



**City of Flowery Branch
City Council Meeting
Thursday, June 01, 2023, 6:00 PM
City of Flowery Branch City Hall
5410 Pine Street, Flowery Branch, GA 30542**



CALL WORK SESSION TO ORDER:

PLEDGE OF ALLEGIANCE:

ADOPTION OF AGENDA:

NEW BUSINESS -WORK SESSION:

- Consider Folksong Apartments Estoppel Certificate
[Executive Summary - Folksong Estoppel Agreement.pdf](#)
[Woodfield Sewer Development Agreement.pdf](#)
[Woodfield 1st Amend to Sewer Development Agreement.pdf](#)
[Starlight \(Folksong\) City Sewer Agreement Estoppel 4868-7113-2767_3 - Final.pdf](#)
- Consider Awarding a Contract with Archer Western Construction for Construction Manager at Risk Services for the Construction of the Flowery Branch Wastewater Treatment Plant Expansion (WWTP).
[Executive Summary - Archer Western WWTP Expansion CMAR Contract.pdf](#)
[Flowery Branch WRF CMAR Contract - 5-30-23 Final.pdf](#)

DEPARTMENT REPORTS: - a. City Manager Report

- b. City Clerk Report
- c. Community Relations Report
- d. Finance Department Report
- e. Planning Department Report
- f. Police Department Report
- g. Public Works & Utilities Report
- h. Attorney Report
- i. Council Report

ADJOURNMENT WORK SESSION:

VOTING SESSION AGENDA

CALL VOTING SESSION TO ORDER:

PUBLIC COMMENTS: - Please limit to two minutes

CONSENT AGENDA:

- Consider May 18, 2023 City Council Meeting Minutes

[Unofficial May 18, 2023 City Council Meeting Minutes.pdf](#)

- Consider May 2023 Per Diem for Mayor Asbridge
[Mayor Per Diem - May 2023.pdf](#)

UNFINISHED BUSINESS - VOTING SESSION:

- Consider the Second Reading of Ordinance 693, a variance request submitted by Stanton E. Porter allowing fuel pumps to be located in front of the primary structure at 4603 Atlanta Highway.
[letter of intent.pdf](#)
[Thurmond Tanner Pkwy Retail Center Site Plan_6-24-22.pdf](#)
[signed variance app.pdf](#)
[Landscape plan.pdf](#)
[Staff Report.pdf](#)
[ORDINANCE 693 FINAL READ JUNE 1.pdf](#)
- Consider the Second Reading of Ordinance 694, a Text Amendment Implementing Zoning Ordinance Changes.
[Ordinance 694 JUNE 1.pdf](#)

NEW BUSINESS - VOTING SESSION:

- Consider Folksong Apartments Estoppel Certificate
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[Flowery Branch WRF CMAR Contract - 5-30-23 Final.pdf](#)

EXECUTIVE SESSION:

ADJOURNMENT:

If you have a disability or impairment and need special assistance please contact the City Clerk prior to the meeting at 770-967-6371 - Meeting agenda is subject to change



FLOWERY BRANCH CITY COUNCIL

EXECUTIVE SUMMARY



SUBJECT: Consider Folksong Apartments Estoppel Certificate

COUNCIL MEETING DATE: June 1, 2023

HISTORY:

Flowerly Branch Apartments Owner, LLC (“Woodfield”) entered into the attached sewer connection development agreement with the City dated March 22, 2022, as amended July 21, 2022, (“Sewer Agreement”) to provide for access to and maintenance of the sanitary sewer system as part of its development of an apartment complex located on a portion of 4496 Hog Mountain Road. Woodfield subsequently conveyed the development to Folksong Acquisition LLC (“Folksong”) and Folksong is now the Developer under the Sewer Agreement with the City. Folksong has completed the development.

FACTS AND ISSUES:

FACTS AND ISSUES: Folksong intends to sell its apartment complex development and is requesting the City agree that to date, Folksong is in compliance with the Sewer Agreement by approving and signing the attached Estoppel Certificate. An estoppel certificate such as this is common in real estate transactions. Its purpose is for a third party (City) to confirm to the buyer that the seller’s representations (Folksong) are true.

The Estoppel Certificate asks the City to agree to the following:

- a. The Developer is not in default under the Agreement.
- b. The obligations under Sections I, II, III, IV, V, VI, VII, VIII, X, XI, XII, XIII, XIV of the Agreement have been satisfied.
- c. The City did not exercise its right to require additional connections pursuant to Section XI of the Agreement;
- d. As of the date hereof, the Developer is in compliance with its obligations under Section IX of the Agreement;
- e. The City issued the certification of completeness of the Connection Project and connection of the Development on July 14, 2022, and the Connection Project is deemed complete in accordance with the Agreement;
- f. Construction of the Development has been completed and approved by the City and the City has issued a final certificate of occupancy for the Development.

The City Manager and/or City Water and Sewer Engineer, have confirmed the stated events have occurred. Given that Folksong is in compliance with the provisions of the Sewer Agreement, staff recommends the city council approve the Estoppel Certificate.

OPTIONS:

As all obligations as outlined in the Estoppel Certificate have been met, approve the Estoppel Certificate as presented.

IF FUNDING IS INVOLVED, ARE FUNDS APPROVED IN THE CURRENT BUDGET:

Yes

AMOUNT AND SOURCE OF FUNDS:

N/A

RECOMMENDATION:

Approve an estoppel certificate in connection with the sale of the Folksong apartment complex development.

SAMPLE MOTION:

I make a motion to approve the Estoppel Certificate regarding the Folksong apartment complex as presented.

COLLABORATING DEPARTMENT:

DEPARTMENT: Administration

Prepared by: Shelia Cooper

ATTACHMENTS

- [Executive Summary - Folksong Estoppel Agreement.pdf](#)
- [Woodfield Sewer Development Agreement.pdf](#)
- [Woodfield 1st Amend to Sewer Development Agreement.pdf](#)
- [Starlight \(Folksong\) City Sewer Agreement Estoppel 4868-7113-2767_3 - Final.pdf](#)

**FLOWERY BRANCH CITY COUNCIL
EXECUTIVE SUMMARY**

SUBJECT: FOLKSONG APARTMENTS ESTOPPEL CERTIFICATE

DATE: JUNE 1, 2023

(x) RECOMMENDATION

() POLICY DISCUSSION

BUDGET INFORMATION:

() STATUS REPORT

ANNUAL- \$0

() OTHER

CAPITAL- \$0

COUNCIL ACTION REQUESTED ON: JUNE 1, 2023

PURPOSE: Consider approving an estoppel certificate in connection with the sale of the Folksong apartment complex development.

HISTORY: Flowery Branch Apartments Owner, LLC (“Woodfield”) entered into the attached sewer connection development agreement with the City dated March 22, 2022, as amended July 21, 2022, (“Sewer Agreement”) to provide for access to and maintenance of the sanitary sewer system as part of its development of an apartment complex located on a portion of 4496 Hog Mountain Road. Woodfield subsequently conveyed the development to Folksong Acquisition LLC (“Folksong”) and Folksong is now the Developer under the Sewer Agreement with the City. Folksong has completed the development.

FACTS AND ISSUES: Folksong intends to sell its apartment complex development and is requesting the City agree that to date, Folksong is in compliance with the Sewer Agreement by approving and signing the attached Estoppel Certificate. An estoppel certificate such as this is common in real estate transactions. Its purpose is for a third party (City) to confirm to the buyer that the seller’s representations (Folksong) are true.

The Estoppel Certificate asks the City to agree to the following:

- a. The Developer is not in default under the Agreement.
 - b. The obligations under Sections I, II, III, IV, V, VI, VII, VIII, X, XI, XII, XIII, XIV of the Agreement have been satisfied.
 - c. The City did not exercise its right to require additional connections pursuant to Section XI of the Agreement;
 - d. As of the date hereof, the Developer is in compliance with its obligations under
-
-

Section IX of the Agreement;

- e. The City issued the certification of completeness of the Connection Project and connection of the Development on July 14, 2022, and the Connection Project is deemed complete in accordance with the Agreement;
- f. Construction of the Development has been completed and approved by the City and the City has issued a final certificate of occupancy for the Development.

The City Manager and/or City Water and Sewer Engineer, have confirmed the stated events have occurred. Given that Folksong is in compliance with the provisions of the Sewer Agreement, staff recommends the city council approve the Estoppel Certificate.

OPTION(S): As all obligations as outlined in the Estoppel Certificate have been met, approve the Estoppel Certificate as presented.

RECOMMENDED SAMPLE MOTION: I make a motion to approve the Estoppel Certificate regarding the Folksong apartment complex as presented.

ATTACHMENTS:

- (1) Sewer Connection Development Agreement
- (2) First Amendment to the Sewer Connection Development Agreement
- (3) Proposed Estoppel Certificate

DEPARTMENT: Legal

Prepared by: Karen G. Thomas

eFiled and eRecorded
DATE: 03/23/2022
TIME: 2:30 PM
DEED BOOK: 9087
PAGE: 613 - 656
FILING FEES: \$25.00
INTANGIBLE TAX: \$0.00
PARTICIPANT ID: 4591293252
RECORDED BY: JP
CLERK: Charles Baker, C.S.C
Hall County, GA

UPON RECORDING RETURN TO:
Troutman Pepper Hamilton Sanders LLP
600 Peachtree Street, N.E.
Suite 3000
Atlanta, Georgia 30308
Attn: David C. Kirk

STATE OF GEORGIA

COUNTY OF HALL

AGREEMENT BY AND BETWEEN FLOWERY BRANCH APARTMENTS OWNER, LLC AND THE CITY OF FLOWERY BRANCH, GEORGIA, FOR ACCESS TO AND MAINTENANCE OF THE SANITARY SEWER SYSTEM

This AGREEMENT is made and entered into this 22nd day of March, 2022, by and between FLOWERY BRANCH APARTMENTS OWNER, LLC, a Delaware limited liability company, located at 8210 Creedmoor Road, Suite 103, Raleigh, North Carolina 27613 ("DEVELOPER") and the City of Flowery Branch, Georgia, a Georgia municipal corporation, located at 5410 Pine Street, Flowery Branch, Georgia 30542 ("CITY") for the purpose of maintaining, repairing, and improving the CITY'S sanitary sewer system by acknowledging DEVELOPER'S rights to immediately utilize sanitary sewer lines and a lift station conveyed to CITY by the Hall County Board of Education on property at 4450 Hog Mountain Road by installing a new sewer connection to an existing manhole on such property ("CONNECTION PROJECT") and, further, for the purpose of providing for the CITY'S eventual enhancement of the sanitary sewer system through an

additional project to be determined by the CITY (the "ENHANCEMENT"). Together, the CONNECTION PROJECT and ENHANCEMENT are referred to herein as "THE PROJECTS."

WHEREAS, DEVELOPER is the developer of 32.49 acres of land commonly known as the Woodfield Flowery Branch Apartments located at 4496 Hog Mountain Road within the City of Flowery Branch, Georgia (Tax Parcel 08097 000001A), consisting of approximately 342 residential units as shown on Exhibit A, attached hereto and incorporated herein ("DEVELOPMENT") and desires certain commitments from the CITY in regard to THE PROJECTS; and

WHEREAS, DEVELOPER is the owner of a permanent sewer and temporary construction easement on property owned by the Hall County Board of Education on property at 4450 Hog Mountain Road adjacent to DEVELOPMENT that gives DEVELOPER the right to perform the CONNECTION PROJECT to connect to the CITY sewer system through a manhole located on the School Board property, recorded in Book 8771 at Pages 425 - 435 of the records of Hall County, Georgia, and as shown on Exhibit B attached hereto and incorporated herein; and

WHEREAS, CITY acknowledges such rights, has previously approved plans for the CONNECTION PROJECT, and desires the DEVELOPER carry out the CONNECTION PROJECT; and

WHEREAS, DEVELOPER owns certain design and engineering documents for a possible future gravity sewer line from the CITY-owned lift station to another portion of the CITY sewer system ("DESIGN DOCUMENTS") that it is willing to provide to the CITY for potential use in the ENHANCEMENT; and

WHEREAS, DEVELOPER is the owner of a certain perpetual easement on property adjacent to DEVELOPMENT, and recorded in Book 9078 at Pages 536 - 553 of the records of Hall County, Georgia, as shown on Exhibit C, attached hereto and incorporated herein, that it is willing to assign to CITY and is also willing to grant an easement across a portion of DEVELOPMENT for CITY'S potential use in the ENHANCEMENT ("EASEMENTS"); and

WHEREAS, CITY is the owner of a pump station, sanitary sewer lines, and perpetual easements for same on property owned by the Hall County Board of Education by virtue of a Sewer System Facilities Dedication dated October 9, 2000, and recorded in Book 3782 at Pages 547 & 548 of the records of Hall County, Georgia, ("DEDICATION") as shown on Exhibit D, attached hereto and incorporated herein; and

WHEREAS, the CITY and DEVELOPER desire to cooperate in the design and construction of THE PROJECTS to maintain, repair, and improve the CITY'S sanitary sewer service to serve said DEVELOPMENT and other existing and planned developments in the City of Flowery Branch.

NOW THEREFORE, DEVELOPER and CITY agree to the following:

- I. CITY acknowledges DEVELOPER has prepared the engineering design of the CONNECTION PROJECT which has been accomplished by professional engineers registered in the State of Georgia and that the design complies with all relevant CITY specifications and standards. City further acknowledges the design and plans for the CONNECTION PROJECT have been approved in writing by the CITY engineer.
- II. DEVELOPER shall be responsible for and shall provide all labor and materials necessary for the construction of the CONNECTION PROJECT.
- III. DEVELOPER shall notify CITY in writing of its right to inspect the CONNECTION PROJECT prior to completion of construction of the CONNECTION PROJECT. DEVELOPER shall not bear the cost of said CITY inspection.
- IV. DEVELOPER shall provide CITY a statement from the CONNECTION PROJECT engineer certifying that the materials and workmanship meet CITY specifications and standards. Upon request of CITY, DEVELOPER shall substantiate by material affidavits from suppliers and by applicable test results. DEVELOPER shall provide CITY two copies of "as-built" drawings of the CONNECTION PROJECT.

- V. DEVELOPER shall provide CITY with copies of all lien releases by material and equipment suppliers for the CONNECTION PROJECT.
- VI. The CONNECTION PROJECT shall be complete upon certification in writing by the City Engineer and City Manager and upon such certification CITY shall permit connection of the DEVELOPMENT to the CITY sewer system.
- VII. Within ten (10) business days of the certification of completeness of the CONNECTION PROJECT and connection of DEVELOPMENT to the CITY'S sewer system as described in Paragraph VI of this AGREEMENT, DEVELOPER shall provide the CITY with the DESIGN DOCUMENTS as well as funds equal to \$50,000.00 (Fifty Thousand Dollars) ("DEVELOPER'S CASH CONTRIBUTION"), such DEVELOPER'S CASH CONTRIBUTION to be used by the CITY for design and engineering, easement acquisition, and construction of the ENHANCEMENT PROJECT, the scope, location, and timing of which shall be at the CITY'S discretion.
- VIII. Within ten (10) business days of the certification of completeness of the CONNECTION PROJECT and connection of DEVELOPMENT to the CITY'S sewer system as described in Paragraph VI of this AGREEMENT, DEVELOPER also shall deposit into escrow funds equal to \$150,000.00 (One Hundred Fifty Thousand Dollars) ("DEVELOPER'S ESCROW CONTRIBUTION") for the CITY'S eventual use for the ENHANCEMENT. The DEVELOPER'S ESCROW CONTRIBUTION will be escrowed with the national title insurance company that has issued DEVELOPER'S title insurance policy or another company mutually agreed upon by the DEVELOPER and the CITY. Together, the DEVELOPER'S CASH CONTRIBUTION and DEVELOPER'S ESCROW CONTRIBUTION (totaling \$200,000.00) will be DEVELOPER'S maximum monetary contribution towards the ENHANCEMENT.

- IX. Except as otherwise provided herein, DEVELOPER or its successors in interest or assigns shall be responsible for maintaining the CONNECTION PROJECT for one year after the CITY certifies the CONNECTION PROJECT complete. DEVELOPER shall transfer all applicable warranties to the CITY within fourteen (14) days before the expiration of the one-year maintenance period.
- X. Except as otherwise provided herein, upon the completion of the one-year maintenance period described in Paragraph IX of this AGREEMENT, DEVELOPER or its successors in interest or assigns shall dedicate all rights, title, and interest that DEVELOPER or its successors in interest or assigns may have in the CONNECTION PROJECT and any real property, including but not limited to easements or rights-of-way, necessary for the purpose of owning, operating and/or maintaining the CONNECTION PROJECT by providing CITY a recordable plat(s) showing all utilities within public easements and/or rights of way to be owned and maintained by the CITY. CITY shall not accept said dedication until such time that all property offered by DEVELOPER or its successors in interest or assigns for acceptance by the CITY is free and clear of all encumbrances including but not limited to liens and security interests.
- XI. Within ninety (90) calendar days of the certification of completeness of the CONNECTION PROJECT and connection of DEVELOPMENT to the CITY'S sewer system as described in Paragraph VI of this AGREEMENT, the CITY shall have the right to direct DEVELOPER in writing to construct, at DEVELOPER'S expense, a direct connection to the CITY-owned pump station on property owned by the Hall County Board of Education using, in DEVELOPER'S sole discretion, either the existing CITY-owned easement as depicted in the DEDICATION attached hereto as Exhibit C, provided such easement is undisputed by the Hall County Board of Education, or another easement obtained by DEVELOPER or CITY

and to discontinue the use of the CONNECTION PROJECT. Upon receipt of such written direction from the CITY, DEVELOPER shall have an additional ninety (90) calendar days to construct the direct connection to the CITY-owned pump station and discontinue the use of the CONNECTION PROJECT, at which time DEVELOPER shall be relieved of any obligations contained in Paragraphs IX and X of this AGREEMENT. Should CITY not exercise its right under this Paragraph XI within ninety (90) calendar days of the certification of completeness of the CONNECTION PROJECT and connection of DEVELOPMENT to the CITY'S sewer system as described in Paragraph VI of this AGREEMENT, DEVELOPER shall have no obligation to connect to the CITY-owned pump station. Likewise, should the DEVELOPER'S use of the CITY-owned easement, as depicted in the DEDICATION, be disputed by the Hall County Board of Education or if CITY or DEVELOPER is unable to obtain an undisputed easement from the Hall County Board of Education to construct a direct connection to the CITY-owned pump station, DEVELOPER shall have no obligation to connect to the CITY-owned pump station.

- XII. CITY acknowledges that DEVELOPER'S CASH CONTRIBUTION and DEVELOPER'S ESCROW CONTRIBUTION may represent only a portion of funds required for final design and engineering, easement acquisition, and construction of the ENHANCEMENT and agrees to fund all remaining costs of the ENHANCEMENT using CITY funds and other funding sources.
- XIII. DEVELOPER agrees that, no later than the issuance of the final certificate of occupancy for the DEVELOPMENT, it will grant CITY a perpetual easement for the construction and maintenance of the portion of a possible gravity sewer line that crosses the portion of the DEVELOPMENT indicated in Exhibit D, such easement being in substantially the same location as indicated on Exhibit D. DEVELOPER further agrees that, concurrent with the

grant of the aforementioned easement, it will assign to CITY all rights DEVELOPER has under any and all EASEMENTS obtained by DEVELOPER for portions of such gravity sewer line.

- XIV. DEVELOPER further agrees that, within ten (10) business days of the issuance of the final certificate of occupancy for the DEVELOPMENT, it will direct the escrow agent to release DEVELOPER'S ESCROW CONTRIBUTION to the CITY.
- XV. CITY acknowledges DEVELOPER previously has paid all required fees for CITY sewer capacity and/or connection to the CITY sewer system. CITY further agrees that, upon the completion of the CONNECTION PROJECT by DEVELOPER, CITY shall not withhold any certificates of occupancy for any portion of the DEVELOPMENT for any reason related to the CONNECTION PROJECT, sewer capacity, or sewer system improvements desired by the CITY.
- XVI. The term of this AGREEMENT shall be from the date first written above up and through one (1) year after completion of the PROJECTS unless terminated prior to such date by mutual agreement of CITY and DEVELOPER.
- XVII. All notices under this AGREEMENT shall be in writing and shall be deemed to have been given by delivering in-person, certified mail, or statutory overnight delivery to the following:

For CITY: Ms. Tonya Parrish
City Manager
City of Flowery Branch
5410 Pine Street
Flowery Branch, Georgia 30542

With Copy To: E. Ronald Bennett, Jr., Esq.
Carothers & Mitchell, LLC
1809 Buford Highway
Buford, Georgia 30518

For DEVELOPER: Attn: Mr. Patrick Kassin

Flowery Branch Apartments Owner, LLC
8210 Creedmoor Road
Suite 103
Raleigh, North Carolina 27613

With Copy To: Stephanie E. Greer Fulcher, Esq.
Troutman Pepper Hamilton Sanders LLP
301 South College Street
34th Floor
Charlotte, North Carolina 28202

DEVELOPER or CITY may designate new or additional persons to receive such notices by providing written notice to the other party.

- XVIII. DEVELOPER shall indemnify and hold harmless CITY for any and all claims arising out of any act or omission related to the design and construction of the CONNECTION PROJECT made by DEVELOPER, or any person for whom DEVELOPER could be liable, prior to CITY acceptance of ownership of the CONNECTION PROJECT.
- XIX. The failure of any party to exercise any right given hereunder or to insist upon strict compliance with any term, condition, or covenant specified herein shall not constitute a waiver of such party's right to exercise such right or to demand strict compliance with any such term, condition, or covenant under this AGREEMENT.
- XX. This AGREEMENT contains the sole and entire agreement of the parties with respect to the PROJECTS contemplated hereunder and no representation, inducement, promise, or agreement, parole or written, between the parties and not incorporated herein shall be of any force or effect. Any amendment to this AGREEMENT shall be in writing and executed by the parties.
- XXI. The provisions of this AGREEMENT shall inure to the benefit or and be binding upon the parties hereto and the respective successors and assigns.
- XXII. Time is of the essence with respect to this AGREEMENT.

XXIII. This AGREEMENT and all amendments hereto shall be governed and construed under the laws of the State of Georgia.

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

XXV. This AGREEMENT may be executed in several counterparts, each of which shall constitute an original and all of which together shall constitute one and the same instrument.

IN WITNESS THEREOF, the parties have set their hand and seal.

FLOWERY BRANCH APARTMENTS OWNER, LLC
FLOWERY BRANCH VENTURE LLP,
By: a Delaware LLP and sole
Manager of FLOWERY BRANCH APARTMENTS
OWNER, LLC

CITY OF FLOWERY BRANCH, GEORGIA

Patrick J. Kassir
By: Patrick J. Kassir

Edward R. Asbridge
By: Edward R. Asbridge, Mayor

ATTEST:

ATTEST:

Shelia R. Cooper

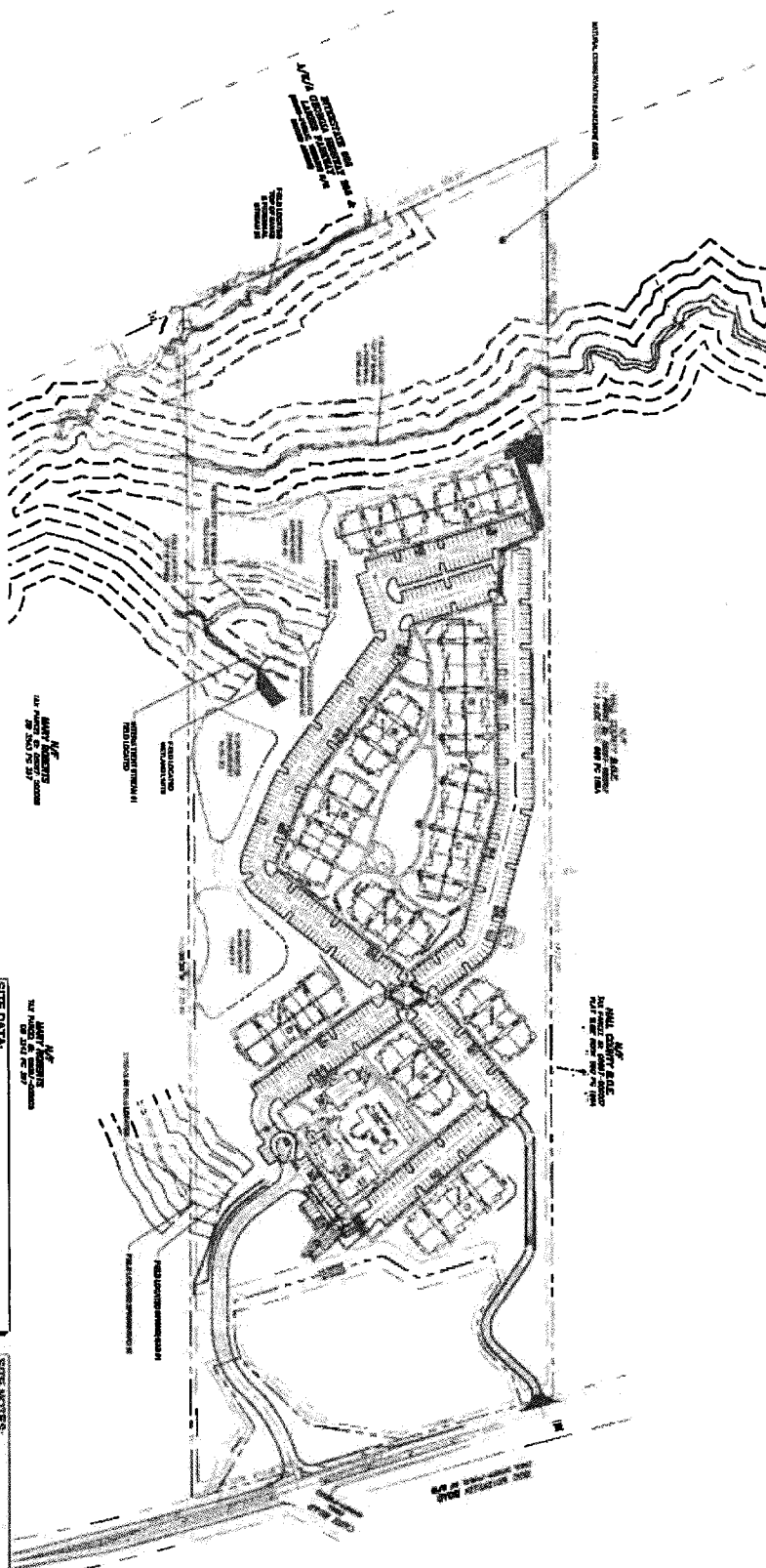
Shelia R. Cooper
By: Shelia Cooper, City Clerk

By:

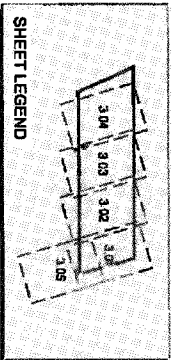
SHELIA R COOPER NOTARY PUBLIC Gwinnett County State of Georgia My Commission Expires Sept 18, 2023

123572386v7

EXHIBIT A



GEORGINA
INCORPORATED



SITE DATA

GENERAL

PROJECT NAME: HOG MOUNTAIN
PROJECT LOCATION: 10000 S.W. 10th Ave., Miami, FL 33155
OWNER: HOG MOUNTAIN DEVELOPMENT, INC.
DESIGNER: PLANNERS AND ENGINEERS COLLABORATIVE, INC.
DATE: 10/1/99

DESIGN

DESIGN TYPE: SITE PLAN
DESIGN SCALE: 1" = 100'

REVISIONS

1. 10/1/99: INITIAL DESIGN
2. 10/1/99: REVISION 1
3. 10/1/99: REVISION 2

SITE NOTES:

1. ALL DIMENSIONS ARE IN FEET AND INCHES. DIMENSIONS SHALL BE TO THE CENTERLINE OF THE ROAD OR TO THE CENTERLINE OF THE LOT, UNLESS OTHERWISE SPECIFIED.

