_\_\_

EEV / Basic Pilot Program\* User Identification Number

BY: \_\_\_\_\_  
Authorized Officer of Agent  
(Subcontractor Name)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title of Authorized Officer or Agent of Subcontractor

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

SUBSCRIBED AND SWORN  
BEFORE ME ON THIS THE  
\_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_

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

\* As of the effective date of O.C.G.A. 13-10-91, the applicable federal work authorization program is the "EEV / Basic Pilot Program" operated by the U.S. Citizenship and Immigration Services Bureau of the U.S. Department of Homeland Security, in conjunction with the Social Security Administration (SSA).

END OF EXHIBIT