2. THE DEVELOPER SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE CITY OF PALM BEACH AND THE FLORIDA DEPARTMENT OF TRANSPORTATION (FDOT).

3. THE DEVELOPER SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE CITY OF PALM BEACH AND THE FLORIDA DEPARTMENT OF TRANSPORTATION (FDOT).

4. THE DEVELOPER SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE CITY OF PALM BEACH AND THE FLORIDA DEPARTMENT OF TRANSPORTATION (FDOT).

5. THE DEVELOPER SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE CITY OF PALM BEACH AND THE FLORIDA DEPARTMENT OF TRANSPORTATION (FDOT).

MASTER SITE PLAN

SCALE: 1" = 100'

DATE: 10/1/99

PROJECT: HOG MOUNTAIN

C3.00

REVISIONS:

NO.	DATE	DESCRIPTION
1	10/1/99	INITIAL DESIGN
2	10/1/99	REVISION 1
3	10/1/99	REVISION 2

HOG MOUNTAIN
A MASTER PLANNED RESIDENTIAL DEVELOPMENT
WOODFIELD DEVELOPMENT
P.O. BOX 1157
ISLE OF PALMS, NC 25461
PHONE: 404-445-0400

PLANNERS AND ENGINEERS COLLABORATIVE
SITE PLANNING • LANDSCAPE ARCHITECTURE • CIVIL ENGINEERING • LAND SURVEYING
230 RESEARCH COURT • PEACHTREE CORNERS, GEORGIA 30092 • (770) 651-2741 • FAX (770) 451-5945

EXHIBIT B

Recording Requested by and
Please Return to:

Michael Wall
Troutman Pepper Hamilton Sanders LLP
600 Peachtree Street, N.E., Suite 3000
Atlanta, GA 30308

eFiled and eRecorded
DATE: 03/30/2021
TIME: 8:50 AM
DEED BOOK: 8771
PAGE: 425 - 435
FILING FEES: \$25.00
PARTICIPANT ID: 4591293252
RECORDED BY: CH
CLERK: Charles Baker, C.S.C
Hall County, GA

PERMANENT SEWER AND TEMPORARY
CONSTRUCTION EASEMENT

THIS PERMANENT SEWER AND TEMPORARY CONSTRUCTION EASEMENT is executed this 26 day of Oct. 2020 by the Hall County Board of Education (hereinafter, "*Grantor*") for the benefit of Flowery Branch Apartments Owner, LLC, a Delaware limited liability company and its successors and assigns (the "*Grantee*").

WHEREAS, Grantee owns that certain parcel of land within the city of Flowery Branch, Hall County, Georgia having a tax parcel identification number of 08097-000001A (the "*Grantee Property*"), and requires certain easements as hereinafter described and granted in connection with the construction, maintenance, operation, and repair of certain Sewer Improvements (hereinafter defined) located within Hall County, Georgia; and

WHEREAS, Grantor owns that certain parcel of land located adjacent to the Grantee Property having a tax parcel identification number of 08093-000008 (the "*Grantor Property*"); the Grantor Property and the Grantee Property are collectively referred to herein as the "*Tracts*") and desires to grant such easements to Grantee for the consideration and upon the terms, conditions, and agreements hereinafter set forth.

NOW, THEREFORE, for and in consideration of TEN AND NO/100 DOLLARS (\$10.00), and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by Grantor, said Grantor does hereby grant, bargain, sell, and release unto Grantee, its successors and assigns forever, the following easements subject to the terms, conditions, and agreements contained herein:

(1) A perpetual easement (the "*Sewer Easement*") for the construction, location, installation, operation, relocation, extension, inspection, maintenance, repair, alteration, modification, redesign, reconstruction, replacement, and removal of one or more sewer lines, together with all valves, appurtenances, apparatus, and equipment (collectively, the "*Sewer Improvements*") upon, over, along, across, through, and under the area identified as "20' Permanent Sewer Easement" on Exhibit A attached hereto (the "*Easement Area*"); and

(2) A temporary access and construction easement (the "*TCE*," and together with the Sewer Easement, the "*Easements*") upon, over, along, across, through, and under such portions of the Grantor Property as shall be reasonably necessary for the installation of the Sewer Improvements and the performance of related construction activities and the operation of construction equipment associated therewith.

TOGETHER with all the rights and privileges necessary or convenient for the full use and enjoyment of said Easements, including, without limitation, the rights of ingress, egress, and regress over, under, through, upon, and across the remainder of the Grantor Property and all rights of way and ingress and egress easements beneficial to Grantor and/or the above-described property.

TOGETHER also with the right from time to time to remove, cut, trim, or clear and keep clear trees, underbrush, structures, and obstructions upon said Easement Area, and the right of entry upon the Grantor Property, beneficial estates, and all rights of way for all of the purposes aforesaid; provided, however, that nothing herein shall create a duty of Grantee to remove said items or keep clear or maintain the Easement Area, beneficial estates, or rights of way.

These Easements shall run with title to the Tracts and shall be binding upon and inure to the benefit of the Grantor and the Grantee and their respective heirs, successors, assigns, administrators, and executors.

IT IS UNDERSTOOD AND AGREED that the Easements above described are granted and accepted upon the following terms and conditions:

The TCE granted herein shall automatically terminate, without the necessity of the execution of recording of any other document, upon the completion of the Sewer Improvements and the public dedication of same to the City of Flowery Branch, a municipal corporation of the state of Georgia (the "*City*").

Upon completion of the Sewer Improvements, Grantee may assign its rights hereunder to the City in connection with the public dedication of such Sewer Improvements, and Grantor hereby consents both to such assignment and to such dedication.

The Grantor will make no use of the Easement Area that is inconsistent with the uses and purposes for which the Easements have been granted and shall not interfere with Grantee's use of the Easement Area in any way, and without limiting the generality of this provision, the Grantor

agrees that no permanent structures such as buildings, sheds, and other structures shall be placed upon the Easement Area at any time.

TO HAVE AND TO HOLD, all and singular, the easement rights and privileges described unto Grantee, its successors and assigns forever.

And the Grantor does hereby bind itself and its heirs, successors, assigns, administrators and executors to warrant and forever defend all and singular the said premises unto Grantee, its successors and assigns against Grantor and Grantor's heirs, successors, assigns, administrators and executors and against every person whomsoever lawfully claiming or to claim the same or any part thereof. The terms of this instrument shall run with title to the Tracts, and shall bind and inure to the benefit of the parties hereto, their respective successors and assigns, and every other person now or hereafter acquiring an interest in or lien upon the Tracts, or any portion thereof.

If any covenant or other provision contained in this instrument is to any extent declared by a court of competent jurisdiction to be invalid or unenforceable, the remaining covenants, restrictions, and provisions contained herein (or the application of such covenants and provisions to persons or circumstances other than those in respect of which the determination of invalidity or unenforceability was made) will not be affected thereby and each covenant and provision contained in this instrument will be valid and enforceable to the fullest extent permitted by law.

This instrument may be executed in any number of counterparts, each of which shall be an original but all of which shall constitute one and the same instrument.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, said Grantor has hereunto set its hand and affixed seal, the day and year first above written.

Signed, sealed and delivered
in the presence of:

Ronelle C. Craven
Unofficial Witness

Rhonda Sizemore
Notary Public

My commission expires:

RHONDA SIZEMORE
NOTARY PUBLIC - Georgia
Hall County
My Commission Expires
April 24, 2021

GRANTOR:

HALL COUNTY BOARD OF EDUCATION

By: _____ (SEAL)
Name: Ray Knight
Title: Chairman

TABLE A
PASADENA AREA

(See Attached)

Easement Line Table

Line #	Length	Direction
L1	190.89'	N55° 30' 24"E
L2	123.92'	N19° 05' 40"E
L3	84.69'	N82° 41' 47"E
L4	116.06'	N7° 18' 13"W
L5	149.19'	N74° 06' 01"E
L6	20.00'	S15° 53' 59"E
L7	131.99'	S74° 06' 01"W
L8	118.86'	S7° 18' 13"E
L9	92.29'	S82° 41' 47"W
L10	118.10'	S19° 05' 40"W
L11	199.13'	S55° 30' 24"W
L12	20.07'	N29° 45' 45"W

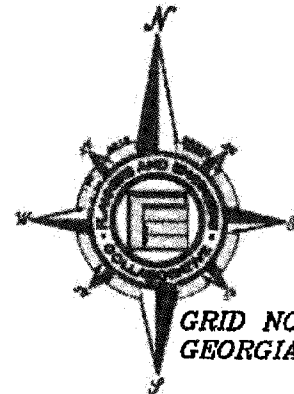
**INTERSTATE 985
A/K/A GEORGIA
HIGHWAY 385
& LANIER PARKWAY**
(PUBLIC, VARIABLE R/W,
LIMITED ACCESS)

POC
N.1523697.86
E.2375542.53
20' PERMANENT
SEWER EASEMENT
0.304 ACRES
13,251 S.F.

IPF 1" ANGLE IRON
1.1' S.W. @
OF P/L

POB
20' PERMANENT
SEWER EASEMENT
N.1523309.24
E.2375764.76
S29°45'45"E /
0.65'
(TIE TO 1"CTP @
ANGLE IRON)

N/F
HALL COUNTY B.O.E.
TAX PARCEL ID: 08093-000008
PLAT SLIDE BOOK 660 PG 189A



SHEET 1 OF 2

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330 RESEARCH COURT PEACHTREE CORNERS, GEORGIA 30092
(770) 451-2241 ■ WWW.PECATL.COM
C.O.A.-LSF000004

**20' PERMANENT SEWER
EASEMENT EXHIBIT FOR:**

WOODFIELD DEVELOPMENT

DRAWN BY: MN
CHECKED BY: JH
FILE NO.: 18161.01A
DATE: 7/09/20
SCALE: 1"=100'



20' PERMANENT SEWER EASEMENT LEGAL DESCRIPTION

ALL THAT TRACT OR PARCEL OF LAND lying and being in Land Lot 97 of the 8th District, City of Flowery Branch, Hall County, Georgia and being more particularly described as follows:

COMMENCING at a #4 rebar found (N.1523697.86, E. 2375542.53, NAD83, GA. West Zone) on the Southeasterly Right of Way Line of Interstate 985 A/K/A Georgia Highway 365 & Lanier Parkway (Public, Variable R/W, Limited Access; thence leaving said Southeasterly Right of Way Line of Interstate 985 South 29 degrees 45 minutes 45 seconds East a distance of 447.67 feet to a point (N.1523309.24, E. 2375764.76, NAD83, GA. West Zone), said point is the TRUE POINT OF BEGINNING.

THENCE North 55 degrees 30 minutes 24 seconds East a distance of 190.89 feet to a point; thence North 19 degrees 05 minutes 40 seconds East a distance of 123.92 feet to a point; thence North 82 degrees 41 minutes 47 seconds East a distance of 84.69 feet to a point; thence North 07 degrees 18 minutes 13 seconds West a distance of 116.06 feet to a point; thence North 74 degrees 06 minutes 01 seconds East a distance of 149.19 feet to a point; thence South 15 degrees 53 minutes 59 seconds East a distance of 20.00 feet to a point; thence South 74 degrees 06 minutes 01 seconds West a distance of 131.99 feet to a point; thence South 07 degrees 18 minutes 13 seconds East a distance of 118.86 feet to a point; thence South 82 degrees 41 minutes 47 seconds West a distance of 92.29 feet to a point; thence South 19 degrees 05 minutes 40 seconds West a distance of 118.10 feet to a point; thence South 55 degrees 30 minutes 24 seconds West a distance of 199.13 feet to a point; thence North 29 degrees 45 minutes 45 seconds West a distance of 20.07 feet to a point, said point is the TRUE POINT OF BEGINNING.

Said 20 foot Permanent Sewer Easement having an area of 13251 square feet, 0.304 acres more or less

SHEET 2 OF 2

PLANNERS AND ENGINEERS COLLABORATIVE

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(770) 451-2741 ■ WWW.PECATL.COM
C.O.A. LS-000004

20' PERMANENT SEWER EASEMENT LEGAL DESCRIPTION FOR: :

DRAWN BY: MN
CHECKED BY: JH
FILE NO.: 18161.01A
DATE: 7/09/20
SCALE: 1"=100'



20' PERMANENT SEWER EASEMENT LEGAL DESCRIPTION

ALL THAT TRACT OR PARCEL OF LAND lying and being in Land Lot 97 of the 8th District, City of Flowery Branch, Hall County, Georgia and being more particularly described as follows:

COMMENCING at a #4 rebar found (N.1523697.86, E. 2375542.53, NAD83, GA. West Zone) on the Southeasterly Right of Way Line of Interstate 985 A/K/A Georgia Highway 365 & Lanier Parkway (Public, Variable R/W, Limited Access; thence leaving said Southeasterly Right of Way Line of Interstate 985 South 29 degrees 45 minutes 45 seconds East a distance of 447.67 feet to a point (N.1523309.24, E. 2375764.76, NAD83, GA. West Zone), said point is the TRUE POINT OF BEGINNING.

THENCE North 55 degrees 30 minutes 24 seconds East a distance of 190.89 feet to a point; thence North 19 degrees 05 minutes 40 seconds East a distance of 123.92 feet to a point; thence North 82 degrees 41 minutes 47 seconds East a distance of 84.69 feet to a point; thence North 07 degrees 18 minutes 13 seconds West a distance of 116.06 feet to a point; thence North 74 degrees 06 minutes 01 seconds East a distance of 149.19 feet to a point; thence South 15 degrees 53 minutes 59 seconds East a distance of 20.00 feet to a point; thence South 74 degrees 06 minutes 01 seconds West a distance of 131.99 feet to a point; thence South 07 degrees 18 minutes 13 seconds East a distance of 118.86 feet to a point; thence South 82 degrees 41 minutes 47 seconds West a distance of 92.29 feet to a point; thence South 19 degrees 05 minutes 40 seconds West a distance of 118.10 feet to a point; thence South 55 degrees 30 minutes 24 seconds West a distance of 199.13 feet to a point; thence North 29 degrees 45 minutes 45 seconds West a distance of 20.07 feet to a point, said point is the TRUE POINT OF BEGINNING.

Said 20 foot Permanent Sewer Easement having an area of 13251 square feet, 0.304 acres more or less

SHEET 2 OF 2

PLANNERS AND ENGINEERS COLLABORATIVE

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(770) 451-2741 ■ WWW.PECATL.COM
C.O.A.-LSF000004

20' PERMANENT SEWER EASEMENT LEGAL DESCRIPTION FOR:

WOODFIELD DEVELOPMENT

DRAWN BY: MN
CHECKED BY: JH
FILE NO.: 18161.01A
DATE: 7/09/20
SCALE: 1"=100'



Easement #2 Line Table		
Line #	Length	Direction
L25	20.07'	S29° 45' 45"E
L26	97.10'	N55° 30' 24"E
L27	102.02'	N55° 30' 24"E
L28	118.10'	N19° 05' 40"E
L29	92.29'	N82° 41' 47"E
L30	20.00'	N7° 18' 13"W
L31	20.00'	N82° 41' 47"E

L32	40.00'	S7° 18' 13"E
L33	20.04'	S82° 41' 47"W
L34	5.05'	S7° 14' 28"E
L35	20.00'	S82° 45' 32"W
L36	5.03'	N7° 14' 28"W
L37	59.85'	S82° 41' 47"W
L38	112.27'	S19° 05' 40"W
L39	108.60'	S55° 30' 24"W
L40	20.00'	N34° 29' 36"W

Easement #1 Line Table		
Line #	Length	Direction
L13	190.89'	N55° 30' 24"E
L14	123.92'	N19° 05' 40"E
L15	84.69'	N82° 41' 47"E
L16	95.83'	N7° 18' 13"W
L17	20.23'	S74° 06' 01"W
L18	40.45'	N7° 18' 13"W
L19	186.40'	N74° 06' 01"E
L20	40.00'	S15° 53' 59"E
L21	20.00'	S74° 06' 01"W
L22	20.00'	N15° 53' 59"W
L23	149.19'	S74° 06' 01"W
L24	20.23'	S7° 18' 13"E

**INTERSTATE 985
A/K/A GEORGIA
HIGHWAY 365 &
LANIER PARKWAY**
(PUBLIC, VARIABLE R/W,
LIMITED ACCESS)

POC IPF #4RB
N.1523697.86
E.2375542.53

**40' TEMPORARY
CONSTRUCTION
EASEMENT #1**
0.105 ACRES
4563 S.F.

**40' TEMPORARY
CONSTRUCTION
EASEMENT #2**
0.161 ACRES
7033 S.F.

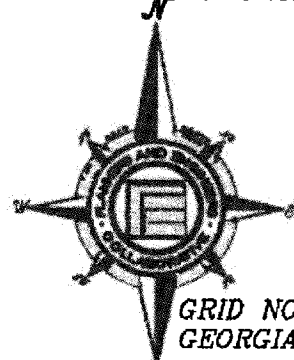
IPF 1" ANGLE IRON
1.1' S.W. @
OF P/L

S29°45'45"E/
0.65'
(TIE TO 1"CTP @
ANGLE IRON)

POB
**40' TEMPORARY
CONSTRUCTION
EASEMENT #2**
N.1523346.81
E.2375854.75

POB
**40' TEMPORARY
CONSTRUCTION
EASEMENT #1**
N.1523640.27
E.2376034.45

N/F
HALL COUNTY B.O.E.
TAX PARCEL ID: 08093-000008
PLAT SLIDE BOOK 660 PG 189A



GRID NORTH
GEORGIA WEST ZONE
SHEET 1 OF 3

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C.O.A.-LSF000004

40' TEMPORARY CONSTRUCTION EASEMENT EXHIBIT FOR:

WOODFIELD DEVELOPMENT

DRAWN BY: MN
CHECKED BY: JH
FILE NO.: 18161.01A
DATE: 7/09/20
SCALE: 1"=100'



40' TEMPORARY CONSTRUCTION EASEMENT #1

ALL THAT TRACT OR PARCEL OF LAND lying and being in Land Lot 97 of the 8th District, City of Flowery Branch, Hall County, Georgia and being more particularly described as follows:

COMMENCING at a #4 rebar found (N.1523697.86, E. 2375542.53, NAD83, GA. West Zone) on the Southeasterly Right of Way Line of Interstate 985 A/K/A Georgia Highway 365 & Lanier Parkway (Public, Variable R/W, Limited Access; thence leaving said Southeasterly Right of Way Line of Interstate 985 South 29 degrees 45 minutes 45 seconds East a distance of 447.67 feet to a point; thence North 55 degrees 30 minutes 24 seconds East a distance of 190.89 feet to a point; thence North 19 degrees 05 minutes 40 seconds East a distance of 123.92 feet to a point; thence North 82 degrees 41 minutes 47 seconds East a distance of 84.69 feet to a point; thence North 07 degrees 18 minutes 13 seconds West a distance of 95.83 feet to a point (N.1523640.27, E.2376034.45, NAD83, GA. West Zone), said point is the TRUE POINT OF BEGINNING.

THENCE South 74 degrees 06 minutes 01 seconds West a distance of 20.23 feet to a point; thence North 07 degrees 18 minutes 13 seconds West a distance of 40.45 feet to a point; thence North 74 degrees 06 minutes 01 seconds East a distance of 186.40 feet to a point; thence South 15 degrees 53 minutes 59 seconds East a distance of 40.00 feet to a point; thence South 74 degrees 06 minutes 01 seconds West a distance of 20.00 feet to a point; thence North 15 degrees 53 minutes 59 seconds West a distance of 20.00 feet to a point; thence South 74 degrees 06 minutes 01 seconds West a distance of 149.19 feet to a point; thence South 07 degrees 18 minutes 13 seconds East a distance of 20.23 feet to a point, said point is the TRUE POINT OF BEGINNING.

Said 40 foot Temporary Construction Easement #1 having an area of 4563 square feet, 0.105 acres more or less

SHEET 2 OF 3

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C.O.A.-LSP000004

40' TEMPORARY CONSTRUCTION EASEMENT #1 LEGAL DESCRIPTION FOR:

WOODFIELD DEVELOPMENT

DRAWN BY: MN
CHECKED BY: JH
FILE NO.: 18151.01A
DATE: 7/09/20
SCALE: 1"=100'



40' TEMPORARY CONSTRUCTION EASEMENT #2

ALL THAT TRACT OR PARCEL OF LAND lying and being in Land Lot 97 of the 8th District, City of Flowery Branch, Hall County, Georgia and being more particularly described as follows:

COMMENCING at a #4 rebar found (N.1523697.86, E.2375542.53, NAD83, GA. West Zone) on the Southeasterly Right of Way Line of Interstate 985 A/K/A Georgia Highway 365 & Lanier Parkway (Public, Variable R/W, Limited Access; thence leaving said Southeasterly Right of Way Line of Interstate 985 South 29 degrees 45 minutes 45 seconds East a distance of 447.67 feet to a point; thence South 29 degrees 45 minutes 45 seconds East a distance of 20.07 feet to a point; thence North 55 degrees 30 minutes 24 seconds East a distance of 97.10 feet to a point (N.1523346.81, E.2375854.75, NAD83, GA. West Zone), said point is the TRUE POINT OF BEGINNING.

THENCE North 55 degrees 30 minutes 24 seconds East a distance of 102.02 feet to a point; thence North 19 degrees 05 minutes 40 seconds East a distance of 118.10 feet to a point; thence North 82 degrees 41 minutes 47 seconds East a distance of 92.29 feet to a point; thence North 07 degrees 18 minutes 13 seconds West a distance of 20.00 feet to a point; thence North 82 degrees 41 minutes 47 seconds East a distance of 20.00 feet to a point; thence South 07 degrees 18 minutes 13 seconds East a distance of 40.00 feet to a point; thence South 82 degrees 41 minutes 47 seconds West a distance of 20.04 feet to a point; thence South 07 degrees 14 minutes 28 seconds East a distance of 5.05 feet to a point; thence South 82 degrees 45 minutes 32 seconds West a distance of 20.00 feet to a point; thence North 07 degrees 14 minutes 28 seconds West a distance of 5.03 feet to a point; thence South 82 degrees 41 minutes 47 seconds West a distance of 59.85 feet to a point; thence South 19 degrees 05 minutes 40 seconds West a distance of 112.27 feet to a point; thence South 55 degrees 30 minutes 24 seconds West a distance of 108.60 feet to a point; thence North 34 degrees 29 minutes 36 seconds West a distance of 20.00 feet to a point, said point is the TRUE POINT OF BEGINNING.

Said 40 foot Temporary Construction Easement #2 having an area of 7033 square feet, 0.161 acres more or less

SHEET 3 OF 3

PLANNERS AND ENGINEERS COLLABORATIVE

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(770) 451-2741 ■ WWW.PECATL.COM
C.O.A.-LSF000004

40' TEMPORARY CONSTRUCTION EASEMENT #2 LEGAL DESCRIPTION FOR:

DRAWN BY: MN WOODFIELD DEVELOPMENT
CHECKED BY: JH
FILE NO.: 18161.01A
DATE: 7/09/20
SCALE: 1"=100'



EXHIBIT C

eFiled and eRecorded
DATE: 03/11/2022
TIME: 7:08 AM
DEED BOOK: 9078
PAGE: 536 - 553
FILING FEES: \$25.00
INTANGIBLE TAX: \$0.00
PARTICIPANT ID: 4591293252
RECORDED BY: JP
CLERK: Charles Baker, C.S.C
Hall County, GA

Recording Requested by and
Please Return to:

Michael Wall
Troutman Pepper Hamilton Sanders LLP
600 Peachtree Street, N.E., Suite 3000
Atlanta, GA 30308

PERMANENT SEWER AND TEMPORARY
CONSTRUCTION EASEMENT

THIS PERMANENT SEWER AND TEMPORARY CONSTRUCTION EASEMENT is executed this 31st day of March, 2020 (the "*Effective Date*") by the Estate of Mary Elizabeth R. Hickman, Louise Harley Hull, William Watt Neal, Jr. and Mary E. Roberts, f/k/a Mary Neal (collectively, "*Grantor*") for the benefit of Flowery Branch Apartments Owner, LLC, a Delaware limited liability company and its successors and assigns (the "*Grantee*").

WHEREAS, Grantee owns that certain parcel of land within the city of Flowery Branch, Hall County, Georgia having a tax parcel identification number of 08097-000001A (the "*Grantee Property*"), and requires certain easements as hereinafter described and granted in connection with the construction, maintenance, operation, and repair of certain Sewer Improvements (hereinafter defined) located within Hall County, Georgia; and

WHEREAS, Grantor owns that certain parcel of land located adjacent to the Grantee Property having a tax parcel identification number of 08097-000005 (the "*Grantor Property*"); the Grantor Property and the Grantee Property are collectively referred to herein as the "*Tracts*") and desires to grant such easements to Grantee for the consideration and upon the terms, conditions, and agreements hereinafter set forth.

NOW, THEREFORE, for and in consideration of TEN AND NO/100 DOLLARS (\$10.00), and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by Grantor, said Grantor does hereby grant, bargain, sell, and release unto Grantee,



its successors and assigns forever, the following easements subject to the terms, conditions, and agreements contained herein:

(1) A perpetual easement (the "**Sewer Easement**") for the construction, location, installation, operation, relocation, extension, inspection, maintenance, repair, alteration, modification, redesign, reconstruction, replacement, and removal of one or more sewer lines, together with all valves, appurtenances, apparatus, and equipment (collectively, the "**Sewer Improvements**") upon, over, along, across, through, and under the area identified as "20' Permanent Sewer Easement" on Exhibit A attached hereto (the "**Easement Area**"); and

(2) A temporary access and construction easement (the "**TCE**," and together with the Sewer Easement, the "**Easements**") upon, over, along, across, through, and under such portions of the Grantor Property as shall be reasonably necessary for the installation of the Sewer Improvements and the performance of related construction activities and the operation of construction equipment associated therewith.

TOGETHER with all the rights and privileges necessary or convenient for the full use and enjoyment of said Easements, including, without limitation, the rights of ingress, egress, and regress over, under, through, upon, and across the remainder of the Grantor Property and all rights of way and ingress and egress easements beneficial to Grantor and/or the above-described property.

TOGETHER also with the right from time to time to remove, cut, trim, or clear and keep clear trees, underbrush, structures, and obstructions upon said Easement Area, and the right of entry upon the Grantor Property, beneficial estates, and all rights of way for all of the purposes aforesaid; provided, however, that nothing herein shall create a duty of Grantee to remove said items or keep clear or maintain the Easement Area, beneficial estates, or rights of way.

These Easements shall run with title to the Tracts and shall be binding upon and inure to the benefit of the Grantor and the Grantee and their respective heirs, successors, assigns, administrators, and executors.

IT IS UNDERSTOOD AND AGREED that the Easements above described are granted and accepted upon the following terms and conditions:

The TCE granted herein shall automatically terminate, without the necessity of the execution of recording of any other document, upon the completion of the Sewer Improvements and the public dedication of same to the City of Flowery Branch, a municipal corporation of the state of Georgia (the "**City**").

Upon completion of the Sewer Improvements, Grantee may assign its rights hereunder to the City in connection with the public dedication of such Sewer Improvements, and Grantor hereby consents both to such assignment and to such dedication.

The Grantor will make no use of the Easement Area that is inconsistent with the uses and purposes for which the Easements have been granted and shall not interfere with Grantee's use of

the Easement Area in any way, and without limiting the generality of this provision, the Grantor agrees that no permanent structures such as buildings, sheds, and other structures shall be placed upon the Easement Area at any time.

Notwithstanding anything contained herein to the contrary, Grantee hereby indemnifies and shall save and hold Grantor harmless from any injury or loss incurred by the Grantor as a direct result of damage to the Grantor Property caused by the Grantee in the exercise of its rights hereunder; provided that in no case shall Grantee indemnify Grantor, its successors, or assigns for losses arising from Grantor's, its successors' or assigns' negligence or willful misconduct, or for losses arising or incurred due to any hazardous substances or other conditions existing on the Grantor Property prior to the Effective Date and not otherwise directly caused by Grantee.

TO HAVE AND TO HOLD, all and singular, the easement rights and privileges described unto Grantee, its successors and assigns forever.

And the Grantor does hereby bind itself and its heirs, successors, assigns, administrators and executors to warrant and forever defend all and singular the said premises unto Grantee, its successors and assigns against Grantor and Grantor's heirs, successors, assigns, administrators and executors and against every person whomsoever lawfully claiming or to claim the same or any part thereof. The terms of this instrument shall run with title to the Tracts, and shall bind and inure to the benefit of the parties hereto, their respective successors and assigns, and every other person now or hereafter acquiring an interest in or lien upon the Tracts, or any portion thereof.

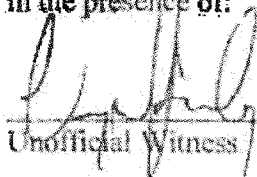
If any covenant or other provision contained in this instrument is to any extent declared by a court of competent jurisdiction to be invalid or unenforceable, the remaining covenants, restrictions, and provisions contained herein (or the application of such covenants and provisions to persons or circumstances other than those in respect of which the determination of invalidity or unenforceability was made) will not be affected thereby and each covenant and provision contained in this instrument will be valid and enforceable to the fullest extent permitted by law.

This instrument may be executed in any number of counterparts, each of which shall be an original but all of which shall constitute one and the same instrument.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, said Grantor has hereunto set its hand and affixed seal, the day and year first above written.

Signed, sealed and delivered
in the presence of:


Unofficial Witness


Notary Public

My commission expires: May 10, 2022

GRANTOR:

Estate of Mary Elizabeth R. Hickman

 (SEAL)
By: Earl L. Hickman
Title: Executor of the Estate of Mary Elizabeth
R. Hickman



[GRANTOR SIGNATURES CONTINUE ON FOLLOWING PAGE]

Signed, sealed and delivered
in the presence of:

GRANTOR:

Louise Harley Hull

Helen Hull
Unofficial Witness

Louise Harley Hull (SEAL)
LOUISE HARLEY HULL

Molly M. Hull
Notary Public

My commission expires: 10-19-24

[GRANTOR SIGNATURES CONTINUE ON FOLLOWING PAGE]



Signed, sealed and delivered
in the presence of:

GRANTOR:

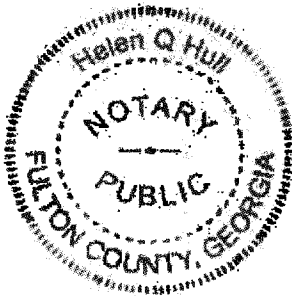
[Signature]
Unofficial Witness

[Signature]
WILLIAM WATT NEAL, JR.

[Signature]
Notary Public

My commission expires: 9.25.2023

[GRANTOR SIGNATURES CONTINUE ON FOLLOWING PAGE]

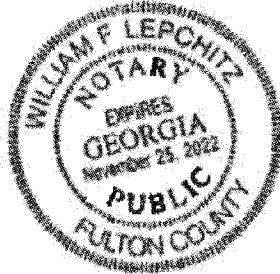


Signed, sealed and delivered
in the presence of:

[Signature]
Unofficial Witness

[Signature]
Notary Public

My commission expires: 11/25/2022



GRANTOR:

Mary E. Roberts, f/k/a Mary Neal

[Signature] (SEAL)
MARY E. ROBERTS, F/K/A MARY NEAL

Exhibit A
EASEMENT AREA

(SEE ATTACHED)

10/10/19

4

**A/K/A INTERSTATE 985
LANIER PARKWAY
(PUBLIC, VARIABLE R/W,
LIMITED ACCESS)**



GRID NORTH
GEORGIA WEST ZONE

POC
N.1523126.68
E.2375119.06

N30°50'15"W
274.99'

L1
IPF #4RB

L2

L3

L4

L25

L26

L32

L21

6/95

POB
40' TEMPORARY
CONSTRUCTION
EASEMENT
N.1522595.83
E.2375115.19

40' TEMPORARY
CONSTRUCTION
EASEMENT
0.184 ACRES
8,023 S.F.

N/F
MARY ELIZABETH HICKMAN
TAX PARCEL ID: 08097-000005
DB 3543 PG. 397

MATCHLINE

SHEET 1 OF 3

PLANNERS AND ENGINEERS COLLABORATIVE
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770/451-2711 ■ WWW.PECOLL.COM
C.O.A.-US000054

**40' TEMPORARY CONSTRUCTION
EASEMENT EXHIBIT FOR:**

WOODFIELD DEVELOPMENT

DRAWN BY: MN
CHECKED BY: JH
FILE NO.: 18161.01A
DATE: 7/09/20
SCALE: 1"=100'



IPF RWM

N/F
MARY ELIZABETH HICKMAN
TAX PARCEL ID: 08097-000005
DB 3543 PG 397

MATCHLINE

POB

40' TEMPORARY
CONSTRUCTION
EASEMENT

N.1522595.83

E.2375115.19

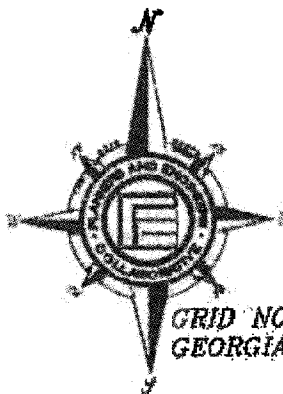
40' TEMPORARY
CONSTRUCTION
EASEMENT

0.184 ACRES

8,023 S.F.

40 foot Temporary Construction
Easement Line Table

Line #	Length	Direction
L1	39.05'	S29° 25' 29"E
L2	20.29'	S29° 25' 29"E
L3	133.75'	S70° 15' 13"W
L4	138.42'	S54° 51' 44"W
L25	134.95'	S28° 50' 35"E
L26	20.00'	N61° 09' 25"E
L27	39.31'	S28° 50' 35"E
L28	261.48'	S19° 38' 53"W
L29	118.78'	S70° 01' 57"W
L30	20.00'	N19° 58' 03"W
L31	109.37'	N70° 01' 57"E
L32	30.31'	S28° 50' 35"E



SHEET 2 OF 3

PLANNERS AND ENGINEERS COLLABORATIVE
"WE PROVIDE SOLUTIONS"



■ SITE PLANNING ■ LANDSCAPE ARCHITECTURE
■ CIVIL ENGINEERING ■ LAND SURVEYING
350 RESEARCH COURT, PEACHTREE CORNERS, GEORGIA 30092
(770) 451-2741 or WWW.PECAL.COM
C.O.A.-USPC00004

**40' TEMPORARY CONSTRUCTION
EASEMENT EXHIBIT FOR:**

WOODFIELD DEVELOPMENT

DRAWN BY: MN
CHECKED BY: JH
FILE NO.: 18161.01A
DATE: 7/09/20
SCALE: 1"=100'



40' TEMPORARY CONSTRUCTION EASEMENT

ALL THAT TRACT OR PARCEL OF LAND lying and being in Land Lot 97 of the 8th District, City of Flowery Branch, Hall County, Georgia and being more particularly described as follows:

COMMENCING at a #4 rebar found (N.1523126.68, E. 2375119.06, NAD83, GA. West Zone) on the Southeasterly Right of Way Line of Interstate 985 A/K/A Georgia Highway 365 & Lanier Parkway (Public, Variable R/W, Limited Access; thence leaving said Southeasterly Right of Way Line of Interstate 985 South 30 degrees 50 minutes 15 seconds East a distance of 274.99 feet to a #4 rebar found; thence South 29 degrees 25 minutes 29 seconds East a distance of 39.05 feet to a point; thence South 29 degrees 25 minutes 29 seconds East a distance of 20.29 feet to a point; thence South 70 degrees 15 minutes 13 seconds West a distance of 133.75 feet to a point; thence South 54 degrees 51 minutes 44 seconds West a distance of 138.42 feet to a point; thence South 28 degrees 50 minutes 35 seconds East a distance of 134.95 feet to a point (N.1522595.83, E. 2375115.19, NAD83, GA. West Zone), said point is the TRUE POINT OF BEGINNING.

THENCE North 61 degrees 09 minutes 25 seconds East a distance of 20.00 feet to a point; thence South 28 degrees 50 minutes 35 seconds East a distance of 39.31 feet to a point; thence South 19 degrees 38 minutes 53 seconds West a distance of 261.48 feet to a point; thence South 70 degrees 01 minutes 57 seconds West a distance of 118.78 feet to a point; thence North 19 degrees 58 minutes 03 seconds West a distance of 20.00 feet to a point; thence North 70 degrees 01 minutes 57 seconds East a distance of 109.37 feet to a point; thence North 19 degrees 38 minutes 53 seconds East a distance of 243.07 feet to a point; thence North 28 degrees 50 minutes 35 seconds West a distance of 30.31 feet to a point, said point is the TRUE POINT OF BEGINNING.

Said 40 foot Temporary Construction Easement having an area of 8,023 square feet, 0.184 acres more or less.

SHEET 9 OF 3

PLANNERS AND ENGINEERS COLLABORATIVE "WE PROVIDE SOLUTIONS"

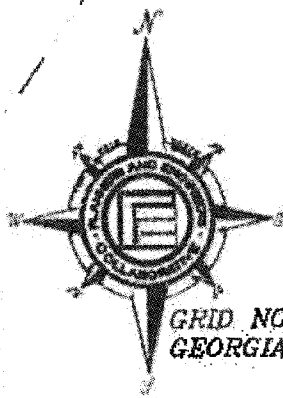


■ SITE PLANNING ■ LANDSCAPE ARCHITECTURE
■ CIVIL ENGINEERING ■ LAND SURVEYING
350 RESEARCH COURT PEACHTREE CORNERS, GEORGIA 30092
(770) 451-2741 ■ WWW.PECOLL.COM
C.O.A. - ESF000004

40' TEMPORARY CONSTRUCTION EASEMENT LEGAL DESCRIPTION FOR:

DRAWN BY: MN WOODFIELD DEVELOPMENT
CHECKED BY: JH
FILE NO.: 18161.01A
DATE: 7/09/20
SCALE: 1"=100'





INTERSTATE 985
A/K/A GEORGIA HIGHWAY 365 &
LANIER PARKWAY
(PUBLIC, VARIABLE R/W,
LIMITED ACCESS)

IPF R/W

20' PERMANENT
SEWER EASEMENT
0.703 ACRES
30,611 S.F.

N/F
MARY ELIZABETH HICKMAN
TAX PARCEL ID: 08097-000005
DB 3543 PG 397

MATCHLINE

SHEET 1 OF 3

POC
N.1523126.68
E.2375119.06

S30°50'15"E
274.99'

POB
20' PERMANENT
SEWER EASEMENT
N.1522856.56
E.2375279.21

L24

L3

L23

L4

L5

L21

L6

PLANNERS AND ENGINEERS COLLABORATIVE

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■ CIVIL ENGINEERING ■ LAND SURVEYING
350 RESEARCH COURT, PEACHTREE CORNERS, GEORGIA 30092
(770) 451-2741 ■ WWW.PECATLOOM
C.O.A.-13R00004

20' PERMANENT SEWER
EASEMENT EXHIBIT FOR:

WOODFIELD DEVELOPMENT

DRAWN BY: MN
CHECKED BY: JH
FILE NO.: 18181.01A
DATE: 7/29/20
SCALE: 1"=100'



**INTERSTATE 985
A/K/A GEORGIA
HIGHWAY 365 &
LANIER PARKWAY
(PUBLIC VARIABLE R/W,
LIMITED ACCESS)**

MATCHLINE

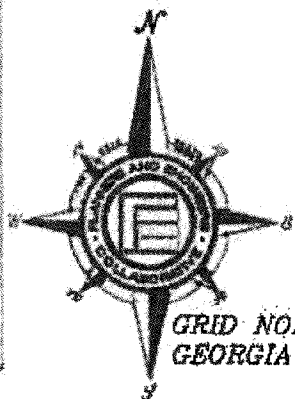
**20' PERMANENT
SEWER EASEMENT
0.703 ACRES
30,611 S.F.**

**N/F
MARY ELIZABETH HICKMAN
TAX PARCEL ID: 08097-000005
DB: 3543 PG 397**

20 foot Permanent Sanitary Sewer Easement Line Table		
Line #	Length	Direction
L1	39.05'	S29° 25' 29"E
L2	20.29'	S29° 25' 29"E
L3	133.75'	S70° 15' 13"W
L4	138.42'	S54° 51' 44"W
L5	165.25'	S28° 50' 35"E
L6	243.07'	S19° 38' 53"W
L7	295.53'	S70° 01' 57"W
L8	158.77'	S53° 07' 19"W
L9	220.09'	S47° 07' 41"W
L10	129.08'	S48° 34' 37"W
L11	4.61'	N85° 19' 11"E
L12	20.00'	S4° 40' 49"E
L13	18.77'	S85° 19' 11"W
L14	27.59'	N44° 18' 05"W
L15	153.52'	N48° 34' 37"E
L16	220.89'	N47° 07' 41"E
L17	182.79'	N53° 07' 19"E

L18	16.01'	N53° 07' 19"E
L19	4.87'	S36° 52' 40"E
L20	272.37'	N70° 01' 57"E
L21	224.65'	N19° 38' 53"E
L22	174.16'	N28° 50' 35"W
L23	159.04'	N54° 51' 44"E
L24	133.05'	N70° 15' 13"E

**N/F
BRE DDR BR
STONEBRIDGE GA LLC
TAX PARCEL ID: 08097-000009**



**GRID NORTH
GEORGIA WEST ZONE**

SHEET 2 OF 3

PLANNERS AND ENGINEERS COLLABORATIVE

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■ CIVIL ENGINEERING ■ LAND SURVEYING
300 RESEARCH COURT, PERCHIEVE CORNER, GEORGIA 30092
(770) 451-2741 ■ WWW.PECATL.COM
C.O.A. 137000004

**20' PERMANENT SEWER
EASEMENT EXHIBIT FOR:**

WOODFIELD DEVELOPMENT

**DRAWN BY: MN
CHECKED BY: JH
FILE NO.: 18151.01A
DATE: 7/09/20
SCALE: 1"=100'**



20' PERMANENT SEWER EASEMENT LEGAL DESCRIPTION

ALL THAT TRACT OR PARCEL OF LAND lying and being in Land Lot 97 of the 8th District, City of Flowery Branch, Hall County, Georgia and being more particularly described as follows:

COMMENCING at a #4 rebar found (N.1523126.68, E. 2375119.06, NAD83, GA. West Zone) on the Southeasterly Right of Way Line of Interstate 985 A/K/A Georgia Highway 365 & Lanier Parkway (Public, Variable R/W, Limited Access; thence leaving said Southeasterly Right of Way Line of Interstate 985 South 30 degrees 50 minutes 15 seconds East a distance of 274.99 feet to a #4 rebar found; thence South 29 degrees 25 minutes 29 seconds East a distance of 39.05 feet to a point (N.1522856.56, E. 2375279.21, NAD83, GA. West Zone), said point is the TRUE POINT OF BEGINNING.

THENCE South 29 degrees 25 minutes 29 seconds East a distance of 20.29 feet to a point;
thence South 70 degrees 15 minutes 13 seconds West a distance of 133.75 feet to a point;
thence South 54 degrees 51 minutes 44 seconds West a distance of 138.42 feet to a point;
thence South 28 degrees 50 minutes 35 seconds East a distance of 165.25 feet to a point;
thence South 19 degrees 38 minutes 53 seconds West a distance of 243.07 feet to a point;
thence South 70 degrees 01 minutes 57 seconds West a distance of 295.53 feet to a point;
thence South 53 degrees 07 minutes 19 seconds West a distance of 158.77 feet to a point;
thence South 47 degrees 07 minutes 41 seconds West a distance of 220.09 feet to a point;
thence South 48 degrees 34 minutes 37 seconds West a distance of 129.08 feet to a point;
thence North 85 degrees 19 minutes 11 seconds East a distance of 4.61 feet to a point;
thence South 04 degrees 40 minutes 49 seconds East a distance of 20.00 feet to a point;
thence South 85 degrees 19 minutes 11 seconds West a distance of 18.77 feet to a point;
thence North 44 degrees 18 minutes 05 seconds West a distance of 27.59 feet to a point;
thence North 48 degrees 34 minutes 37 seconds East a distance of 153.52 feet to a point;
thence North 47 degrees 07 minutes 41 seconds East a distance of 220.89 feet to a point;
thence North 53 degrees 07 minutes 19 seconds East a distance of 162.79 feet to a point;
thence North 53 degrees 07 minutes 19 seconds East a distance of 16.01 feet to a point;
thence South 36 degrees 52 minutes 41 seconds East a distance of 4.87 feet to a point;
thence North 70 degrees 01 minutes 57 seconds East a distance of 272.37 feet to a point;
thence North 19 degrees 38 minutes 53 seconds East a distance of 224.65 feet to a point;
thence North 28 degrees 50 minutes 35 seconds West a distance of 174.16 feet to a point;
thence North 54 degrees 51 minutes 44 seconds East a distance of 159.04 feet to a point;
thence North 70 degrees 15 minutes 13 seconds East a distance of 133.05 feet to a point,
said point is the TRUE POINT OF BEGINNING.

Said 20 foot Permanent Sewer Easement having an area of 30,611 square feet, 0.703 acres more or less

SHEET 3 OF 3

PLANNERS AND ENGINEERS COLLABORATIVE

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■ CIVIL ENGINEERING ■ LAND SURVEYING
350 RESEARCH COURT PEACHTREE CORNERS, GEORGIA 30092
(770) 451-2741 ■ WWW.PECATL.COM
C.O.A. - LS0000004

20' PERMANENT SEWER EASEMENT LEGAL DESCRIPTION FOR:

WOODFIELD DEVELOPMENT

DRAWN BY: JMN
CHECKED BY: JH
FILE NO.: 18161.01A
DATE: 7/09/20
SCALE: 1"=100'



AFFIDAVIT OF MARY ELIZABETH ROBERTS

This Affidavit (this "Affidavit") is made as of the date set forth below by Mary Elizabeth Roberts, f/k/a Mary Neal, an individual resident of Hall County, Georgia (the "Undersigned"). The Undersigned hereby certifies for the benefit of Chicago Title Insurance Company as follows:

1. The Undersigned is not the party identified as "Mary E. Dine-Neal" in the Notice of Federal Tax Lien dated December 6, 2011, recorded December 14, 2011 in Lien Book 387, Page 314 in the records of the Clerk of Superior Court of Hall County, Georgia, attached as Exhibit A hereto.

2. The Undersigned owns and permanently resides at the residence located at 11 Bohler Manor Rd [street address] in Hall County [state], and has owned and permanently resided at such property since 2012 [year].

[SEE ATTACHED SIGNATURE PAGE]

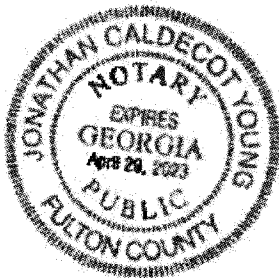
Dated: August 7, 2020.

By: Mary Elizabeth Roberts
MARY ELIZABETH ROBERTS

STATE OF Georgia
COUNTY OF Fulton

I, Jonathan Caldecot Young, a Notary Public for said County and State, do hereby certify that Mary Elizabeth Roberts either being personally known to me or proven by satisfactory evidence (said evidence being Durston), personally appeared before me this day, and acknowledged the voluntary due execution of the foregoing instrument by him for the purposes stated therein. Witness my hand and notarial seal, this 7 day of August, 2020.

[SEAL]



Notary Public

Printed Name: Jonathan Caldecot Young

My Commission Expires 4/20/23

00387
00314

3351 Department of the Treasury - Internal Revenue Service
Form 668 (Y)(c)
(Rev. February 2004) **Notice of Federal Tax Lien** BK 387
000314

Area: SMALL BUSINESS/SELF EMPLOYED AREA #5 Serial Number 834381311
Lien Unit Phone: (800) 829-3993

As provided by section 6321, 6322, and 6323 of the Internal Revenue Code, we are giving a notice that taxes (including interest and penalties) have been assessed against the following named taxpayer. We have made a demand for payment of this liability, but it remains unpaid. Therefore, there is a lien in favor of the United States on all property and rights to property belonging to this taxpayer for the amount of these taxes, and additional penalties, interest, and costs that may accrue.

Name of Taxpayer WILLIAM J NEALIS & MARY E DINE-NEAL

Residence 3039 DALE RD
GAINESVILLE, GA 30507-8102

IMPORTANT RELEASE INFORMATION: For each assessment listed below, unless notice of the lien is refiled by the date given in column (d), this notice shall, on the day following such date, operate as a certificate of release as defined in IRC 6325(a).

Kind of Tax (a)	Tax Period Ending (b)	Identifying Number (c)	Date of Assessment (d)	Last Day for Refiling (e)	Unpaid Balance of Assessment (f)
1040	12/31/2000	XXX-XX-9367	04/11/2011	05/11/2021	7413.64
1040	12/31/2001	XXX-XX-9367	05/23/2011	06/22/2021	9781.56
1040	12/31/2002	XXX-XX-9367	04/11/2011	05/11/2021	5331.02
1040	12/31/2003	XXX-XX-9367	08/21/2006	09/20/2016	161.31
1040	12/31/2004	XXX-XX-9367	04/18/2011	05/18/2021	9791.17
1040	12/31/2006	XXX-XX-9367	04/04/2011	05/04/2021	4207.25
1040	12/31/2007	XXX-XX-9367	04/18/2011	05/18/2021	7715.44
1040	12/31/2008	XXX-XX-9367	03/07/2011	04/06/2021	18440.50
1040	12/31/2009	XXX-XX-9367	03/07/2011	04/06/2021	2335.53

Place of Filing Clerk of Superior Court
Hall County
Gainesville, GA 30503
Total \$ 65167.42

This notice was prepared and signed at NASHVILLE, TN on this,

the 06th day of December, 2011.

021993

Signature for FRED BANKS
Title ACS SBSE
(800) 829-3993
25-00-0000

(NOTE: Certificate of officer authorized by law to take acknowledgment is not essential to the validity of Notice of Federal Tax Lien
Rev. RUL. 71-455, 1971-2 C.B. 409)

Part 1 - Kept By Recording Office

Form 668(Y)(c) (Rev. 2-2004)
CAT. NO 60029X

FILED
HALL CO, GA
11 DEC 14 PM 12:25
CHARLES BAKER, CLERK
SUPERIOR STATE COURT
BY: JH

EXHIBIT D

033796

Mail- Mr. Daniel R. Murphy
Harben & Hartley
P.O. Box 2975
Gainesville, Ga 30503

SEWER SYSTEM FACILITIES DEDICATION

000547

GEORGIA, HALL COUNTY

This conveyance executed this 9th day of October, 2000 for and in consideration of ten (\$10.00) dollars in hand paid, receipt of which is acknowledged, the undersigned does hereby grant, sell and convey unto the City of Flowery Branch, Georgia, forever all pump stations, sanitary sewers lines, perpetual easements for same, and appurtenances shown across and through the land indicated on the plat attached hereto as Exhibit A. Said land is indicated in Deed Book 3067, Pages 223-227; Deed Book 3183, Pages 258-262; and Deed Book 3420, Page 464, in the Superior Court of Hall County in Gainesville, Georgia. Said easements being on the lands of grantor and extending a distance of 10 feet on either and both sides of the centerline of sewer line and pump station or as otherwise shown on Exhibit A.

The Grantee shall have the right of ingress and egress on said lands for the purpose of maintaining said sewer system facilities and shall exercise reasonable diligence in doing necessary work in connection therewith so as to avoid damaging the property.

IN WITNESS WHEREOF, the undersigned Grantee hereto set his/her hand and seal the day and year above written.

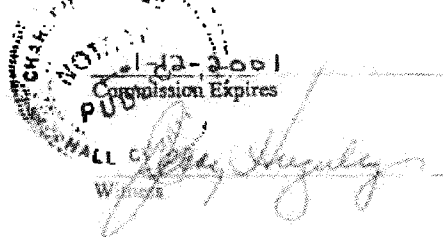
Signed, Sealed and Delivered
In the Presence of:

Chasem Young
Notary Public

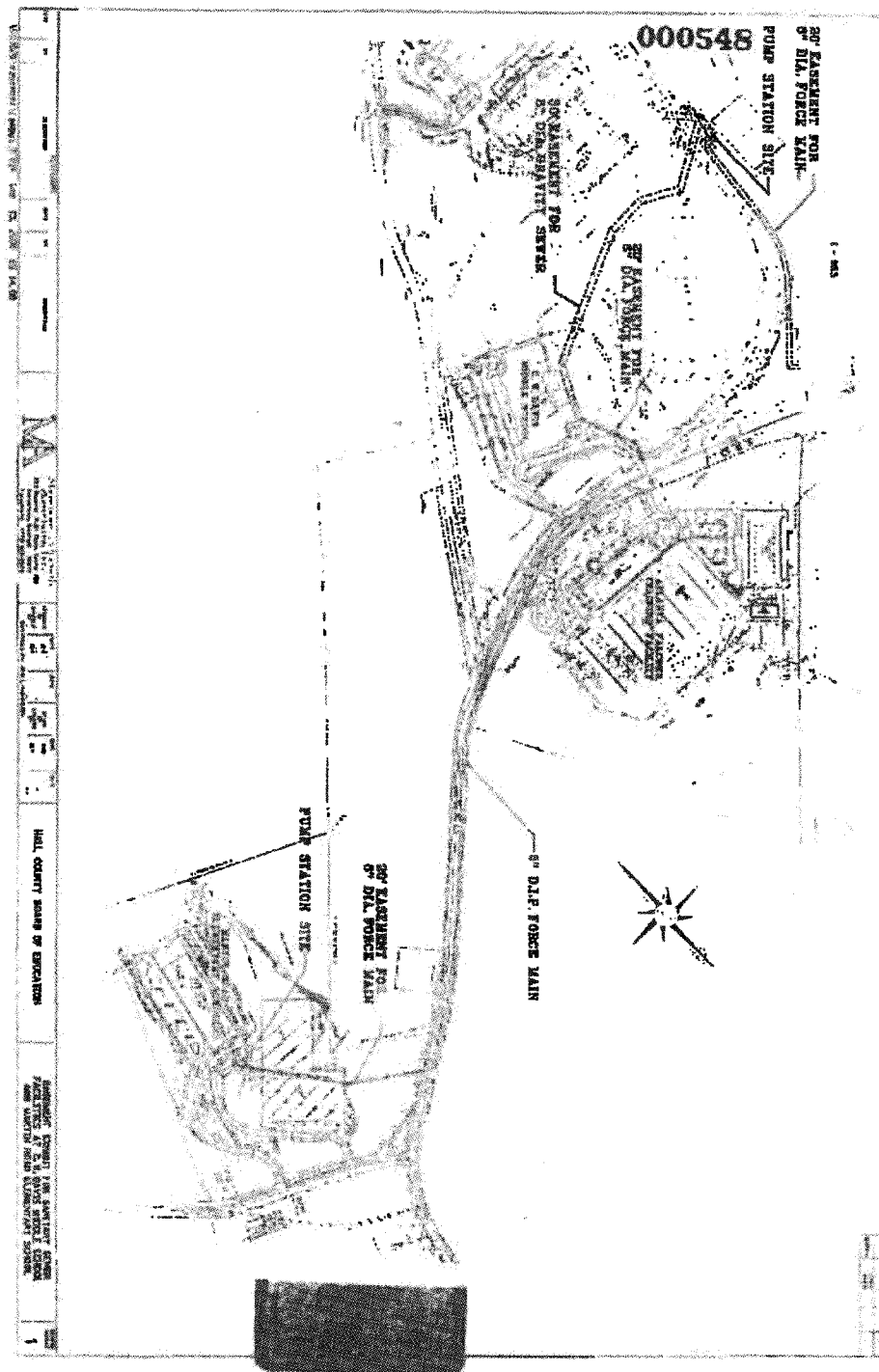
HALL COUNTY SCHOOL DISTRICT

Bill L. Higgins
Chairman, Hall County Board of Education

Dwight S. Wood
Superintendent and Ex-Officio Secretary
Hall County Board of Education



Georgia, Hall County Clerk Superior Court
Filed in office, this 11 day of Dec.
20 00 at 11:15 a.m. Recorded in
Book 3183 Page(s) 547-548
this 12 day of Dec., 2000
DWIGHT S. WOOD, CLERK, by: 31442



Cross Reference: DB 9087 P 613 – 656

UPON RECORDING RETURN TO:
Troutman Pepper Hamilton Sanders, LLP
600 Peachtree Street, N.E.
Suite 3000
Atlanta, Georgia 30308
Attn: David C. Kirk

eFiled and eRecorded
DATE: 07/28/2022
TIME: 11:15 AM
DEED BOOK: 9170
PAGE: 217 - 222
FILING FEES: \$25.00
PARTICIPANT ID: 9562359654
PARTICIPANT ID: 7067927936
RECORDED BY: CH
CLERK: Charles Baker, C.S.C
Hall County, GA

STATE OF GEORGIA

COUNTY OF HALL

**FIRST AMENDMENT TO THE AGREEMENT
BY AND BETWEEN FLOWERY BRANCH APARTMENTS OWNER, LLC
AND THE CITY OF FLOWERY BRANCH, GEORGIA
FOR ACCESS TO AND MAINTENANCE OF THE SANITARY SEWER SYSTEM**

THIS FIRST AMENDMENT TO THE AGREEMENT (AMENDMENT), is made and entered into effective the 21 day of July, 2022, by and between Flowery Branch Apartments Owners, LLC, a Delaware limited liability company, located at 8210 Creedmoor Road, Suite 103, Raleigh, North Carolina 27613, ("DEVELOPER") and the City of Flowery Branch, Georgia, a Georgia municipal corporation, located at 5410 Pine Street, Flowery Branch, Georgia 30542 ("CITY").

WHEREAS, DEVELOPER and CITY entered into that certain agreement dated March 22, 2022, 2015 ("ORIGINAL AGREEMENT") for access to and maintenance of the sanitary sewer system; and

WHEREAS, DEVELOPER and CITY desire to amend the ORIGINAL AGREEMENT, on and subject to the terms and conditions set forth herein.

NOW, THEREFORE, DEVELOPER and CITY agree to amend the ORIGINAL AGREEMENT as follows:

1. Recitals. Each of the foregoing recitals and representations in this Amendment form a material part of this AMENDMENT and are incorporated herein by this reference, and such recitals and representations and the ORIGINAL AGREEMENT are hereby ratified.
2. Paragraph XI. Paragraph XI of the ORIGINAL AGREEMENT is deleted in its entirety and replaced by the following:

First American Title Insurance
National Commercial Services
NCS - 1123415 -CO

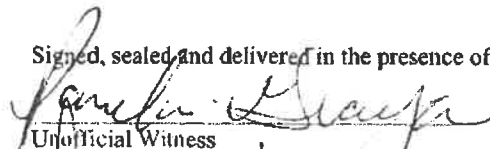
"XI. Within ninety (90) calendar days of the certification of completeness of the CONNECTION PROJECT and connection of DEVELOPMENT to the CITY's sewer system as described in Paragraph VI of this AGREEMENT, the CITY shall have the right to direct DEVELOPER in writing to install ten (10) foot extensions to raise the height, at DEVELOPER'S expense, of the two manholes shown within the red box on Exhibit E, which is attached hereto and incorporated by reference herein. Upon receipt of such written direction from the CITY, DEVELOPER shall have an additional ninety (90) days to construct/install the manhole extensions, at which time DEVELOPER shall be relieved of any obligations contained in Paragraphs XI and X of this AGREEMENT. Should CITY not exercise its right under this Paragraph XI within ninety (90) calendar days of the certification of completeness of the CONNECTION PROJECT and connection of DEVELOPMENT to the CITY's sewer system as described in Paragraph VI of this AGREEMENT, DEVELOPER shall have no obligation to raise said manholes."

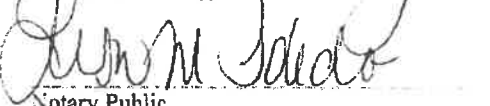
EXCEPT AS HEREIN PROVIDED, all other terms and conditions of the ORIGINAL AGREEMENT shall remain the same and the parties hereto do hereby ratify the ORIGINAL AGREEMENT.

IN WITNESS WHEREOF, DEVELOPER and CITY have carefully read and reviewed this AMENDMENT and each term and provision contained herein, and by the execution of this AMENDMENT shows their informed and voluntary consent thereto.

THIS 21st DAY OF JULY, 2022.

Signed, sealed and delivered in the presence of:


Unofficial Witness


Notary Public

My Commission Expires

(NOTARIAL SEAL)

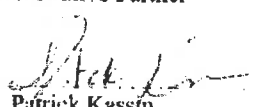


**FLOWERY BRANCH APARTMENTS
OWNER, LLC**, a Delaware limited liability
company

BY: **FLOWERY BRANCH VENTURE LLP**,
a Delaware limited liability partnership
Its Sole Member

BY: **WF FLOWERY BRANCH, LLC**,
a Delaware limited liability
company,
Its Administrative Partner

BY:


Patrick Kassm
its Vice President

Signatures Continued Next Page

CITY OF FLOWERY BRANCH, GEORGIA

Edward R. Asbridge
By: Edward R. Asbridge, Mayor

ATTEST:

Shelia Cooper
Shelia Cooper, City Clerk



EXHIBIT E

128003386v2

ESTOPPEL CERTIFICATE

Re: Agreement by and between Flowery Branch Apartments Owner, LLC, a Delaware limited liability company (the “**Prior Developer**”) and the City of Flowery Branch, Georgia, a Georgia municipal corporation (“**City**”) dated as of March 22, 2022 and recorded in Deed Book 9087, Page 613 in the land records of Hall County, Georgia (such records, the “**Public Records**,” and such agreement, the “**Original Agreement**”), as amended by that certain First Amendment to the Agreement by and between Prior Developer and City dated as of July 21, 2022 and recorded in Deed Book 9170, Page 217 in the Public Records (the “**First Amendment**,” and together with the Original Agreement, the “**Agreement**”).

With the understanding that Prior Developer has conveyed the Development to Folksong Acquisition LLC, a Delaware limited liability company, its successors and assigns (“**Purchaser**”) and Purchaser is now the Developer under the Agreement, the City hereby certifies to Prior Developer, Purchaser, and their respective successors and assigns as follows:

1. The Agreement is in full force and effect and has not been modified, extended, supplemented or amended except by those written instruments referred to herein. All capitalized terms used herein but not defined herein shall have the meanings assigned to them in the Agreement.
2. The Developer is not in default under the Agreement, and no event has occurred which, with the giving of notice or the passage of time, or both, would constitute a default by the Developer.
3. The obligations of the Developer under Sections I, II, III, IV, V, VI, VII, VIII, X, XI, XII, XIII, XIV of the Agreement have been satisfied, and neither Prior Developer, Developer, Purchaser, the owner of the Development, nor their respective successors or assigns shall have any further obligations to design, construct, or pay for the construction of the Projects.
4. The City did not exercise its rights to require additional extensions to raise the height of two manholes pursuant to Section XI of the Agreement and all such rights included therein have expired.
5. As of the date hereof, the Developer is in compliance with its obligations under Section IX of the Agreement.
6. The City issued a certification of completeness for the Connection Project and connection of the Development on July 14, 2022, and as such the Connection Project is deemed complete in accordance with the Agreement.
7. Construction of the Development has been completed and approved by the City and the City has issued a final certificate of occupancy for the Development.
8. The undersigned executing this Estoppel Certificate on behalf of the City has the power and authority to execute this Estoppel Certificate.

This Estoppel Certificate may be relied upon by Prior Developer, Purchaser, and their respective successors and assigns. This Estoppel Certificate may be executed by electronic means (including, without limitation, manually executed signatures transmitted by electronic format (including, without limitation, “pdf”, “tif” or “jpg”) and other electronic signatures (including, without limitation, DocuSign and AdobeSign). The use of certified electronic signatures and

electronic records (including, without limitation, any contract or other record created, generated, sent, communicated, received, or stored by electronic means) shall be of the same legal effect, validity and enforceability as a manually executed signature or use of a paper-based record-keeping system to the fullest extent permitted by applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, and any other applicable law, including, without limitation, any state law based on the Uniform Electronic Transactions Act or the Uniform Commercial Code. The undersigned hereby waive any defenses to the enforcement of the terms of this Estoppel Certificate based on the form of its signature, and hereby agrees that such electronically transmitted or signed signatures shall be conclusive proof, admissible in judicial proceedings, of such party's execution of this Estoppel Certificate.

[Signature Page Follows]

Executed as of this ____ day of _____, 2023.

City of Flowery Branch, Georgia

By: Edward R. Asbridge, Mayor

ATTEST:

Shelia R. Cooper, City Clerk



FLOWERY BRANCH CITY COUNCIL



EXECUTIVE SUMMARY

SUBJECT: Consider Awarding a Contract with Archer Western Construction for Construction Manager at Risk Services for the Construction of the Flowery Branch Wastewater Treatment Plant Expansion (WWTP).

COUNCIL MEETING DATE: June 1, 2023

HISTORY:

The City of Flowery Branch has seen a substantial increase in population over the last several years with an even more substantial increase in wastewater influent as the entire region has seen the same growth. With that growth, there is the need for the wastewater treatment facility to expand to manage the incoming flow. This CMAR WWTP expansion project will increase the facility capacity to 2.2 MGD (which matches the acquired Lake Lanier permit.)

FACTS AND ISSUES:

The construction manager at risk role was advertised via a request for proposal (RFP) process and included an interview phase for all proposers. A total of four reputable and experienced firms proposed for the CMAR role. Using the provided proposals, interviews, and contractor provided cost markup sheet the best value CMAR was identified to be Archer Western Construction (AW). AW will work with city staff and the engineering design firm, ESG Engineering, Inc., to help deliver the needed wastewater treatment plant expansion. During the ongoing design phase AW will provide constructability review of the design, detailed cost estimates at each phase of the design, and provide procurement guidance and support to mitigate the long lead equipment purchases. Once the preconstruction (design) period reaches the 60-80% design level AW will provide a guaranteed maximum price (GMP) to complete the construction work for the expansion. That proposal and contract amount will be brought back for approval to amend this overall CMAR contract with the GMP. The construction to expand the wastewater treatment plant will include new screening, grit removal, biological treatment basins, membranes, disinfection equipment, site work, electrical work, solids dewatering improvements, and other miscellaneous components to increase overall facility capacity.

OPTIONS:

Approve or Deny

IF FUNDING IS INVOLVED, ARE FUNDS APPROVED IN THE CURRENT BUDGET:

Yes

AMOUNT AND SOURCE OF FUNDS:

\$352,720 - GEFA Loan for Clean Water

RECOMMENDATION:

Award a contract with Archer Western Construction for construction manager at risk services for the construction of the Flowery Branch Wastewater Treatment Plant Expansion (WWTP).

SAMPLE MOTION:

I make a motion to approve the attached CMAR contract with Archer Western Construction for an initial amount for preconstruction services not to exceed \$352,720 with funding to be supported with the previously acquired GEFA loan.

COLLABORATING DEPARTMENT:

Water/Wastewater

DEPARTMENT: Administration

Prepared by: Shelia Cooper

ATTACHMENTS

- [Executive Summary - Archer Western WWTP Expansion CMAR Contract.pdf](#)
- [Flowery Branch WRF CMAR Contract - 5-30-23 Final.pdf](#)

FLOWERY BRANCH CITY COUNCIL
EXECUTIVE SUMMARY

SUBJECT: Construction Manager at Risk (CMAR) contract with Archer Western Construction.

DATE: May 30, 2023

BUDGET INFORMATION:

ANNUAL- \$352,720 (GEFA Loan)

CAPITAL- No change

☒ **RECOMMENDATION**

☐ **POLICY DISCUSSION**

☐ **STATUS REPORT**

☐ **OTHER**

COUNCIL ACTION REQUESTED ON: June 1, 2023

PURPOSE: Authorizing a contract with Archer Western Construction for construction manager at risk services for the construction of the Flowery Branch Wastewater Treatment Plant Expansion (WWTP).

HISTORY: The City of Flowery Branch has seen a substantial increase in population over the last several years with an even more substantial increase in wastewater influent as the entire region has seen the same growth. With that growth, there is the need for the wastewater treatment facility to expand to manage the incoming flow. This CMAR WWTP expansion project will increase the facility capacity to 2.2 MGD (which matches the acquired Lake Lanier permit.)

FACTS AND ISSUES: The construction manager at risk role was advertised via a request for proposal (RFP) process and included an interview phase for all proposers. A total of four reputable and experienced firms proposed for the CMAR role. Using the provided proposals, interviews, and contractor provided cost markup sheet the best value CMAR was identified to be Archer Western Construction (AW). AW will work with city staff and the engineering design firm, ESG Engineering, Inc., to help deliver the needed wastewater treatment plant expansion. During the ongoing design phase AW will provide constructability review of the design, detailed cost estimates at each phase of the design, and provide procurement guidance and support to mitigate the long lead equipment purchases. Once the preconstruction (design) period reaches the 60-80% design level AW will provide a guaranteed maximum price (GMP) to complete the construction work for the expansion. That proposal and contract amount will be brought back for approval to amend this overall CMAR contract with the GMP. The construction to expand the wastewater treatment plant will include new screening, grit removal, biological treatment basins, membranes, disinfection equipment, site work, electrical work, solids dewatering improvements, and other miscellaneous components to increase overall facility capacity.

OPTIONS: Approve or Deny

RECOMMENDED SAMPLE MOTION: I make a motion to approve the attached CMAR contract with Archer Western Construction for an initial amount for preconstruction services not to exceed \$352,720 with funding to be supported with the previously acquired GEFA loan.

DEPARTMENT: Administration

Prepared by: Tonya D. Parrish



ConsensusDocs®
BUILDING A BETTER WAY

ConsensusDocs 500
STANDARD AGREEMENT AND GENERAL CONDITIONS BETWEEN OWNER AND
CONSTRUCTION MANAGER (Where the CM is At-Risk)



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STANDARD AGREEMENT AND GENERAL CONDITIONS BETWEEN OWNER AND CONSTRUCTION MANAGER (Where the CM is At-Risk)

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ARTICLE 1 AGREEMENT

Job Number: 50270

This Agreement is made this [_____] day of [_____] in the year [____], by and between the

OWNER, **City of Flowery Branch**

and the

CONSTRUCTION MANAGER, **Archer Western Construction, LLC**

Contractor License No. UC302167

for construction and services in connection with the following

PROJECT Flowery Branch Water Reclamation Facility Expansion

Design Professional is ESG Engineering, Inc..

ARTICLE 2 GENERAL PROVISIONS

2.1 PARTIES' RELATIONSHIP Each Party agrees to act on the basis of mutual trust, good faith, and fair dealing, and perform in an economical and timely manner. The Parties shall each endeavor to promote harmony and cooperation among all Project participants.

2.1.1 Construction Manager represents that it is an independent contractor and that it is familiar with the type of Work it is undertaking.



2.1.2 Neither Construction Manager nor any of its agents or employees shall act on behalf of or in the name of Owner except as provided in this Agreement unless authorized in writing by Owner's Representative.

2.2 ETHICS Each Party shall perform with integrity. Each shall: (a) avoid conflicts of interest, and (b) promptly disclose to the other Party any conflicts that may arise. Each Party warrants that it has not and shall not pay or receive any contingent fees or gratuities to or from the other Party, including its agents, officers, employees, Subcontractors, Subsubcontractors, Suppliers, or Others to secure preferential treatment.

2.3 DESIGN PROFESSIONAL Owner, through its Design Professional, shall provide all architectural and engineering design services necessary for the completion of the Work excluding, however, (a) design services delegated to Construction Manager in accordance with §3.17, and (b) services within the construction means, methods, techniques, sequences, and procedures employed by Construction Manager, its Subcontractors, and Subsubcontractors in connection with their construction operations.

2.4 Owner shall obtain from Design Professional either a license for Construction Manager and Subcontractors to use the design documents prepared by Design Professional or ownership of the copyrights for such design documents, and to the extent permitted by law shall indemnify and hold harmless Construction Manager against any suits or claims of infringement of any copyrights or licenses arising out of the use of the design documents for the Project.

2.5 DEFINITIONS

2.5.1 "Agreement" means this ConsensusDocs 500 Standard Agreement and General Conditions Between Owner and Construction Manager, as modified, and exhibits and attachments made part of this agreement upon its execution.

2.5.1.1 The following attached exhibits are a part of this Agreement:

Exhibit A: Scope of CMAR Services.

Exhibit B: Fee and Rate Proposal Form

Exhibit C: Allocation of Fees and Costs

Exhibit D: Georgia Environmental Finance Authority Supplemental General Conditions

Exhibit E: Forms and Affirmation of Compliance

2.5.2 "Business Day" means all Days, except weekends and official federal or state holidays where the Project is located.

2.5.3 A "Change Order" is a written order signed by the Parties after execution of this Agreement, indicating changes in the scope of the Work, the GMP and Date of Substantial Completion or Date of Final Completion, including substitutions proposed by Construction Manager and accepted by Owner.

2.5.4 The "Contract Documents" consist of (a) this Agreement; (b) documents listed in §15.1 as existing contract documents; (c) drawings, specifications, addenda issued and acknowledged before execution of this Agreement; (d) information furnished by Owner pursuant to §3.15.4, and (e) Change Orders, Interim Directives, and amendments issued in accordance with this Agreement.

2.5.5 "Contract Time" is the period between the Date of Commencement and the total time authorized to achieve Final Completion.

2.5.6 "Cost of the Work" means the costs and discounts specified in ARTICLE 8.

2.5.7 The "Construction Manager" or "CMAR" is the person or entity identified in ARTICLE 1 and includes Construction Manager's Representative.



2.5.8 "Date of Commencement" is as set forth in §6.1.

2.5.9 "Day" means a calendar day.

2.5.10 "Defective Work" is any portion of the Work that does not conform with the requirements of the Contract Documents.

2.5.11 "Design Professional" or "Design Engineer" means the licensed architect or engineer, and its consultants, retained by Owner to perform design services for the Project.

2.5.12 "Final Completion" occurs on the date when Construction Manager's obligations under this Agreement are complete and accepted by Owner and final payment becomes due and payable. This date shall be confirmed by a Certificate of Final Completion signed by the Parties.

2.5.13 "Hazardous Material" is any substance or material identified now or in the future as hazardous under the Law, or any other substance or material that may be considered hazardous or otherwise subject to statutory or regulatory requirement governing handling, disposal, or cleanup.

2.5.14 "Interim Directive" is a written order containing change to the Work directed by Owner pursuant to §9.2 and that is signed by Owner after execution of this Agreement and before Substantial Completion.

2.5.15 "Law" means federal, state, or local laws, ordinances, codes, rules, and regulations applicable to the Work with which Construction Manager must comply that are enacted as of the Agreement date.

2.5.16 "Others" means Owner's other: (a) contractors/constructors, (b) suppliers, (c) subcontractors, subsubcontractors, or suppliers of (a) and (b); and others employed directly or indirectly by (a), (b), or (c) or any by any of them or for whose acts any of them may be liable.

2.5.17 "Overhead" means (a) payroll costs, burden, and other compensation of Construction Manager's employees in Construction Manager's principal and branch offices; (b) general and administrative expenses of Construction Manager's principal and branch offices including charges against Construction Manager for delinquent payments, and costs related to the correction of defective work; and (c) Construction Manager's capital expenses, including interest on capital used for the Work.

2.5.18 "Owner" is the person or entity identified in ARTICLE 1.

2.5.19 The "Owner's Program" is an initial description of Owner's objectives, including budgetary and time criteria, space requirements and relationships, flexibility and expandability requirements, special equipment and systems, site requirements, and any requirements for phased occupancy.

2.5.20 The "Parties" are collectively Owner and Construction Manager.

2.5.21 The "Project," as identified in ARTICLE 1, is the building, facility, or other improvements for which Construction Manager is to perform Work under this Agreement. It may also include construction by Owner or Others.

2.5.22 The "Schedule of the Work" is the document prepared by Construction Manager that specifies the dates on which Construction Manager plans to begin and complete various parts of the Work, including dates on which information and approvals are required from Owner.

2.5.23 "Subcontractor" is a person or entity retained by Construction Manager as an independent contractor to provide the labor, materials, equipment, or services necessary to complete a specific portion of the Work. The term Subcontractor does not include Design Professional or Others.



2.5.24 “Substantial Completion” of the Work, or of a designated portion, occurs on the date when the Work is sufficiently complete in accordance with the Contract Documents so that Owner may occupy or utilize the Work, or a designated portion, for the use for which it is intended, without unapproved disruption. The issuance of a certificate of occupancy is not a prerequisite for Substantial Completion if the certificate of occupancy cannot be obtained due to factors beyond Construction Manager's control. This date shall be confirmed by a certificate of Substantial Completion signed by the Parties.

2.5.25 A “Subsubcontractor” is a person or entity who has an agreement with a Subcontractor or another subsubcontractor or Supplier to perform a portion of the Subcontractor's Work or supply material or equipment.

2.5.26 A “Supplier” is a person or entity retained by Construction Manager to provide material or equipment for the Work.

2.5.27 “Terrorism” means a violent act, or an act that is dangerous to human life, property, or infrastructure, that is committed by an individual or individuals and that appears to be part of an effort to coerce a civilian population or to influence the policy or affect the conduct of any government by coercion. Terrorism includes, but is not limited to, any act certified by the United States government as an act of terrorism pursuant to the Terrorism Risk Insurance Act, as amended.

2.5.28 “Work” means the construction and administrative and management services necessary or incidental to fulfill Construction Manager's obligations for the Project in accordance with and reasonably inferable from the Contract Documents. The Work may refer to the whole Project or only a part of the Project if work is also being performed by Owner or Others.

2.5.29 “Worksite” means the area of the Project location as identified in ARTICLE 1 where the Work is to be performed.

ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES

3.1 GENERAL RESPONSIBILITIES

3.1.1 Construction Manager shall provide all labor, materials, equipment, and services necessary to complete the Work, all of which shall be provided in full accord with the Contract Documents and reasonably inferable from the Contract Documents.

3.1.2 Construction Manager represents that it is an independent contractor and that it is familiar with the type of work required by this Agreement.

3.1.3 Unless the Contract Documents instruct otherwise, Construction Manager shall be responsible for the supervision and coordination of the Work, including the construction means, methods, techniques, sequences, and procedures utilized. When following construction means, methods, techniques, sequences, or procedures instructed by the Contract Documents, Construction Manager is not liable to Owner for damages resulting from compliance with such instructions, unless (a) Construction Manager recognized and (b) failed to timely report to Owner any error, inconsistency, omission, or unsafe practice that it discovered in such requirements.

3.1.4 Construction Manager shall perform Work only within locations allowed by the Contract Documents, Law, and applicable permits.

3.2 CONSTRUCTION PERSONNEL AND SUPERVISION

3.2.1 Construction Manager shall provide competent supervision for the performance of the Work. Before commencing the Work, Construction Manager shall notify Owner in writing of the name and qualifications of its proposed superintendent(s) and project manager, so Owner may review the



individual's qualifications. If, for reasonable cause, Owner refuses to approve the individual, or withdraws its approval after once giving it, Construction Manager shall name a different superintendent for Owner's review.

3.2.2 Construction Manager shall be responsible to Owner for acts or omissions of Parties or entities performing portions of the Work for or on behalf of Construction Manager or any of its Subcontractors.

3.2.3 Construction Manager shall permit only fit and skilled persons to perform the Work. Construction Manager shall enforce safety procedures, strict discipline and good order among persons performing the Work. If Owner determines that a particular person does not follow safety procedures, or is unfit or unskilled for the assigned work, Construction Manager shall immediately reassign the person on receipt of Owner's written notice to do so.

3.2.4 CONSTRUCTION MANAGER'S REPRESENTATIVE Construction Manager's authorized representative is Josh Vigneault. Construction Manager's Representative shall possess full authority to receive instructions from Owner and to act on those instructions. If Construction Manager changes its representative or their authority, Construction Manager shall immediately notify Owner in writing.

3.3 PRECONSTRUCTION SERVICES The Preconstruction Services under this section are included in Construction Manager's work.

3.3.1 Intentionally omitted

3.3.2 CONSULTATION Construction Manager shall attend regular meetings with Owner and Design Professional. Construction Manager shall consult with Owner and Design Professional regarding site use and improvements and the selection of materials, building systems, and equipment. Construction Manager shall provide recommendations on construction feasibility; actions designed to minimize adverse effects of labor or material shortages; time requirements for procurement, installation, and construction completion; and factors related to construction cost, including estimates of alternative designs or materials. Services under this article shall be provided in accordance with Exhibit A Item A.11.

3.3.3 SCHEDULE OF THE WORK When Project requirements have been sufficiently identified, Construction Manager shall prepare a preliminary Schedule of the Work for Design Professional's review and Owner's approval. Construction Manager shall coordinate and integrate the Schedule of the Work with the services and activities of Owner, Construction Manager, Design Professional, and the requirements of governmental entities. As design proceeds, Construction Manager shall update the Schedule of the Work to indicate proposed activity sequences, durations, or milestone dates for such activities as receipt and approval of pertinent information, issuance of the drawings and specifications, the preparation and processing of shop drawings and samples, delivery of materials or equipment requiring long-lead-time procurement, Owner's occupancy requirements and estimated date of Substantial Completion of the Project. If Schedule of the Work updates indicate that milestone dates contained in prior Schedules of the Work will not be met, Construction Manager shall notify and make recommendations to Owner. If the Project is to be completed in phases, Construction Manager shall make recommendations to Owner and Design Professional regarding the phased issuance of the drawings and specifications. Services under this article shall be provided in accordance with Exhibit A Item A.9 and A.10.

3.3.4 ESTIMATES

3.3.4.1 When Owner has sufficiently identified Owner's Program and other Project requirements and Design Professional has prepared other basic design criteria, Construction Manager shall prepare, for the review of Design Professional and approval of Owner, an initial estimate for the Project, utilizing area, volume, or similar conceptual estimating techniques.



3.3.4.2 When schematic or preliminary design documents have been completed by Design Professional and approved by Owner, Construction Manager shall prepare for the review of Design Professional and approval of Owner, a more detailed budget with supporting data. During the preparation of the design development documents or documents of comparable detail, Construction Manager shall update and refine this estimate at appropriate intervals agreed upon by The Parties.

3.3.4.3 When design development documents or documents of comparable detail have been completed by Design Professional and approved by Owner, Construction Manager shall prepare a further detailed estimate with supporting data for review by Design Professional and approval by Owner. During the preparation of the drawings and specifications, Construction Manager shall update and refine this estimate at appropriate intervals agreed upon by the Parties.

3.3.4.4 If any estimate submitted to Owner exceeds previously approved estimates, Construction Manager shall notify and make recommendations to Owner.

3.3.4.5 Services provided under Article 3.3.4 shall be in accordance with Exhibit A Items A.4 thru A.9.

3.3.5 CONSTRUCTION DOCUMENT REVIEW Construction Manager shall review the drawings and specifications in an effort to identify potential constructability problems that could impact Construction Manager's ability to perform the Work in an expeditious and economical manner. Construction Manager shall issue a report to Design Professional and Owner for their review and action as appropriate. In addition, Construction Manager shall promptly report to Owner and Design Professional any errors or omissions which it discovers in the drawings and specifications. Services provided under this Article shall be in accordance with Exhibit A Item A.3 and A.4 .

3.3.6 TEMPORARY FACILITIES Construction Manager shall make recommendations regarding temporary construction facilities, equipment, materials, and services for common use by Construction Manager, its Subcontractors, Subsubcontractors, and Suppliers.

3.3.7 LONG-LEAD-TIME ITEMS Construction Manager shall recommend to Owner and Design Professional a schedule for procurement of long-lead-time items which will constitute part of the Work as required to meet the Schedule of the Work. Construction Manager shall help expedite the delivery of long-lead-time items.

3.3.8 SOLICITATION OF SUBCONTRACTORS AND SUPPLIERS Construction Manager shall seek to develop Subcontractor interest in the Project and shall furnish to Owner and Design Professional a list of possible subcontractors from whom proposals may be requested for each principal portion of the Work. Owner shall promptly reply in writing to Construction Manager if Owner or Design Professional know of any objection to a subcontractor. Owner may designate specific persons or entities, in addition to entities already identified, from whom Construction Manager shall solicit bids. Services provided under this Article shall be in accordance with Exhibit A Item A.13 and in compliance with requirements of Exhibit D – GEFA Supplemental General Conditions.

3.3.9 EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION Construction Manager shall consult with Owner regarding equal employment opportunity and affirmative action programs. Construction Manager shall comply with the requirements of Exhibit D – GEFA Supplemental General Conditions.

3.3.10 CONSULTANTS Construction Manager shall assist Owner in selecting, retaining, and coordinating the professional services of a surveyor, testing laboratories, and special consultants as needed.



3.3.11 PERMITS Construction Manager shall assist Owner in obtaining building permits and special permits for permanent improvements, except for permits required to be obtained directly by Construction Manager.

3.3.12 OTHER PRECONSTRUCTION SERVICES Construction Manager shall provide such other preconstruction services as are agreed upon by the Parties and identified in an attached Exhibit A Item A – “Preconstruction-Phase Services” to this Agreement.

3.4 GUARANTEED MAXIMUM PRICE (GMP)

3.4.1 At such time as the Parties agree the drawings and specifications are sufficiently complete, Construction Manager shall prepare and submit to Owner in writing a GMP. The GMP proposal shall include the sum of the estimated cost of the Work, Construction Manager's Fee, General Conditions, the clarifications and assumptions upon which it is based, allowances, and reasonable contingencies, but shall not include compensation for Preconstruction Services. Construction Manager does not guarantee any specific line item provided as part of the GMP, but agrees that it will be responsible for paying all costs of completing the Work which exceed the GMP, as adjusted in accordance with this Agreement. GMP Scope shall be based on Exhibit A Item B – “Construction-Phase Services”.

3.4.2 BASIS OF GUARANTEED MAXIMUM PRICE Construction Manager shall include with the GMP proposal a written statement of its basis, which shall include:

3.4.2.1 a list of the drawings and specifications, including all addenda, which were used in preparation of the GMP Proposal;

3.4.2.2 a list of allowances and/ or contingencies, and a statement of their basis;

3.4.2.3 a list of the assumptions and clarifications made by Construction Manager in the preparation of the GMP Proposal to supplement the information contained in the drawings and specifications;

3.4.2.4 the Date of Substantial Completion or the Date of Final Completion upon which the proposed GMP is based, and the Schedule of Work upon which the Date of Substantial Completion or the Date of Final Completion is based;

3.4.2.5 a schedule of applicable alternate prices;

3.4.2.6 a schedule of applicable unit prices;

3.4.2.7 a statement of any work to be self-performed by Construction Manager.

3.4.3 Construction Manager shall meet with Owner and Design Professional to review the GMP. If Owner or Design Professional discovers any inconsistencies, inaccuracies, or omissions in the information presented, they shall promptly notify Construction Manager, who shall make appropriate adjustments to the GMP. Owner shall then give prompt written approval of the GMP.

3.4.4 Owner shall cause Design Professional to revise the drawings and specifications to the extent necessary to reflect the clarifications, assumptions, and allowances on which the GMP is based. Revised drawings and specifications shall be furnished to Construction Manager in accordance with the current Schedule of the Work, unless otherwise agreed by Owner, Construction Manager, and Design Professional. Construction Manager shall promptly notify Owner and Design Professional if the revised drawings and specifications are inconsistent with the GMP's clarifications, assumptions, and allowances.

3.4.5 If the Contract Documents are not complete at the time the GMP proposal is submitted to Owner, Construction Manager shall provide in the GMP for further development of the Contract



Documents. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes, or equipment, all of which, if required, shall be incorporated by Change Document.

3.4.6 If this Agreement is executed before establishment of the Guaranteed Maximum Price and its acceptance by Owner, then the GMP and its basis shall be set forth in Amendment 1.

3.4.7 Allowances shall include the costs of materials, supplies, and equipment delivered to the Worksite less applicable trade discounts and including requisite taxes, unloading and handling at the Worksite, and labor and installation, unless specifically stated otherwise. Construction Manager's overhead and profit for the allowances shall be included in the GMP, but not in the allowances. The GMP shall be adjusted by Change Order to reflect the actual costs when they are greater than or less than the allowances.

3.4.8 CMAR Contingency is for exclusive use of CMAR while executing the Work, to reimburse CMAR for costs due to unforeseen causes, unintentional errors, or events which cannot specifically be anticipated at the time of GMP approval. CMAR Contingency may be used by CMAR for costs sustained by either CMAR itself, or a Subcontractor CMAR Contingency funds may not be used for costs which are reimbursable or recoverable under other provisions of the Agreement.

CMAR shall have the right to withdraw from CMAR Contingency on monthly progress estimates and the Owner shall not unreasonably deny, compensation for such amounts from any remaining balance in the CMAR Contingency.

CMAR shall keep and provide the Owner with an ongoing record of the original amount of the CMAR Contingency, all uses thereof, and the remaining balance of the CMAR Contingency at any time,

CMAR shall provide Owner with notice of all anticipated charges against the CMAR Contingency with each monthly request for payment, and in case of any use of the Contingency for items not specifically listed, such use shall be subject to Owner's review and approval, which will not be unreasonably denied. Owner shall have ten (10 business days to respond upon receipt of notice or pay request indicating use of Contractor Contingency, if Owner intends to withhold or deny such request for use. Failure to respond shall result in approval of Contingency use request.

3.4.8.1 Without excluding other possible uses of the CMAR Contingency, the following uses are expressly acknowledged as eligible uses of CMAR Contingency funds:

1. Losses and damages, and related expenses, caused by damage to the Work, not compensated by insurance or otherwise, sustained by CMAR or a Subcontractor in connection with the performance of the Work
2. Corrective work, regardless of fault if non-conformance is unintended
3. Subcontractor defaults;
4. Overruns in Construction Support Costs: Extended overheads, heavy equipment, and time-critical general conditions during construction due to project delays including but not limited to schedule overruns, weather delays, subcontractor default or delays, procurement delays, start-up delays, and additional effort attributable to further support in development of design after GMP.
5. Builder's Risk deductibles;
6. Verified excusable errors in estimates; or
7. Non-compensable overtime and other acceleration costs

3.4.8.2 CMAR shall replenish the CMAR Contingency by restoring money withdrawn with money recovered (1) from bonds and insurance coverage payments for such expenditures, and (2) from defaulting Subcontractors or Suppliers.



3.4.8.3 The CMAR Contingency will not be used to fund Owner-directed changes in the Work. Such changes will be administered through the contractual procedures established for changes in the scope of the Work, including expenditures from the Owner's Contingency, if any, Work Authorizations as modified by Change Order, and Contract Amendments or other modifications that impact the Guaranteed Maximum Price.

3.4.8.4 The CMAR Contingency will not be used to recover the cost of items that are compensable as a Cost of the Work

3.4.8.5 The designated CMAR Contingency, as duly replenished, is the maximum amount available to CMAR to recover eligible costs under this Article; Owner will not increase the CMAR Contingency or otherwise reimburse CMAR for eligible costs incurred in excess of the CMAR Contingency.

3.4.8.6 The CMAR Fee applies to expenditures from the CMAR Contingency. CMAR will not be entitled to any additional overhead, profit, or other markup on any CMAR Contingency expenditure.

3.4.8.7 CMAR will submit applications for reimbursement from the CMAR Contingency to Owner, in a format acceptable to Owner, together with appropriate documentation. Payments from the CMAR Contingency will be recorded in the Application for Payment.

3.4.8.8 Remaining CMAR contingency funds at the end of the Project will be shared 50%/50% between the Owner and CMAR.

3.4.9 FAILURE TO ACCEPT THE GMP PROPOSAL Unless Owner accepts the GMP Proposal in writing on or before the date specified in the GMP Proposal for such acceptance and so notifies Construction Manager, the GMP Proposal shall not be effective. If Owner fails to accept the GMP Proposal, or rejects the GMP Proposal, Owner shall have the right to:

3.4.9.1 suggest modifications to the GMP Proposal. If such modifications are accepted in writing by Construction Manager, the GMP Proposal shall be deemed accepted in accordance with §3.4.6;

3.4.9.2 Intentionally omitted

3.4.9.3 terminate the Agreement for convenience in accordance with §12.4. In the absence of a GMP the Parties may establish a Date of Substantial Completion or a Date of Final Completion.

3.4.10 PRE-GMP WORK Before Owner's acceptance of the GMP Proposal, Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work, except as provided in this Agreement or as Owner may specifically authorize in writing.

3.4.11 LUMP SUM CONVERSION If Owner and CMAR mutually agree, GMP may be converted to a lump sum (stipulated amount). If GMP is converted to a lump sum amount, this lump sum amount will include costs for General Conditions, Cost of the Work, the CMAR Fee, and all other costs associated with the Contract, all as if bid as a lump sum amount. CMAR will no longer have access to CMAR Contingency funds and bears all risk associated with delivering the Work for the lump sum amount.

3.5 WORKMANSHIP

3.5.1 The Work shall be executed in accordance with the Contract Documents in a workmanlike manner. All materials used in the Work shall be furnished in sufficient quantities to facilitate the



proper and expeditious execution of the Work and shall be new except as otherwise provided in the Contract Documents.

3.6 COOPERATION WITH WORK OF OWNER AND OTHERS

3.6.1 Owner may perform work at the Worksite directly or by Others. Any agreements with Others to perform construction or operations related to the Project shall include provisions pertaining to insurance, indemnification, waiver of subrogation, consequential damages, coordination, interference, cleanup, and safety that are substantively the same as the corresponding provisions of this Agreement.

3.6.2 If Owner elects to perform work at the Worksite directly or by Others, the Parties shall coordinate the activities of all forces at the Worksite and agree upon fair and reasonable schedules and operational procedures for Worksite activities. Owner shall require each separate contractor to cooperate with Construction Manager and assist with the coordination of activities and the review of construction schedules and operations. The GMP or the Date of Substantial Completion or the Date of Final Completion may be equitably adjusted in accordance with this Agreement, for changes resulting from the coordination of construction activities, and the Schedule of the Work shall be revised accordingly.

3.6.3 With regard to the work of Owner and Others, Construction Manager shall (a) proceed with the Work in a manner that does not hinder, delay, or interfere with the work of Owner or Others or cause the work of Owner or Others to become defective; (b) afford Owner or Others reasonable access for introduction and storage of their materials and equipment and performance of their activities; and (c) coordinate Construction Manager's Work with theirs.

3.6.4 Before proceeding with any portion of the Work affected by the construction or operations of Owner or Others, Construction Manager shall give Owner prompt, written notification of any defects Construction Manager discovers in their work which will prevent the proper execution of the Work. Construction Manager's obligations in this subsection do not create a responsibility for the work of Owner or Others, but are for the purpose of facilitating the Work. If Construction Manager does not notify Owner of defects interfering with the performance of the Work, Construction Manager acknowledges that the work of Owner or Others is not defective and is acceptable for the proper execution of the Work. Following receipt of written notice from Construction Manager of defects, Owner shall promptly issue an Interim Directive informing Construction Manager what action, if any, Construction Manager shall take with regard to the defects.

3.7 CONTRACT DOCUMENT REVIEW AND ADMINISTRATION

3.7.1 Before commencing the Work, Construction Manager shall examine and compare the drawings and specifications with information furnished by Owner that are considered Contract Documents, relevant field measurements made by Construction Manager, and any visible conditions at the Worksite affecting the Work.

3.7.2 Should Construction Manager discover any errors, omissions, or inconsistencies in the Contract Documents, Construction Manager shall promptly report them to Owner. It is recognized, however, that Construction Manager is not acting in the capacity of a licensed design professional, and that Construction Manager's examination is to facilitate construction and does not create an affirmative responsibility to detect defects or to ascertain compliance with a Law. Following receipt of written notice from Construction Manager of defects, Owner shall promptly inform Construction Manager what action, if any, Construction Manager shall take with regard to the defect.

3.7.3 Construction Manager shall have no liability for errors, omissions, or inconsistencies discovered under this section, unless Construction Manager knowingly fails to report a recognized problem to Owner.



3.7.4 Construction Manager may be entitled to additional costs or time because of clarifications or instructions growing out of Construction Manager's reports described in this §3.7.

3.7.5 Nothing in §3.7 shall relieve Construction Manager of responsibility for its own errors, inconsistencies, or omissions.

3.7.6 COST REPORTING Construction Manager shall maintain complete, accurate, and current records that comply with generally accepted accounting principles and calculate the proper financial management under this Agreement. Construction Manager shall maintain a complete set of all books and records prepared or used by Construction Manager with respect to the Project. Owner shall be afforded access to all of Construction Manager's records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda, and similar data relating to this Agreement. Construction Manager shall preserve all such records for a period of three years after the final payment or longer where required by Law.

3.7.6.1 Construction Manager agrees to use reasonable skill and judgment in the preparation of cost estimates and Schedule of the Work, but does not warrant or guarantee their accuracy.

3.8 MATERIALS FURNISHED BY OWNER OR OTHERS

3.8.1 If the Work includes installation of materials or equipment furnished by Owner or Others, it shall be the responsibility of Construction Manager to examine the items so provided and thereupon handle, store, and install the items, unless otherwise provided in the Contract Documents, with such skill and care as to provide a satisfactory and proper installation. Loss or damage due to acts or omissions of Construction Manager shall be the responsibility of Construction Manager and may be deducted from any amounts due or to become due Construction Manager. Any defects discovered in such materials or equipment shall be reported at once to Owner. Following receipt of written notice from Construction Manager of defects, Owner shall promptly inform Construction Manager what action, if any, Construction Manager shall take with regard to the defects.

3.9 TESTS AND INSPECTIONS

3.9.1 Construction Manager shall schedule all required tests, approvals, and inspections of the Work or portions thereof at appropriate times so as not to delay the progress of the Work or other work related to the Project. Construction Manager shall give proper notice to all required Parties of such tests, approvals, and inspections. If feasible, Owner and Others may timely observe the tests at the normal place of testing. Except as provided in §3.9.3, Owner shall bear all expenses associated with tests, inspections, and approvals required by the Contract Documents which, unless otherwise agreed to, shall be conducted by an independent testing laboratory or entity retained by Owner. Unless otherwise required by the Contract Documents, required certificates of testing, approval, or inspection shall be secured by Construction Manager and promptly delivered to Owner.

3.9.2 If Owner or appropriate authorities determine that tests, inspections, or approvals in addition to those required by the Contract Documents will be necessary, Construction Manager shall arrange for the procedures and give timely notice to Owner and Others who may observe the procedures. Costs of the additional tests, inspections, or approvals are at Owner's expense except as provided in the subsection below.

3.9.3 If the procedures described in the two subsections immediately above indicate that portions of the Work fail to comply with the Contract Documents due to the negligence of Construction Manager, Construction Manager shall be responsible for costs of correction and retesting.

3.10 WARRANTY

3.10.1 Construction Manager warrants that all materials and equipment furnished under the Construction Phase of this Agreement will be new unless otherwise specified, of good quality, in



conformance with the Contract Documents, and free from defective workmanship and materials. At Owner's request, Construction Manager shall furnish satisfactory evidence of the quality and type of materials and equipment furnished. Construction Manager further warrants that the Work shall be free from material defects not intrinsic in the design or materials required in the Contract Documents. Construction Manager's warranty does not include remedies for defects or damages caused by normal wear and tear during normal usage, use for a purpose for which the Project was not intended, improper or insufficient maintenance, modifications performed by Owner or others, or abuse. Construction Manager's warranty shall commence on the Date of Substantial Completion of the Work, or of a designated portion.

3.10.2 With respect to any portion of Work first performed after Substantial Completion, Construction Manager's warranty obligation for such portion of the Work only shall be extended by the period of time between Substantial Completion and the actual performance of the later Work.

3.10.3 To the extent products, equipment, systems, or materials incorporated in the Work are specified and purchased by Owner, they shall be covered exclusively by the warranty of the manufacturer. There are no warranties which extend beyond the description on the face of any such warranty. For such incorporated items, ALL OTHER WARRANTIES EXPRESSED OR IMPLIED INCLUDING THE WARRANTY OF MERCHANTABILITY AND THE WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE ARE EXPRESSLY DISCLAIMED

3.10.4 Construction Manager shall obtain from its Subcontractors and Suppliers any special or extended warranties required by the Contract Documents. Construction Manager's liability for such warranties shall be limited to the one-year correction period referred to in the section immediately below. After that period Construction Manager shall provide reasonable assistance to Owner in enforcing the obligations of Subcontractors or Suppliers for such extended warranties.

3.11 CORRECTION OF WORK WITHIN ONE YEAR

3.11.1 If before Substantial Completion or within one year after the date of Substantial Completion of the Work any Defective Work is found, Owner shall promptly notify Construction Manager in writing. Unless Owner provides written acceptance of the condition, Construction Manager shall promptly correct the Defective Work at its own cost and time and bear the expense of additional services required for correction of any Defective Work for which it is responsible. If within the one-year correction period Owner discovers and does not promptly notify Construction Manager or give Construction Manager an opportunity to test or correct Defective Work as reasonably requested by Construction Manager, Owner waives Construction Manager's obligation to correct that Defective Work as well as Owner's right to claim a breach of the warranty with respect to that Defective Work.

3.11.2 With respect to any portion of Work first performed after Substantial Completion, the one-year correction period shall commence when that portion of the Work is substantially complete. Correction periods shall not be extended by corrective work performed by Construction Manager.

3.11.3 If Construction Manager fails to correct Defective Work within a reasonable time after receipt of written notice from Owner before final payment, Owner may correct it in accordance with Owner's right to carry out the Work. In such case, an appropriate Change Order shall be issued deducting the cost of correcting the Defective Work from payments then or thereafter due Construction Manager. If payments then or thereafter due Construction Manager are not sufficient to cover such amounts, Construction Manager shall pay the difference to Owner.

3.11.4 Construction Manager's obligations and liability, if any, with respect to any Defective Work discovered after the one-year correction period shall be determined by the Law. If, after the one-year correction period but before the applicable limitation period has expired, Owner discovers any Work which Owner considers Defective Work, Owner shall, unless the Defective Work requires emergency correction, promptly notify Construction Manager and allow Construction Manager an opportunity to correct the Work if Construction Manager elects to do so. If Construction Manager elects to correct



the Work it shall provide written notice of such intent within fourteen (14) Days of its receipt of notice from Owner and shall complete the correction of Work within a mutually agreed timeframe. If Construction Manager does not elect to correct the Work, Owner may have the Work corrected by itself or Others, and, if Owner intends to seek recovery of those costs from Construction Manager, Owner shall promptly provide Construction Manager with an accounting of the actual correction costs.

3.11.5 If Construction Manager's correction or removal of Defective Work causes damage to or destroys other completed or partially completed work or existing building, Construction Manager shall be responsible for the cost of correcting the destroyed or damaged property.

3.11.6 The one-year period for correction of Defective Work does not constitute a limitation period with respect to the enforcement of Construction Manager's other obligations under the Contract Documents.

3.11.7 Before final payment, at Owner's option and with Construction Manager's agreement, Owner may elect to accept Defective Work rather than require its removal and correction. In such cases the GMP shall be equitably adjusted for any diminution in the value of the Project caused by such Defective Work.

3.12 CORRECTION OF COVERED WORK

3.12.1 Upon issuance of an Interim Directive, Work that has been covered without a requirement that it be inspected before being covered may be uncovered for Owner's inspection. Owner shall pay for the costs of uncovering and replacement if the Work proves to be in conformance with the Contract Documents, or if the defective condition was caused by Owner or Others. If the uncovered Work proves to be defective, Construction Manager shall pay the costs of uncovering and replacement.

3.12.2 If any Work is covered contrary to requirements in the Contract Documents, Owner may issue an Interim Directive to uncover the Work for Owner's observation and recover the Work all at Construction Manager's expense. In this circumstance the Work shall be replaced at Construction Manager's expense and with no adjustment to the Dates of Substantial or Final Completion.

3.13 SAFETY OF PERSONS AND PROPERTY

3.13.1 SAFETY PROGRAMS Construction Manager holds overall responsibility for safety programs. However, such obligation does not relieve Subcontractors of their safety responsibilities and to comply with the Law. Construction Manager shall prevent against injury, loss, or damage to persons or property by taking reasonable steps to protect: (a) its employees and other persons at the Worksite; (b) materials and equipment stored at onsite or offsite locations for use in performing the Work; and (c) property located at the Worksite and adjacent to work areas, whether or not the property is part of the Worksite.

3.13.2 CONSTRUCTION MANAGER'S SAFETY REPRESENTATIVE Construction Manager shall designate an individual at the Worksite in its employ as its safety representative. Unless otherwise identified by Construction Manager in writing to Owner, Construction Manager's project superintendent shall serve as its safety representative. Construction Manager shall report promptly in writing all recordable accidents and injuries occurring at the Worksite. When Construction Manager is required to file an accident report with a public authority, Construction Manager shall furnish a copy of the report to Owner.

3.13.3 Construction Manager shall provide Owner with copies of all notices required of Construction Manager by the Law. Construction Manager's safety program shall comply with the requirements of governmental and quasi-governmental authorities having jurisdiction.

Damage or loss not insured under property insurance that may arise from the Work, to the extent caused by negligent or intentionally wrongful acts or omissions of Construction Manager, or anyone



for whose acts Construction Manager may be liable, shall be promptly remedied by Construction Manager.

3.13.4 If Owner deems any part of the Work or Worksite unsafe, Owner, without assuming responsibility for Construction Manager's safety program, may require by Interim Directive Construction Manager to stop performance of the Work, take corrective measures satisfactory to Owner, or both. If Construction Manager does not adopt corrective measures, Owner may perform them and deduct their cost from the GMP. Construction Manager agrees to make no claim for damages, or an increase in the GMP, or for a change in the Dates of Substantial or Final Completion based on Construction Manager's compliance with Owner's reasonable request.

3.14 EMERGENCIES In an emergency affecting the safety of persons or property, Construction Manager shall act in a reasonable manner to prevent threatened damage, injury, or loss. If appropriate, an equitable adjustment in GMP or Date of Substantial Completion or Date of Final Completion shall be determined as provided for in ARTICLE 9.

3.15 HAZARDOUS MATERIALS

3.15.1 Construction Manager shall not be obligated to commence or continue Work until any Hazardous Material discovered at the Worksite has been removed, rendered or determined to be harmless by Owner as certified by an independent testing laboratory, and approved by the appropriate governmental agency.

3.15.2 If after commencing the Work, Hazardous Material is discovered at the Worksite, Construction Manager shall be entitled to immediately stop Work in the affected area. Construction Manager shall promptly report the condition to Owner, Design Professional, and, if required, the governmental agency with jurisdiction.

3.15.3 Construction Manager shall not resume nor be required to continue any Work affected by any Hazardous Material without written mutual agreement between the Parties after the Hazardous Material has been removed or rendered harmless and only after approval, if necessary, of the governmental agency with jurisdiction.

3.15.4 Owner shall be responsible for retaining an independent testing laboratory to determine the nature of the material encountered and whether the material requires corrective measures or remedial action. Such measures shall be the sole responsibility of Owner, and shall be performed in a manner minimizing any adverse effect upon the Work.

3.15.5 If Construction Manager incurs additional costs or is delayed due to the presence or remediation of Hazardous Material, Construction Manager may be entitled to an equitable adjustment in the GMP or the Dates of Substantial or Final Completion in accordance with this Agreement.

3.15.6 To the extent permitted by §6.7 and to the extent not caused by the negligent or intentionally wrongful acts or omissions of Construction Manager, its Subcontractors and Subsubcontractors, and the agents, officers, directors, and employees of each of them, Owner shall, to the extent permitted by law, defend, indemnify, and hold harmless Construction Manager, its Subcontractors and Subsubcontractors, and the agents, officers, directors, and employees of each of them, from and against all claims, damages, losses, costs, and expenses, including but not limited to reasonable attorneys' fees, costs, and expenses incurred in connection with any dispute resolution procedure arising out of or relating to the performance of the Work in any area affected by Hazardous Material.

3.15.7 MATERIALS BROUGHT TO THE WORKSITE

3.15.7.1 Safety Data Sheets (SDS) as required by law and pertaining to materials or substances used or consumed in the performance of the Work, whether obtained by Construction Manager,



Subcontractors, Owner or Others, shall be maintained at the Worksite by Construction Manager and made available to Owner, Subcontractors, and Others.

3.15.7.2 Construction Manager shall be responsible for the proper delivery, handling, application, storage, removal, and disposal of all materials and substances brought to the Worksite by Construction Manager in accordance with the Contract Documents and used or consumed in the performance of the Work. Upon the issuance of the Certificate of Substantial Completion, Owner shall be responsible for materials and substances brought to the Worksite by Construction Manager if such materials or substances are required by the Contract Documents.

3.15.7.3 To the extent permitted under §6.7 and to the extent caused by the negligent or intentionally wrongful acts or omissions of Construction Manager, its agents, officers, directors, and employees, Construction Manager shall defend, indemnify, and hold harmless Owner, its agents, officers, directors, and employees, from and against claims, damages, losses, costs, and expenses, including but not limited to reasonable attorneys' fees, costs and expenses incurred in connection with any dispute resolution procedure, arising out of or relating to delivery, handling, application, storage, removal, and disposal of all materials and substances brought to the Worksite by Construction Manager

3.15.7.4 §3.15 shall survive the completion of the Work or Agreement termination.

3.16 SUBMITTALS

3.16.1 Construction Manager shall submit to Owner and Design Professional all shop drawings, samples, product data, and similar submittals required by the Contract Documents for review and approval. Submittals shall be submitted in electronic form if required in accordance with §4.6.1. Construction Manager shall be responsible for the accuracy and conformity of its submittals to the Contract Documents. At no additional cost, Construction Manager shall prepare and deliver its submittals in such time and sequence so as not to delay the performance of the Work or the work of Owner and Others. Construction Manager's submittals shall identify in writing for each submittal all changes, deviations, or substitutions from the requirements of the Contract Documents. The approval of any Construction Manager submittal shall not be deemed to authorize changes, deviations, or substitutions from the requirements of the Contract Documents unless a Change Order or Interim Directive specifically authorizes such deviation, substitution, or change. To the extent a change, deviation, or substitution causes an impact to the Contract Price or Contract Time, such approval shall be memorialized in a Change Order no later than seven (7) Days following approval by Owner. Neither Design Professional nor Owner shall make any change, deviation, or substitution through the submittal process without specifically identifying and authorizing such deviation to Construction Manager. If the Contract Documents do not contain submittal requirements pertaining to the Work, Construction Manager agrees upon request to submit in a timely fashion to Design Professional and Owner for review any shop drawings, samples, product data, manufacturers' literature, or similar submittals as may reasonably be required by Owner.

3.16.2 Owner shall be responsible for review and approval of submittals with reasonable promptness to avoid causing delay.

3.16.3 Construction Manager shall perform all Work strictly in accordance with approved submittals. Approval of shop drawings is not an authorization to perform changed work, unless the procedures of ARTICLE 9 are followed. Approval does not relieve Construction Manager from responsibility for Defective Work resulting from errors or omissions on the approved shop drawings.

3.16.4 Record copies of the following, incorporating field changes and selections made during construction, shall be maintained at the Worksite and available to Owner upon request: drawings, specifications, addenda and other modifications, and required submittals including product data, samples, and shop drawings.



3.16.5 Construction Manager shall prepare and submit to Owner

- X Final marked-up as-built drawings;
- X Updated electronic data, in accordance with §4.6.1;
- X Other documentation required by the Contract Documents that specifies how various elements of the Work were actually constructed or installed.

3.17 DESIGN DELEGATION If the Contract Documents require Construction Manager to specify that Construction Manager is responsible for the design of a particular system or component to be incorporated into the Project, then Owner shall specify all required performance and design criteria. Construction Manager shall not be responsible for the adequacy of such performance and design criteria. As required by the Law, Construction Manager shall procure design services and certifications necessary to satisfactorily complete the Work from a licensed design professional. The signature and seal of Construction Manager's design professional shall appear on all drawings, calculations, specifications, certifications, shop drawings, and other submittals related to the Work designed or certified by Construction Manager's design professional.

3.18 WORKSITE CONDITIONS

3.18.1 WORKSITE VISIT Construction Manager acknowledges that it has visited, or has had the opportunity to visit, the Worksite to visually inspect the general and local conditions which could affect the Work.

3.18.2 CONCEALED OR UNKNOWN SITE CONDITIONS If a condition encountered at the Worksite is (a) a subsurface or other physical condition materially different from those indicated in the Contract Documents, or (b) an unusual and unknown physical condition materially different from conditions ordinarily encountered and generally recognized as inherent in Work provided for in the Contract Documents, Construction Manager shall stop affected Work after the condition is first observed and give prompt written notice of the condition to Owner and Design Professional. Owner shall investigate and then issue an Interim Directive specifying the extent to which Owner agrees that a concealed or unknown condition exists and directing how Construction Manager is to proceed. Construction Manager shall not be required to perform any Work relating to the condition without the written mutual agreement of the Parties. Any change in the GMP, estimated Cost of the Work, Construction Manager's Fee, Date of Substantial Completion or Date of Final Completion, and, if appropriate, the Compensation for Preconstruction Services as a result of the condition, including any dispute about its existence or nature shall be determined as provided in ARTICLE 9.

3.19 PERMITS AND TAXES

3.19.1 Construction Manager shall give public authorities all notices required by law and, except for permits and fees that are the responsibility of Owner pursuant to §4.4, shall obtain and pay for all necessary permits, licenses, and renewals pertaining to the Work. Construction Manager shall provide to Owner copies of all notices, permits, licenses, and renewals required under this Agreement.

3.19.2 Construction Manager shall pay applicable taxes for the Work provided by Construction Manager.

3.19.3 If, in accordance with Owner's direction, Construction Manager claims an exemption for taxes, Owner, to the extent permitted by law, shall indemnify and hold Construction Manager harmless from any liability, penalty, interest, fine, tax assessment, attorneys' fees, or other expense or cost incurred by Construction Manager as a result of any such claim.

3.20 CUTTING, FITTING, AND PATCHING



3.20.1 Construction Manager shall perform cutting, fitting, and patching necessary to coordinate the various parts of the Work and to prepare its Work for the work of Owner or Others.

3.20.2 Cutting, patching, or altering the work of Owner or Others shall be done with the prior written approval of Owner. Such approval shall not be unreasonably withheld.

3.21 CLEAN UP

3.21.1 Construction Manager shall regularly remove debris and waste materials at the Worksite resulting from the Work. Before discontinuing Work in an area, Construction Manager shall clean the area and remove all rubbish and its construction equipment, tools, machinery, waste, and surplus materials. Construction Manager shall minimize and confine dust and debris resulting from construction activities. At the completion of the Work, Construction Manager shall remove from the Worksite all construction equipment, tools, surplus materials, waste materials, and debris.

3.21.2 If Construction Manager fails to commence compliance with cleanup duties within two (2) Business Days after written notification from Owner of non-compliance, Owner may implement appropriate cleanup measures without further notice and the cost shall be deducted from any amounts due or to become due to Construction Manager in the next payment period.

3.22 ACCESS TO WORK Construction Manager shall facilitate the access of Owner, its Design Professional, and Others to Work in progress.

3.23 COMPLIANCE WITH LAWS Construction Manager shall comply with all the Law at its own cost. Construction Manager shall be liable to Owner for all loss, cost, or expense attributable to any acts or omissions by Construction Manager, its employees, subcontractors, suppliers, and agents for failure to comply with Laws, including fines, penalties, or corrective measures. However, liability under this subsection shall not apply if prior approval by appropriate authorities and Owner is received.

3.23.1 CHANGES IN THE LAW The GMP, estimated Cost of the Work, Construction Manager's Fee, Date of Substantial Completion or Date of Final Completion, and, if appropriate, the Compensation for Preconstruction Services shall be equitably adjusted in accordance with ARTICLE 9 for additional costs or time needed resulting from Laws enacted after the date of this Agreement, including taxes.

3.24 CONFIDENTIALITY Construction Manager shall treat as confidential and not disclose to third persons, nor use for its own benefit ("Treat as Confidential"), any of Owner's confidential information, know-how, discoveries, production methods, and the like disclosed to Construction Manager or which Construction Manager may acquire in performing the Work. To the extent necessary to perform the Work, Construction Manager's confidentiality obligations do not apply to disclosures to Subcontractors, Subsubcontractors, and Suppliers. Owner shall Treat as Confidential information all of Construction Manager's estimating systems and historical and parameter cost data disclosed to Owner in performing the Work. Each Party shall specify and mark confidential items as "Confidential." Confidentiality obligations do not supersede compulsion by Law, a governmental agency or authority, an order of a court of competent jurisdiction, or a validly issued subpoena. In such event, a Party shall promptly notify the other Party to permit that Party's legal objection.

ARTICLE 4 OWNER'S RESPONSIBILITIES

4.1 INFORMATION AND SERVICES Owner's responsibilities under this Article shall be fulfilled with reasonable detail and in a timely manner.

4.2 FINANCIAL INFORMATION Before commencement of the Work and thereafter at the written request of Construction Manager, Owner shall provide Construction Manager with evidence of Project financing. Evidence of such financing shall be a condition precedent to Construction Manager's commencing or continuing the Work. Construction Manager shall be notified before any material change in Project financing.



4.3 WORKSITE INFORMATION To the extent Owner has obtained, or is required to obtain the following Worksite information, then Owner shall provide Construction Manager the following:

4.3.1 information describing the physical characteristics of the Worksite, including surveys, Worksite evaluations, legal descriptions, data, or drawings depicting existing conditions, subsurface conditions, and environmental studies, reports, and investigations;

4.3.2 tests, inspections, and other reports dealing with environmental matters, Hazardous Material, and other existing conditions, including structural, mechanical, and chemical tests, required by the Contract Documents or Law;

4.3.3 the limits of Pollution Liability Insurance covering the Worksite held by Owner; and

4.3.4 any other information or services requested in writing by Construction Manager which are required for Construction Manager's performance of the Work and under Owner's control.

4.4 BUILDING PERMIT, FEES, AND APPROVALS Except for those permits and fees related to the Work which are the responsibility of Construction Manager pursuant to §3.19.1, Owner shall secure and pay for all other permits, approvals, easements, assessments, and fees required for the development, construction, use, or occupancy of permanent structures or for permanent changes in existing facilities, including the building permit.

4.5 MECHANICS AND CONSTRUCTION LIEN INFORMATION Within seven (7) Days after receiving Construction Manager's written request, Owner shall provide Construction Manager with the information necessary to give notice of or enforce mechanics lien rights and, where applicable, stop notices. This information shall include Owner's real property interests in the Worksite and the record legal title.

4.6 CONTRACT DOCUMENTS Unless otherwise specified, Owner shall provide a reasonable number of hard copies of the Contract Documents to Construction Manager without cost.

4.6.1 **ELECTRONIC DOCUMENTS** If Owner requires that Owner, Design Professional, and Construction Manager exchange documents and data in electronic or digital form, before any such exchange, Owner, Design Professional, and Construction Manager shall agree on and follow a written protocol governing all exchanges in, which, at a minimum, shall specify: (a) the definition of documents and data to be accepted in electronic or digital form or to be transmitted electronically or digitally; (b) management and coordination responsibilities; (c) necessary equipment, software, and services; (d) acceptable formats, transmission methods, and verification procedures; (e) methods for maintaining version control; (f) privacy and security requirements; and (g) storage and retrieval requirements. Except as otherwise agreed upon by the Parties in writing, each Party shall each bear its own costs as identified in the protocol. In the absence of a written protocol, use of documents and data in electronic or digital form shall be at the sole risk of the recipient.

4.7 OWNER'S REPRESENTATIVE Owner's Representative is Chris Carr of ESG Engineering, Inc.. Owner's Representative shall be fully acquainted with the Project, and shall have authority to bind Owner in all matters requiring Owner's approval, authorization, or written notice. If Owner changes its Representative or the Representative's authority, Owner shall immediately notify Construction Manager in writing.

4.8 OWNER'S CUTTING AND PATCHING Cutting, patching, or altering the Work by Owner or Others shall be done with the prior written approval of Construction Manager, which approval shall not be unreasonably withheld.

4.9 OWNER'S RIGHT TO CLEAN UP In case of a dispute between Construction Manager and Others with regard to respective responsibilities for cleanup at the Worksite, Owner may implement appropriate



cleanup measures after two (2) Business Days' notice and allocate the cost among those responsible during the following pay period.

4.10 COST OF CORRECTING DAMAGED OR DESTROYED WORK With regard to damage or loss attributable to the acts or omissions of Owner or Others and not to Construction Manager, Owner may either (a) promptly remedy the damage or loss and assume affected warranty responsibilities, (b) accept the damage or loss, or (c) issue an Interim Directive or Change Order to remedy the damage or loss. If Construction Manager incurs costs or is delayed due to such loss or damage, Construction Manager may seek an equitable adjustment in the GMP, estimated Cost of the Work, Construction Manager's Fee, Date of Substantial Completion or Date of Final Completion, and, if appropriate, the Compensation for Preconstruction Services under this Agreement.

ARTICLE 5 SUBCONTRACTS

5.1 SUBCONTRACTORS Subcontracts shall be issued on a lump sum or unit price basis unless Owner has given prior written approval of a different method of payment to the Subcontractor.

5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

5.2.1 Prior to execution of the Amendment for Construction Services, Construction Manager shall provide Owner, and, if directed, Design Professional with a written list of the proposed subcontractors and significant Suppliers. If Owner has a reasonable objection to any proposed subcontractor or material supplier, Owner shall notify Construction Manager in writing. Failure to promptly object shall constitute acceptance.

5.2.2 If Owner has reasonably and promptly objected, Construction Manager shall not contract with the proposed Subcontractor or Supplier, and Construction Manager shall propose another acceptable Subcontractor or Supplier to Owner. An appropriate GMP adjustment and/ or Schedule adjustment shall reflect any increase or decrease in the GMP or Dates of Substantial or Final Completion because of the substitution.

5.3 BINDING OF SUBCONTRACTORS AND SUPPLIERS Construction Manager agrees to bind every Subcontractor and Supplier (and require every Subcontractor to so bind its subcontractors and significant suppliers) to the Contract Documents as they apply to the Subcontractor's or Supplier's applicable provisions to that portion of the Work.

5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

5.4.1 If this Agreement is terminated, each subcontract and supply agreement shall be assigned by Construction Manager to Owner, subject to the prior rights of any surety, provided that: (a) this Agreement is terminated by Owner pursuant to §12.4 or §12.5; (b) Owner accepts such assignment after termination by notifying the Construction Manager and Subcontractor or Construction Manager and Supplier in writing; and (c) Owner assumes all rights and obligations of Construction Manager pursuant to each subcontract or supply agreement.

5.4.2 If Owner accepts such an assignment, and the Work has been suspended for more than thirty (30) consecutive Days, following termination, the Subcontractor's or Supplier's compensation shall be equitably adjusted as a result of the suspension.

ARTICLE 6 TIME

6.1 DATE OF COMMENCEMENT The Date of Commencement is the Agreement date in ARTICLE 1

6.1.1 SUBSTANTIAL/FINAL COMPLETION Unless the Parties agree otherwise, the Date of Substantial Completion or the Date of Final Completion shall be established in Amendment 1 to this Agreement subject to adjustments as provided for in the Contract Documents. Owner and



Construction Manager may agree not to establish such dates, or in the alternative, to establish one but not the other of the two dates. If such dates are not established upon the execution of this Agreement, at such time as GMP is accepted a Date of Substantial Completion or Date of Final Completion of the Work shall be established in Amendment 1. If a GMP is not established and the Parties desire to establish a Date of Substantial Completion or Date of Final Completion, it shall be set forth in Amendment 1. The dates for Substantial and Final Completion are subject to adjustments as provided for in the Contract Documents.

6.1.2 Time is of the essence with regard to the obligations of the Contract Documents.

6.1.3 Unless instructed by Owner in writing, Construction Manager shall not knowingly commence the Work before the effective date of Construction Manager's required insurance.

6.2 SCHEDULE OF THE WORK

6.2.1 Before submitting its first application for payment, Construction Manager shall submit to Owner and, if directed, Design Professional a Schedule of the Work showing the dates on which Construction Manager plans to begin and complete various parts of the Work, including dates on which information and approvals are required from Owner. Except as otherwise directed by Owner, Construction Manager shall comply with the approved Schedule of the Work or Construction Manager. Unless otherwise agreed, the Schedule of the Work shall be formatted in a detailed precedence-style critical path method that (a) provides a graphic representation of all activities and events, including float values that will affect the critical path of the Work, and (b) identifies dates that are critical to ensure timely and orderly completion of the Work. Construction Manager shall update the Schedule of the Work on a monthly basis or as mutually agreed by the Parties.

6.2.2 Owner may determine the sequence in which the Work shall be performed, provided it does not unreasonably interfere with the approved project schedule. Owner may require Construction Manager to make reasonable changes in the sequence at any time during the performance of the Work in order to facilitate the performance of work by Owner or Others. If Construction Manager consequently incurs costs or is delayed, the GMP or the Dates of Substantial or Final Completion, or both, Construction Manager may seek equitable adjustment under ARTICLE 9.

6.3 DELAYS AND EXTENSIONS OF TIME

6.3.1 If Construction Manager is delayed at any time in the commencement or progress of the Work by any cause beyond the control of Construction Manager, Construction Manager shall be entitled to an equitable extension of the Date of Substantial Completion or Date of Final Completion. Examples of causes beyond the control of Construction Manager include, but are not limited to, the following: (a) acts or omissions of Owner, Design Professional, or Others; (b) changes in the Work or the sequencing of the Work ordered by Owner, or arising from decisions of Owner that impact the time of performance of the Work; (c) encountering Hazardous Materials, or concealed or unknown conditions; (d) delay authorized by Owner pending dispute resolution or suspension by Owner under §12.1; (e) transportation delays not reasonably foreseeable; (f) labor disputes not involving Construction Manager; (g) general labor disputes impacting the Project but not specifically related to the Worksite; (h) fire; (i) Terrorism; (j) epidemics; (k) adverse governmental actions; (l) unavoidable accidents or circumstances; (m) adverse weather conditions not reasonably anticipated. Construction Manager shall submit any requests for equitable extensions of Contract Time in accordance with the provisions of ARTICLE 9.

6.3.2 In addition, if Construction Manager incurs additional costs as a result of a delay that is caused by items (a) through (d) immediately above, Construction Manager shall be entitled to an equitable adjustment in the GMP subject to §6.7.

6.3.3 NOTICE OF DELAYS If delays to the Work are encountered for any reason, Construction Manager shall provide prompt written notice to Owner of the cause of such delays after Construction



Manager first recognizes the delay. The Parties each agree to take reasonable steps to mitigate the effect of such delays.

6.4 NOTICE OF DELAY CLAIMS If Construction Manager requests an equitable extension of the Contract Time or an equitable adjustment in the Contract Price as a result of a delay described in §6.3, Construction Manager shall give Owner written notice of the claim in accordance with §9.4. If Construction Manager causes delay in the completion of the Work, Owner shall be entitled to recover its additional costs subject to §6.7. Owner shall process any such claim against Construction Manager in accordance with ARTICLE 9.

6.5 MONITORING PROGRESS AND COSTS Following acceptance by Owner of the GMP, Construction Manager shall establish a process for monitoring actual costs against the GMP and actual progress against the Schedule of Work. Construction Manager will provide written reports to Owner at intervals as agreed to by the Parties on the status of the Work, showing variances between actual costs and the GMP and actual progress as compared to the Schedule of Work, including estimates of future costs and recovery programs if actual progress indicates that the Dates of Substantial Completion or Final Completion may not be met.

6.6 LIQUIDATED DAMAGES

6.6.1 SUBSTANTIAL COMPLETION Liquidated damages based on the Substantial Completion date shall apply.

6.6.1.1 Owner will suffer damages which are difficult to determine and accurately specify if the Substantial Completion date, which may be amended by Change Order, is not attained. Construction Manager shall pay Owner an amount to be mutually agreed upon by the parties in Amendment 1 as liquidated damages and not as a penalty for each Day that Substantial Completion extends beyond the Substantial Completion date. These liquidated damages are in lieu of all liability for all extra costs, losses, expenses, claims, penalties, and any other damages of any nature incurred by Owner resulting from not attaining the Substantial Completion date.

6.6.2 FINAL COMPLETION Liquidated damages based on the Final Completion date shall apply.

6.6.2.1 Owner will suffer damages which are difficult to determine and accurately specify if the Final Completion date, as may be amended by subsequent Change Order, is not attained. Construction Manager shall pay Owner an amount to be mutually agreed upon by the parties in Amendment 1 as liquidated damages and not as a penalty for each Day that Final Completion extends beyond the Final Completion date. These liquidated damages are in lieu of all liability for any extra costs, losses, expenses, claims, penalties, and any other damages of any nature incurred by Owner resulting from not attaining Final Completion date.

6.6.3 Owner and Construction Manager agree that the maximum aggregate liability Construction Manager has for any liquidated damages that may be assessed under this Agreement for failure to achieve the Substantial and/or Final Completion dates shall be mutually agreed upon by the parties in Amendment 1..

6.7 LIMITED MUTUAL WAIVER OF CONSEQUENTIAL DAMAGES Except for damages mutually agreed upon by the Parties as liquidated damages in §6.6 and excluding losses covered by insurance required by the Contract Documents, the Parties agree to waive all claims against each other for any consequential damages that may arise out of or relate to this Agreement. Owner agrees to waive damages including but not limited to Owner's loss of use of the Project, any rental expenses incurred, loss of income, profit, or financing related to the Project, as well as the loss of business, loss of financing, loss of profits not related to this Project, loss of reputation, or insolvency. Construction Manager agrees to waive damages including but not limited to loss of business, loss of financing, loss of profits not related to this Project, loss of bonding capacity, loss of reputation, or insolvency. The provisions of this section shall also apply to the termination of this Agreement and shall survive such termination.



6.7.1 The Parties shall each require similar waivers in contracts with Subcontractors and Others retained for the Project.

ARTICLE 7 COMPENSATION AND GUARANTEED MAXIMUM PRICE

7.1 Owner shall compensate Construction Manager for Work performed on the following basis:

7.1.1 the Cost of the Work as allowed in ARTICLE 8; and

7.1.2 Construction Manager's Fee paid in proportion to the Work performed subject to adjustment as provided in §7.4.

7.1.3 General Conditions Fee as established in Exhibit B.

7.2 The compensation to be paid shall be limited to the GMP established in Amendment 1, as the GMP may be adjusted under ARTICLE 9. In the event the GMP is converted to a lump sum contract price in accordance with Article 3.4.11, the compensation to be paid shall be limited to that lump sum contract price as such lump sum contract price may be adjusted under ARTICLE 9.

7.2.1 Payment for Work performed shall be as set forth in ARTICLE 10.

7.3 CONSTRUCTION MANAGER'S FEE Construction Manager's Fee shall be as follows, subject to adjustment as provided in §7.4: 8%.

7.4 FEE ADJUSTMENTS:

7.4.1 Changes in the Work as provided in ARTICLE 9, shall adjust Construction Manager's Fee as follows: 8%.

7.4.2 except as provided for in §6.3, delays in the Work not caused by Construction Manager shall adjust Construction Manager's Fee to compensate for increased expenses as provided for in ARTICLE 9; and

7.4.3 managing the replacement of an insured or uninsured loss shall increase Construction Manager's fee in the same proportion that Construction Manager's Fee bears to the estimated Cost of the Work for the replacement.

7.5 PRECONSTRUCTION SERVICES COMPENSATION Construction Manager shall be compensated for Preconstruction Services as follows: \$ 352,720.

ARTICLE 8 COST OF THE WORK

8.1 Owner agrees to pay Construction Manager for the Cost of the Work as defined in this article. This payment shall be in addition to Construction Manager's Fee stipulated in §7.3 and General Conditions Fee established in Exhibit B.

8.2 COST ITEMS

8.2.1 Labor wages directly employed by Construction Manager in performing of the Work.

8.2.2 Salaries of Construction Manager's employees when stationed at the field office, in whatever capacity employed, employees engaged on the road expediting the production or transportation of material and equipment, and employees from the principal or branch office as mutually agreed by the Parties in writing.



8.2.3 Cost of all employee benefits and taxes, including but not limited to, workers' compensation, unemployment compensation, social security, health, welfare, retirement, and other fringe benefits as required by law, labor agreements, or paid under Construction Manager's standard personnel policy, insofar as such costs are paid to employees of Construction Manager who are included in the Cost of the Work pursuant to §8.2.1 and §8.2.2.

8.2.4 Reasonable transportation, travel, hotel, and moving expenses of Construction Manager's personnel incurred in connection with the Work.

8.2.5 Cost of all materials, supplies, and equipment incorporated in the Work, including costs of inspection and testing if not provided by Owner, transportation, storage, and handling.

8.2.6 Payments made by Construction Manager to Subcontractors for work performed under this Agreement.

8.2.7 Cost, including transportation and maintenance of all materials, supplies, equipment, temporary facilities, and hand tools not owned by the workers that are used or consumed in the performance of the Work, less salvage value or residual value; and cost less salvage value on such items used, but not consumed that remain the property of Construction Manager.

8.2.8 Rental charges of all necessary machinery and equipment, exclusive of hand tools owned by workers, used at the Worksite, whether rented from Construction Manager or others, including installation, repair, and replacement, dismantling, removal, maintenance, transportation, and delivery costs. Rental from unrelated third parties shall be reimbursed at actual cost. Rentals from Construction Manager or its affiliates, subsidiaries, or related parties cannot exceed the rates shown for equipment in the EquipmentWatch Cost Recovery Rental Rate Blue Book, (<https://equipmentwatch.com/blue-book-cost-recovery>) An hourly rate will be computed by dividing the monthly rates by 176. These rates will include all operating costs.

8.2.9 Cost of the premiums for all insurance and surety bonds which Construction Manager is required to procure or deems necessary, and approved by Owner including any additional premium incurred as a result of any increase in the GMP.

8.2.10 Sales, use, gross receipts, or other taxes, tariffs, or duties related to the Work for which Construction Manager is liable.

8.2.11 Permits, fees, licenses, tests, royalties.

8.2.12 Losses, expenses, or damages to the extent not compensated by insurance or otherwise, and the cost of corrective work during the Construction Phase and for a one-year period following the Date of Substantial Completion, provided that such losses, expenses, damages, or corrective work did not arise from Construction Manager's negligence.

8.2.13 Costs associated with establishing, equipping, operating, maintaining, and demobilizing the field office.

8.2.14 Water, power, and fuel costs necessary for the Work.

8.2.15 Cost of removal of all nonhazardous substances, debris, and waste materials.

8.2.16 Costs incurred due to an emergency affecting the safety of persons or property.

8.2.17 Legal, mediation, and arbitration fees and costs, other than those arising from disputes between Owner and Construction Manager, reasonably and properly resulting from Construction Manager's performance of the Work.



8.2.18 Costs directly incurred in the performance of the Work or in connection with the Project, and not included in Construction Manager's Fee as set forth in ARTICLE 7, which are reasonably inferable from the Contract Documents.

8.2.19 Allocation of Cost Items Identified in Article 8.2 shall be in accordance with Exhibit C – Allocation of Fees and Costs.

8.3 DISCOUNTS All discounts for prompt payment shall accrue to Owner to the extent such payments are made directly by Owner. To the extent payments are made with funds of Construction Manager, all cash discounts shall accrue to Construction Manager. All trade discounts, rebates, and refunds, and all returns from sale of surplus materials and equipment, shall be credited to the Cost of the Work.

ARTICLE 9 CHANGES

Changes in the Work that are within the general scope of this Agreement shall be accomplished, without invalidating this Agreement, by Change Order and Interim Directive.

9.1 CHANGE ORDER

9.1.1 Construction Manager may request or Owner may order changes in the Work or the timing or sequencing of the Work that impacts the GMP or the estimated Cost of the Work, Construction Manager's Fee, Date of Substantial Completion or Date of Final Completion and, if appropriate, the Compensation for Preconstruction Services. All such changes in the Work shall be formalized in a Change Order. Any such requests for changes in the Work shall be processed in accordance with this article.

9.1.2 For changes in the Work, the Parties shall negotiate an equitable adjustment to the GMP or the Date of Substantial Completion or Date of Final Completion in good faith and conclude negotiations as expeditiously as possible. Acceptance of the Change Order and any equitable adjustment in the GMP or Date of Substantial Completion or Date of Final Completion shall not be unreasonably withheld.

9.1.3 NO OBLIGATION TO PERFORM Construction Manager shall not be obligated to perform changes in the Work that impact the GMP or the estimated Cost of the Work, Construction Manager's Fee, Date of Substantial Completion or Date of Final Completion without a Change Order or Interim Directive.

9.2 INTERIM DIRECTIVES

9.2.1 Owner may issue an Interim Directive directing a change in the Work before reaching agreement with Construction Manager on the adjustment, if any, in the GMP, Construction Manager's Fee, Date of Substantial Completion or Date of Final Completion, or directing Construction Manager to perform Work that Owner believes is not a change. If the Parties disagree that the Interim Directed work is within the scope of the Work, Construction Manager shall perform the disputed Work and furnish Owner with an estimate of the costs to perform the disputed work in accordance with Owner's interpretations.

9.2.2 The Parties shall negotiate expeditiously and in good faith for appropriate adjustments, as applicable, to the GMP or the Date of Substantial Completion or Date of Final Completion arising out of an Interim Directive. As the directed Work is performed, Construction Manager shall submit its costs for such Work with its application for payment beginning with the next application for payment within thirty (30) Days of the issuance of the Interim Directive. If there is a dispute as to the cost to Owner, Owner shall pay Construction Manager fifty percent (50%) of its actual (incurred or committed) cost to perform the Work. In such event, the Parties reserve their rights as to the disputed amount, subject to the requirements of ARTICLE 13. Owner's payment does not prejudice its right to be reimbursed should it be determined that the disputed work was within the scope of the Work.



Construction Manager's receipt of payment for the disputed work does not prejudice its right to receive full payment for the disputed work should it be determined that the disputed work is not within the scope of the Work. Undisputed amounts may be included in applications for payment and shall be paid by Owner in accordance with this Agreement.

9.2.3 When the Parties agree upon the adjustments in the GMP or the Date of Substantial Completion or Date of Final Completion, for a change in the Work directed by an Interim Directive, such agreement shall be the subject of an appropriate Change Order. The Change Order shall include all outstanding Interim Directives on which the Parties have reached agreement on GMP or the Date of Substantial Completion or Date of Final Completion issued since the last Change Order.

9.3 DETERMINATION OF COST

9.3.1 An increase or decrease in the GMP or the Date of Substantial Completion or Date of Final Completion resulting from a change in the Work shall be determined by one or more of the following methods:

9.3.1.1 unit prices set forth in this Agreement or as subsequently agreed;

9.3.1.2 a mutually accepted, itemized lump sum;

9.3.1.3 Cost of the Work as defined by ARTICLE 8 and determined as a net savings from the change in the work; plus 8% for Overhead, Administration and profit(Fee). Construction Manager's Overhead, Administration and profit (Fee) shall be added to any net increase in GMP. No Overhead and profit shall be applied to any net decrease in the GMP that is less than ten percent (10%) of GMP. Overhead and profit shall be applied to any net decrease of the GMP that is ten percent (10%) or more of GMP.

9.3.1.4 If there is a net increase in the GMP, Construction Manager's Fee shall be adjusted accordingly. In case of a net decrease in the GMP, Construction Manager's Fee shall not be adjusted unless ten percent (10%) or more of the Project is deleted. Construction Manager shall maintain a documented, itemized accounting evidencing the expenses and savings.

9.3.2 If unit prices are set forth in the Contract Documents or are subsequently agreed to by the Parties, but the character or quantity of such unit items as originally contemplated is so different in a proposed Change Order that the original unit prices will cause substantial inequity to either Party, such unit prices shall be equitably adjusted.

9.3.3 If the Parties disagree as to whether work required by Owner is within the scope of the Work, Construction Manager shall furnish Owner with an estimate of the costs to perform the disputed work in accordance with Owner's interpretations.

9.4 CHANGES NOTICE Except as provided in §6.3.2 and §6.4 for any claim for an increase in the GMP or the Date of Substantial Completion or Date of Final Completion, Construction Manager shall give Owner written notice of the claim within fourteen (14) Days after the occurrence giving rise to the claim or within fourteen (14) Days after Construction Manager first recognizes the condition giving rise to the claim, whichever is later. Owner's failure to so respond shall be deemed a denial of Construction Manager's claim. Except in an emergency, notice shall be given before proceeding with the Work. Thereafter, Construction Manager shall submit written documentation of its claim, including appropriate supporting documentation, within twenty-one (21) Days after giving notice, unless the Parties mutually agree upon a longer period of time. No later than fourteen (14) Days after receipt, Owner shall respond in writing denying or approving the claim. Owner's failure to so respond shall be deemed a denial of the claim. Any change in the GMP or the Date of Substantial Completion or Date of Final Completion resulting from such claim shall be authorized by Change Order.



9.5 INCIDENTAL CHANGES Owner may direct Construction Manager to perform incidental changes in the Work, upon concurrence with Construction Manager that such changes do not involve adjustments in the Contract Price or the Contract Time. Incidental changes shall be consistent with the scope and intent of the Contract Documents. Owner shall initiate an incidental change in the Work by issuing a written order to Construction Manager. Such written notice shall be carried out promptly and is binding on the Parties.

ARTICLE 10 PAYMENT

10.1 SCHEDULE OF VALUES Within twenty-one (21) Days from the date of execution of Amendment for Construction-Phase Services, Construction Manager shall prepare and submit to Owner and Design Professional a schedule of values apportioned to the various divisions or phases of the Work. Each line item contained in the schedule of values shall be assigned a value such that the total of all items shall equal the GMP.

10.2 PROGRESS PAYMENTS

10.2.1 APPLICATIONS Construction Manager shall submit to Owner and, if directed, Design Professional a monthly application for payment no later than the 5th Day of the calendar month for the preceding calendar month. Construction Manager's applications for payment shall be itemized and supported by Construction Manager's schedule of values based on a percentage of completion and shall include any other substantiating data as required by this Agreement. Applications for payment shall include payment requests on account of properly authorized Change Orders or Interim Directives. Owner shall pay the amount otherwise due on any payment application, as certified by Design Professional, no later than fifteen (15) Days after accepting such application. Owner may deduct from any progress payment amounts that may be retained pursuant to §10.2.4.

10.2.2 STORED MATERIALS AND EQUIPMENT Unless otherwise provided in the contract documents, applications for payment may include materials and equipment not yet incorporated into the Work but delivered to and suitably stored onsite or offsite including applicable insurance, storage, and costs incurred transporting the materials to an offsite storage facility. Approval of payment applications for stored materials and equipment stored offsite shall be conditioned on a submission by Construction Manager of bills of sale and proof of required insurance, or such other documentation satisfactory to Owner to establish the proper valuation of the stored materials and equipment, Owner's title to such materials and equipment, and to otherwise protect Owner's interests therein, including transportation to the Worksite.

10.2.3 LIEN WAIVERS AND LIENS

10.2.3.1 PARTIAL LIEN WAIVERS AND AFFIDAVITS If required by Owner, as a prerequisite for payment, Construction Manager shall provide a partial lien and claim waiver in the amount of the application for payment and affidavits from its Subcontractors and Suppliers for the completed Work. Such waivers shall be conditional upon payment. In no event shall Construction Manager be required to sign an unconditional waiver of lien or claim, before receiving payment or in an amount in excess of what it has been paid.

10.2.3.2 RESPONSIBILITY FOR LIENS If Owner has made payments in the time required by this article, Construction Manager shall, within thirty (30) Days after filing, remove any liens filed against the premises or public improvement fund by any party or parties performing labor or services or supplying materials in connection with the Work. If Construction Manager fails to take such action on a lien, Owner may cause the lien to be removed at Construction Manager's expense, including bond costs and reasonable attorneys' fees. This subsection shall not apply if there is a dispute pursuant to ARTICLE 13 relating to the subject matter of the lien.

10.2.4 RETAINAGE From each progress payment made before Substantial Completion, Owner may retain five percent (5%), of the amount otherwise due after deduction of any amounts as provided in



§10.3, provided such percentage doesn't exceed the Law. If Owner chooses to use this retainage provision:

10.2.4.1 Intentionally omitted

10.2.4.2 Owner may, in its sole discretion, reduce the amount to be retained at any time;

10.2.4.3 Owner may release retainage on that portion of the Work a Subcontractor has completed in whole or in part, and which Owner has accepted. In lieu of retainage, Construction Manager may furnish a retention bond or other security interest acceptable to Owner, to be held by Owner.

10.2.4.4 There shall be no retainage withheld on Preconstruction-Phase Services.

10.3 ADJUSTMENT OF CONSTRUCTION MANAGER'S PAYMENT APPLICATION Owner may adjust or reject a payment application or nullify a previously approved payment application, in whole or in part, as may reasonably be necessary to protect Owner from loss or damage based upon the following, to the extent that Construction Manager is responsible under this Agreement:

10.3.1 Construction Manager's repeated failure to perform the Work as required by the Contract Documents;

10.3.2 except as accepted by the insurer providing builder's risk or other property insurance covering the Project, loss or damage arising out of or relating to this Agreement and caused by Construction Manager to Owner or others to whom Owner may be liable;

10.3.3 Construction Manager's failure to properly pay Subcontractors and Suppliers following receipt of such payment from Owner for that portion of the Work or for supplies, provided that Owner is making payments to Construction Manager in accordance with this Agreement;

10.3.4 rejected or Defective Work not corrected in a timely fashion;

10.3.5 reasonable evidence of delay in performance of the Work such that the Work will not be completed by the Dates of Substantial or Final Completion;

10.3.6 reasonable evidence demonstrating that the unpaid balance of the GMP is insufficient to fund the cost to complete the Work; and

10.3.7 uninsured third-party claims involving Construction Manager or reasonable evidence demonstrating that third-party claims are likely to be filed unless and until Construction Manager furnishes Owner with adequate security in the form of a surety bond, letter of credit, or other collateral or commitment sufficient to discharge such claims if established.

No later than seven (7) Days after receipt of an application for payment, Owner shall give written notice to Construction Manager, at the time of disapproving or nullifying all or part of an application for payment, stating its specific reasons for such disapproval or nullification, and the remedial actions to be taken by Construction Manager in order to receive payment. When the above reasons for disapproving or nullifying an application for payment are removed, payment will be promptly made for the amount previously withheld.

10.4 ACCEPTANCE OF WORK Neither Owner's payment of progress payments nor its partial or full use or occupancy of the Project constitutes acceptance of Work not complying with the Contract Documents.

10.5 PAYMENT DELAY If for any reason not the fault of Construction Manager Construction Manager does not receive a progress payment from Owner within seven (7) Days after the time such payment is due, then Construction Manager, upon giving seven (7) Days' written notice to Owner, and without



prejudice to and in addition to any other legal remedies, may stop Work until payment of the full amount owing to Construction Manager has been received, including interest for late payment. If Construction Manager incurs costs or is delayed resulting from shutdown, delay, and start-up, Construction Manager may seek an equitable adjustment in the GMP and Dates of Substantial or Final Completion may be equitably adjusted by a Change Order in accordance with ARTICLE 9.

10.6 SUBSTANTIAL COMPLETION

10.6.1 Construction Manager shall notify Owner and, if directed, Design Professional when it considers Substantial Completion of the Work or a designated portion to have been achieved. Owner, with the assistance of its Design Professional, shall promptly conduct an inspection to determine whether the Work or designated portion can be occupied or used for its intended use by Owner without excessive interference in completing any remaining unfinished Work. If Owner determines that the Work or designated portion has not reached Substantial Completion, Owner, with the assistance of its Design Professional, shall promptly compile a list of items to be completed or corrected so Owner may occupy or use the Work or designated portion for its intended use. Construction Manager shall promptly complete all items on the list.

10.6.2 When Substantial Completion of the Work or a designated portion is achieved, Construction Manager shall prepare a Certificate of Substantial Completion establishing the date of Substantial Completion and the respective responsibilities of each Party for interim items such as security, maintenance, utilities, insurance, and damage to the Work, and fixing the time for completion of all items on the list accompanying the Certificate. The Certificate of Substantial Completion shall be submitted by Construction Manager to Owner and, if directed, to Design Professional for written acceptance of responsibilities assigned in the Certificate of Substantial Completion.

10.6.3 Unless otherwise provided in the Certificate of Substantial Completion, warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or a designated portion.

10.6.4 Upon Owner's written acceptance of the Certificate of Substantial Completion, Owner shall pay to Construction Manager the remaining retainage held by Owner for the Work described in the Certificate of Substantial Completion less a sum equal to one hundred and fifty percent (150%) of the estimated cost of completing or correcting remaining items on that part of the Work, as agreed to by the Parties as necessary to achieve Final Completion. Uncompleted items shall be completed by Construction Manager in a mutually agreed upon timeframe. Owner shall pay Construction Manager monthly the amount retained for unfinished items as each item is completed.

10.7 PARTIAL OCCUPANCY OR USE

10.7.1 Owner may occupy or use completed or partially completed portions of the Work when (a) the portion of the Work is designated in a Certificate of Substantial Completion, (b) appropriate insurer(s) consent to the occupancy or use, and (c) public authorities authorize the occupancy or use. Construction Manager shall not unreasonably withhold consent to partial occupancy or use. Owner shall not unreasonably refuse to accept partial occupancy.

10.8 FINAL COMPLETION AND FINAL PAYMENT

10.8.1 Upon notification from Construction Manager that the Work is complete and ready for final inspection and acceptance, Owner, with the assistance of its Design Professional shall promptly conduct an inspection to determine if the Work has been completed and is acceptable under the Contract Documents.

10.8.2 When the Work is complete, Construction Manager shall prepare for Owner's written acceptance a final application for payment stating that to the best of Construction Manager's



knowledge, and based on Owner's inspections, the Work has reached Final Completion in accordance with the Contract Documents.

10.8.3 Final payment of the balance of the GMP shall be made to Construction Manager within twenty (20) Days after Construction Manager has submitted an application for final payment, including submissions required under §10.8.4, and a Certificate of Final Completion has been executed by the Parties.

10.8.4 Final payment shall be due on Construction Manager's submission of the following to Owner:

10.8.4.1 an affidavit declaring any indebtedness connected with the Work, to have been paid, satisfied, or to be paid with the proceeds of final payment, so as not to encumber Owner's property;

10.8.4.2 as-built drawings, manuals, copies of warranties, and all other close-out documents required by the Contract Documents;

10.8.4.3 release of any liens, conditioned on final payment being received;

10.8.4.4 consent of any surety; and

10.8.4.5 any outstanding known and unreported accidents or injuries experienced by Construction Manager or its Subcontractors at the Worksite.

10.8.5 If, after Substantial Completion of the Work, the Final Completion of a portion of the Work is materially delayed through no fault of Construction Manager, Owner shall pay the balance due for any portion of the Work fully completed and accepted. If the remaining contract balance for Work not fully completed and accepted is less than the retained amount before payment, Construction Manager shall submit to Owner and, if directed, Design Professional the written consent of any surety to payment of the balance due for portions of the Work that are fully completed and accepted. Such payment shall not constitute a waiver of claims, but otherwise shall be governed by this §10.8.

10.8.6 OWNER RESERVATION OF CLAIMS Owner's claims not reserved in writing with final payment are waived, except for claims relating to liens or similar encumbrances, warranties, Defective Work, and latent defects.

10.8.7 ACCEPTANCE OF FINAL PAYMENT Unless Construction Manager provides written identification of unsettled claims with an application for final payment, its acceptance of final payment constitutes a waiver of such claims.

10.9 LATE PAYMENT Payments due but unpaid shall bear interest from the date payment is due at the statutory rate at the place of the Project.

ARTICLE 11 INDEMNITY, INSURANCE, AND BONDS

11.1 INDEMNITY

11.1.1 To the fullest extent permitted by law, Construction Manager shall indemnify and hold harmless Owner, Owner's officers, directors, members, consultants, agents, and employees, Design Professional, and Others (the "Indemnitees") from all claims for bodily injury and property damage, other than to the Work itself and other property insured, including reasonable attorneys' fees, costs, and expenses, that may arise from the performance of the Work, but only to the extent caused by the negligent or intentionally wrongful acts or omissions of Construction Manager, Subcontractors, Suppliers, Subsubcontractors, or anyone employed directly or indirectly by any of them or by anyone for whose acts any of them may be liable. Construction Manager shall be entitled to reimbursement of



any defense costs paid above Construction Manager's percentage of liability for the underlying claim to the extent provided for by §11.1.2.

11.1.2 To the fullest extent permitted by law, Owner shall indemnify and hold harmless Construction Manager, its officers, directors, members, consultants, agents, and employees, Subcontractors, Suppliers, or anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable from all claims for bodily injury and property damage, other than property insured, including reasonable attorneys' fees, costs, and expenses, that may arise from the performance of work by Owner, Design Professional, or Others, but only to the extent caused by the negligent or intentionally wrongful acts or omissions by Owner, Design Professional, or Others. Owner shall be entitled to reimbursement of any defense costs paid above Owner's percentage of liability for the underlying claim to the extent provided for by §11.1.1.

11.1.3 NO LIMITATION ON LIABILITY In any and all claims against the Indemnitees by any employee of Construction Manager, anyone directly or indirectly employed by Construction Manager, or anyone for whose acts Construction Manager may be liable, the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Construction Manager under workers' compensation acts, disability benefit acts, or other employment benefit acts.

11.2 INSURANCE

11.2.1 Before starting the Work and as a condition precedent to payment, Construction Manager shall procure and maintain in force Workers' Compensation Insurance, Employers' Liability Insurance, Business Automobile Liability Insurance, and Commercial General Liability Insurance ("CGL"). The CGL policy shall include coverage for liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, contractual liability, and broad form property damage. Construction Manager shall maintain completed operations liability insurance for one year after Substantial Completion, or as required by the Contract Documents, whichever is longer. Construction Manager's Employers' Liability, Business Automobile Liability and CGL policies shall be written with at least the following limits of liability:

11.2.1.1 Employers' Liability Insurance

- (a) \$500,000 bodily injury by accident per accident.
- (b) \$500,000 bodily injury by disease per employee.

11.2.1.2 Business Automobile Liability Insurance \$500,000 per accident.

11.2.1.3 Commercial General Liability Insurance

- (a) \$4,000,000 per occurrence.
- (b) \$10,000,000 general aggregate.

11.2.1.4 Umbrella Liability Insurance – Minimum \$10,000,000 limit of liability

11.2.2 Employers' Liability, Business Automobile Liability, and CGL coverages required under §11.2.1 may be provided by a single policy for the full limits required or by a combination of underlying policies with the balance provided by excess or umbrella liability policies.

11.2.3 Construction Manager shall maintain in effect all insurance coverage required under §11.2.1 with insurance companies lawfully authorized to do business in the jurisdiction in which the Project is located. If Construction Manager fails to obtain or maintain any insurance coverage required under this Agreement, Owner may purchase such coverage and charge the expense to Construction Manager, or terminate this Agreement.



11.2.4 To the extent commercially available to Construction Manager from its current insurance company, insurance policies required under §11.2.1 shall contain a provision that the insurance company or its designee must give Owner written notice transmitted in paper or electronic format: (a) thirty (30) Days before coverage is nonrenewed by the insurance company and (b) within ten (10) Business Days after cancelation of coverage by the insurance company. Before commencing the Work and upon renewal or replacement of the insurance policies, Construction Manager shall furnish Owner with certificates of insurance until one year after Substantial Completion or longer if required by the Contract Documents. In addition, if any insurance policy required under §11.2.1 is not to be immediately replaced without lapse in coverage when it expires, exhausts its limits, or is to be cancelled, Construction Manager shall give Owner prompt written notice upon actual or constructive knowledge of such condition.

11.2.5 Construction Manager shall cause each Subcontractor employed by Construction Manager to purchase and maintain appropriate and reasonable insurance coverage and minimum insurance limits to cover each of the Subcontractor's liabilities given the scope of work and the services being provided.

11.3 PROPERTY INSURANCE

11.3.1 Unless otherwise directed in writing by Owner, before starting the Work, Construction Manager shall obtain and maintain a Builder's Risk Policy for the construction phase of the Project upon the entire Project for the full cost of replacement at the time of loss. This insurance shall also (a) name Construction Manager, and Design Professional as named insureds; (b) be written in such form to cover all risks of physical loss except those specifically excluded by the policy.

11.3.2 The Party that is the primary cause of a Builder's Risk Policy claim shall be responsible for any deductible amounts or coinsurance payments. If no Party is the primary cause of a claim, then the Party obtaining and maintaining the Builder's Risk Policy pursuant to §11.3.1 shall be responsible for the deductible amounts or coinsurance payments. This policy shall provide for a waiver of subrogation. This insurance shall remain in effect until final payment has been made or until no person or entity other than Owner has an insurable interest in the property to be covered by this insurance, whichever is sooner. Partial occupancy or use of the Work shall not commence until Owner has secured the consent of the insurance company or companies providing the coverage required in this subsection. Before commencing the Work, Owner shall provide a copy of the property policy or policies obtained in compliance with this §11.3.

11.3.3 Intentionally omitted.

11.3.4 The Parties each waive all rights against each other and their respective employees, agents, contractors, subcontractors, suppliers, subsubcontractors, and design professionals for damages caused by risks covered by the property insurance provided under §11.3.1, except such rights as they may have to the proceeds of the insurance. To the extent of the limits of Construction Manager's Commercial General Liability Insurance specified in §11.2.1, Construction Manager shall indemnify and hold harmless Owner against any and all liability, claims, demands, damages, losses, and expenses, including attorneys' fees, in connection with or arising out of any damage or alleged damage to any of Owner's existing adjacent property that may arise from the performance of the Work, to the extent caused by the negligent or intentionally wrongful acts or omissions of Construction Manager, Subcontractor, Supplier, Subsubcontractor, or anyone employed directly or indirectly by any of them or by anyone for whose acts any of them may be liable.



11.3.5 RISK OF LOSS Except to the extent a loss is covered by applicable insurance, risk of loss from damage to the Work shall be upon the Party obtaining and maintaining the Builder's Risk Policy pursuant to §11.3.1 until the Date of Final Completion.

11.3.6 POLLUTION LIABILITY INSURANCE Construction Manager is required to maintain pollution liability insurance. Unless indicated affirmatively, the obligation to procure such insurance is not triggered.

11.3.6.1 If applicable: in the following amounts: \$1,000,000 per occurrence, \$1,000,000 general aggregate, and shall apply for 1 year(s) after Final Completion. The policy shall cover Construction Manager's liability during construction, removal, storage, encapsulation, transport and disposal of hazardous waste and contaminated soil, and asbestos abatement. The policy shall include coverage for on-site and off-site bodily injury and loss of damage to, or loss of use of property, directly or indirectly arising out of the discharge, dispersal, release, or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gas, waste materials, or other irritants, contaminants or pollutants into or upon the land, the atmosphere or any water body, whether it be gradual or sudden and accidental. The policy shall not have exclusions for mold or asbestos.

11.4 ADDITIONAL GENERAL LIABILITY COVERAGE Owner shall require Construction Manager to purchase and maintain additional liability coverage. If required, Construction Manager shall provide:

11.4.1 Intentionally Omitted.

11.4.2 ☒ OCP. Construction Manager shall provide an Owners' and Contractors' Protective Liability Insurance ("OCP") policy with limits equal to the limits on CGL specified, or limits as otherwise required by Owner.

Any documented additional cost in the form of a surcharge associated with procuring the additional liability coverage in accordance with this subsection shall be paid by Owner directly or the costs may be reimbursed by Owner to Construction Manager by increasing the Contract Price to correspond to the actual cost required to purchase and maintain the coverage. Before commencing the Work, Construction Manager shall provide a copy of the OCP policy.

11.4.3 ROYALTIES, PATENTS, AND COPYRIGHTS Construction Manager shall pay all royalties and license fees which may be due on the inclusion of any patented or copyrighted materials, methods, or systems selected by Construction Manager and incorporated in the Work. Construction Manager shall defend, indemnify, and hold Owner harmless from all suits or claims for infringement of any patent rights or copyrights arising out of such selection. Owner, to the extent permitted by law, agrees to defend, indemnify, and hold Construction Manager harmless from any suits or claims of infringement of any patent rights or copyrights arising out of any patented or copyrighted materials, methods, or systems specified by Owner or Design Professional.

11.5 BONDS Performance and Payment Bonds are required of Construction Manager for the construction phase of the Project. Such bonds shall be issued by a surety admitted in the state in which the Project is located and must be acceptable to Owner. Owner's acceptance shall not be withheld without a reasonable cause. The penal sum of the bonds shall each be one hundred percent (100%) of the GMP (which shall not include amounts for Preconstruction Services). Construction Manager shall endeavor to keep its surety advised of changes potentially impacting the GMP and Contract Time, though Construction Manager shall require that its surety waives any requirement to be notified of any alteration or extension of time.

11.6 PROFESSIONAL LIABILITY INSURANCE To the extent Construction Manager is required to procure design services in accordance with §3.17, Construction Manager shall require its design professionals to obtain professional liability insurance for claims arising from the negligent performance of



professional services under this Agreement, with a company reasonably satisfactory to Owner, including coverage for all professional liability caused by any consultants to Construction Manager's design professional, written for not less than Two Million dollars (\$2,000,000) per claim and in the aggregate with the deductible not to exceed fifty thousand dollars (\$50,000). Construction Manager's design professional shall pay the deductible. The Professional Liability Insurance shall contain a retroactive date providing prior acts coverage sufficient to cover all Services performed by the Construction Manager's design professional for this Project. Construction Manager's design professional shall pay the self-insured retention and deductible.

11.7 ABILITY TO NEGOTIATE INSURANCE PROVISIONS: Owner and CMAR agree that these insurance provisions may be modified prior to the GMP submission upon request by CMAR in order to maximize the use of CMAR's corporate policies which shall be mutually agreed upon by the parties in Amendment 1.

ARTICLE 12 SUSPENSION, NOTICE TO CURE, AND TERMINATION

12.1 SUSPENSION BY OWNER FOR CONVENIENCE

12.1.1 OWNER SUSPENSION Should Owner order Construction Manager in writing to suspend, delay, or interrupt the performance of the Work for the convenience of Owner and not due to any act or omission of Construction Manager or any person or entity for whose acts or omissions Construction Manager may be liable, then Construction Manager shall immediately suspend, delay, or interrupt that portion of the Work for the time period ordered by Owner.

12.1.2 Any action taken by Owner that is permitted by any other provision of the Contract Documents and that results in a suspension of part or all of the Work does not constitute a suspension of Work under this section.

12.2 NOTICE TO CURE A DEFAULT If Construction Manager persistently fails to supply enough properly qualified workers, proper materials, or equipment to maintain the approved Schedule of the Work or fails to make prompt payment to its workers, Subcontractors, or Suppliers, disregards a Law or orders of any public authority having jurisdiction, or is otherwise guilty of a material breach of a provision of this Agreement, Construction Manager may be deemed in default.

12.2.1 After receiving Owner's written notice, if Construction Manager fails within seven (7) Days after receipt of written notice to commence and continue satisfactory correction of such default with diligence and promptness, then Owner shall give Construction Manager a second notice to correct the default within three (3) Business Days after receipt. The second notice to Construction Manager, and if applicable, the surety, may include, that Owner intends to terminate this Agreement for default absent appropriate corrective action.

12.2.2 If Construction Manager fails to promptly commence and continue satisfactory correction of the default following receipt of such second notice, Owner without prejudice to any other rights or remedies may: (a) take possession of the Worksite; (b) complete the Work utilizing reasonable means; (c) withhold payment due to Construction Manager; and (d) as Owner deems necessary, supply workers and materials, equipment, and other facilities for the satisfactory correction of the default, and charge Construction Manager, the costs and expenses, including reasonable Overhead, profit, and attorneys' fees.

12.2.3 In the event of an emergency affecting the safety of persons or property, Owner may immediately commence and continue satisfactory correction of such default without first giving written notice to Construction Manager, but shall give Construction Manager prompt written notice.

12.3 OWNER'S RIGHT TO TERMINATE FOR DEFAULT



12.3.1 Upon expiration of the second notice to cure pursuant to §12.2, and absent appropriate corrective action, Owner may terminate this Agreement by written notice. Termination for default is in addition to any other remedies available to Owner under §12.2. If Owner's costs arising out of Construction Manager's failure to cure, including the costs of completing the Work and reasonable attorneys' fees, exceed the unpaid GMP, Construction Manager shall be liable to Owner for such excess costs. If Owner's costs are less than the unpaid GMP, Owner shall pay the difference to Construction Manager. If Owner exercises its rights under this section, upon the request of Construction Manager, Owner shall furnish to Construction Manager a detailed accounting of the costs incurred by Owner.

12.3.2 If Owner or Others perform work under this section, Owner shall have the right to take and use any materials and supplies for which Owner has paid and located at the Worksite for the purpose of completing any remaining Work. Owner or Others performing work under §12.3 shall also have the right to use construction tools and equipment belonging to the Construction Manager or its subcontractors and located on the Worksite for the purpose of completing the remaining Work but only after Construction Manager's written consent which shall not be unreasonably withheld. If Owner uses Construction Manager's construction tools and equipment in accordance with this subsection, then Owner, to the extent permitted by law, shall indemnify and hold harmless Construction Manager and applicable Subcontractors and the agents, officers, directors, and employees of each of them, from and against all claims, damages, losses, costs, and expenses, including but not limited to reasonable attorneys' fees, costs, and expenses incurred in connection with Owner's use of Construction Manager's or applicable subcontractor's construction tools and equipment. Immediately upon completion of the Work, any remaining materials, supplies, or equipment not consumed or incorporated in the Work shall be returned to Construction Manager in substantially the same condition as when they were taken, reasonable wear and tear excepted.

12.3.3 If Construction Manager files a petition under the Bankruptcy Code, this Agreement shall terminate if: (a) Construction Manager or Construction Manager's trustee rejects the Agreement; (b) a default occurred and Construction Manager is unable to give adequate assurance of required performance; or (c) Construction Manager is otherwise unable to comply with the requirements for assuming this Agreement under the applicable provisions of the Bankruptcy Code.

12.3.4 Owner shall make reasonable efforts to mitigate damages arising from Construction Manager's default, and shall promptly invoice Construction Manager for all amounts due pursuant to §12.2 and §12.3.

12.4 TERMINATION BY OWNER FOR CONVENIENCE

12.4.1 Upon Construction Manager's receipt of written notice from Owner, Owner may, without cause, terminate this Agreement. Construction Manager shall immediately stop the Work, follow Owner's instructions regarding shutdown and termination procedures, and strive to minimize any further costs.

12.4.2 If Owner terminates this Agreement for convenience, Construction Manager shall be paid (a) for the Work performed to date including Overhead and profit; (b) for all demobilization costs and costs incurred resulting from termination, but not including Overhead or profit on Work not performed; and (c) reasonable attorneys' fees and costs related to termination; and (d) a premium as follows: \$250,000.

12.4.3 If Owner terminates this Agreement, Construction Manager shall:

12.4.3.1 execute and deliver to Owner all papers and take all action required to assign, transfer, and vest in Owner the rights of Construction Manager to all materials, supplies, and equipment for which payment has been or will be made in accordance with the Contract Documents and all subcontracts, orders, and commitments which have been made in accordance with the Contract Documents;



12.4.3.2 exert reasonable effort to reduce to a minimum Owner's liability for subcontracts, orders, and commitments that have not been fulfilled at the time of the termination;

12.4.3.3 cancel any subcontracts, orders, and commitments as Owner directs; and

12.4.3.4 sell at prices approved by Owner any materials, supplies, and equipment as Owner directs, with all proceeds paid or credited to Owner.

12.5 CONSTRUCTION MANAGER'S RIGHT TO TERMINATE

12.5.1 Seven (7) Days after Owner's receipt of written notice from Construction Manager, Construction Manager may terminate this Agreement if the Work has been stopped for a thirty (30) Day period through no fault of Construction Manager for any of the following reasons:

12.5.1.1 under court order or order of other governmental authorities having jurisdiction;

12.5.1.2 as a result of the declaration of a national emergency or other governmental act during which, through no act or fault of Construction Manager, project execution under the terms of this agreement is no longer possible ; or

12.5.1.3 suspension by Owner for convenience pursuant to §12.1.

12.5.2 In addition, upon seven (7) Days' written notice to Owner and an opportunity to cure within three (3) Days, Construction Manager may terminate this Agreement if Owner:

12.5.2.1 fails to furnish reasonable evidence pursuant to §4.2 that sufficient funds are available and committed for Project financing, or

12.5.2.2 assigns this Agreement over Construction Manager's reasonable objection, or

12.5.2.3 fails to pay Construction Manager in accordance with this Agreement and Construction Manager has stopped Work in compliance with §10.5, or

12.5.2.4 otherwise materially breaches this Agreement.

12.5.3 Upon termination by Construction Manager in accordance with this section, Construction Manager shall be entitled to recover from Owner payment for all Work executed and for any proven loss, cost, or expense in connection with the Work, including all demobilization costs plus a premium as follows: \$250,000.

12.6 OBLIGATIONS ARISING BEFORE TERMINATION Even after termination, the provisions of this Agreement still apply to any Work performed, payments made, events occurring, costs charged or incurred, or obligations arising before the termination date.

ARTICLE 13 DISPUTE MITIGATION AND RESOLUTION

13.1 WORK CONTINUANCE AND PAYMENT Unless otherwise agreed in writing, Construction Manager shall continue the Work and maintain the Schedule of the Work during any dispute mitigation or resolution proceedings. If Construction Manager continues to perform, Owner shall continue to make payments in accordance with this Agreement.

13.2 DIRECT DISCUSSIONS If the Parties cannot reach resolution on a matter relating to or arising out of this Agreement, the Parties shall endeavor to reach resolution through good faith direct discussions between the Parties' representatives, who shall possess the necessary authority to resolve such matter and who shall record the date of first discussions. If the Parties' representatives are not able to resolve such matter within five (5) Business Days from the date of first discussion, the Parties' representatives



shall immediately inform senior executives of the Parties in writing that a resolution could not be reached. Upon receipt of such notice, the senior executives of the Parties shall meet within five (5) Business Days to endeavor to reach resolution. If the dispute remains unresolved after fifteen (15) Days from the date of first discussion, the Parties shall submit such matter to the dispute mitigation and dispute resolution procedures selected below.

13.3 INTENTIONALLY OMITTED.

13.4 MEDIATION If direct discussions pursuant to §13.2 do not result in resolution of the matter, the Parties shall endeavor to resolve the matter by mediation through the current Construction Industry Mediation Rules of the American Arbitration Association, or the Parties may mutually agree to select another set of mediation rules. The administration of the mediation shall be as mutually agreed by the Parties. The mediation shall be convened within thirty (30) Days of the matter first being discussed and shall conclude within forty-five (45) Business Days of the matter first being discussed. Either Party may terminate the mediation at any time after the first session by written notice to the non-terminating Party and mediator. The costs of the mediation shall be shared equally by the Parties.

13.5 BINDING DISPUTE RESOLUTION If the matter is unresolved after submission of the matter to a mitigation procedure or to mediation, the Parties shall submit the matter to the binding dispute resolution procedure selected below:

☒ Arbitration using:

☒ the current Construction Industry Arbitration Rules of the AAA and administered by the AAA.

13.6 COSTS The costs of any binding dispute resolution procedures and reasonable attorneys' fees shall be borne by the non-prevailing Party, as determined by the adjudicator of the dispute.

13.7 VENUE To the extent permitted by Law, the venue of any binding dispute resolution procedure shall be the location of the Project.

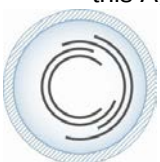
13.8 MULTIPARTY PROCEEDING All parties necessary to resolve a matter agree to be parties to the same dispute resolution proceeding, if possible. Appropriate provisions shall be included in all other contracts relating to the Work to provide for the joinder or consolidation of such dispute resolution procedures.

13.9 LIEN RIGHTS Nothing in this article shall limit any rights or remedies not expressly waived by Construction Manager which Construction Manager may have under lien laws.

ARTICLE 14 MISCELLANEOUS

14.1 EXTENT OF AGREEMENT Except as expressly provided, this Agreement is for the exclusive benefit of the Parties, and not the benefit of any third party. This Agreement represents the entire and integrated agreement between the Parties, and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement and each and every provision is for the exclusive benefit of the Parties and not for the benefit of any third party.

14.2 ASSIGNMENT Except as to the assignment of proceeds, neither Party shall assign their interest in this Agreement without the written consent of the other Party. The terms and conditions of this Agreement



shall be binding upon both Parties, their partners, successors, assigns, and legal representatives. Neither Party shall assign the Agreement as a whole without written consent of the other except that Owner may assign the Agreement to a wholly owned subsidiary of Owner when Owner has fully indemnified Construction Manager or to an institutional lender providing construction financing for the Project as long as the assignment is no less favorable to Construction Manager than this Agreement. If such assignment occurs, Construction Manager shall execute any consent reasonably required. In such event, the wholly owned subsidiary or lender shall assume Owner's rights and obligations under the Contract Documents. If either Party attempts to make such an assignment, that Party shall nevertheless remain legally responsible for all obligations under this Agreement, unless otherwise agreed by the other Party.

14.3 GOVERNING LAW The law in effect at the location of the Project shall govern this Agreement.

14.4 SEVERABILITY The partial or complete invalidity of any one or more provisions of this Agreement shall not affect the validity or continuing force and effect of any other provision.

14.5 NOTICE Unless changed in writing, a Party's address indicated in Article 1 shall be used when delivering notice to a physical address. Except for Agreement termination and as otherwise specified in the Contract Documents, notice is effective upon transmission by any effective means, including U.S. postal service and overnight delivery service.

14.6 NO WAIVER OF PERFORMANCE Either Party's failure to insist upon any of its rights, in any one or more instances, on the performance of any of the terms, covenants, or conditions of this Agreement, or to exercise any of its rights, shall not be construed as a waiver or relinquishment of such term, covenant, condition, or right with respect to further performance or any other term, covenant, condition, or right.

14.7 TITLES The titles given to the articles are for ease of reference only and shall not be relied upon or cited for any other purpose.

14.8 JOINT DRAFTING The Parties expressly agree that this Agreement was jointly drafted, and that both had opportunity to negotiate its terms and to obtain the assistance of counsel in reviewing its terms before execution. Therefore, this Agreement shall be construed neither against nor in favor of either Party, but shall be construed in a neutral manner.

ARTICLE 15 CONTRACT DOCUMENTS

15.1 EXISTING CONTRACT DOCUMENTS The Contract Documents in existence at the time of execution of this Agreement are as follows:

- (a) Flowery Branch WRF Expansion Construction Manager at Risk RFP No. 23-001
- (b) Addendum Number One, dated March 1, 2023
- (c) Addendum Number Two, dated March 8, 2023
- (d) Addendum Number Three, dated March 10, 2023

15.2 INTERPRETATION OF CONTRACT DOCUMENTS

15.2.1 The drawings and specifications are complementary. If Work is shown only on one but not on the other, Construction Manager shall perform the Work as though fully described on both.

15.2.2 In case of conflicts between the drawings and specifications, the specifications shall govern. In any case of omissions or errors in figures, drawings, or specifications, Construction Manager shall immediately submit the matter to Owner for clarification. Subject to an equitable adjustment in the GMP, Dates of Substantial or Final Completion pursuant to ARTICLE 9 or a dispute mitigation and resolution, Owner's clarifications are final and binding.

15.2.3 Where figures are given, they shall be preferred to scaled dimensions.



15.2.4 Unless otherwise specifically defined in this Agreement, any terms that have well-known technical or trade meanings shall be interpreted in accordance with their well-known meanings.

15.2.5 ORDER OF PRECEDENCE In case of any inconsistency, conflict, or ambiguity among the Contract Documents, the documents shall govern in the following order: (a) Change Orders and written amendments to this Agreement; (b) the Agreement; (c) subject to §15.2.2 the drawings, specifications, and addenda issued before the execution of this Agreement; (d) approved submittals; (e) information furnished by Owner pursuant to §3.15.4 or designated as a Contract Document in §15.1; (f) other Contract Documents listed in this Agreement.

OWNER: **City of Flowery Branch**

BY: _____ NAME: _____ TITLE: _____

WITNESS: _____ NAME: _____ TITLE: _____

CONSTRUCTION MANAGER: **Archer Western Construction, LLC**

BY: _____ NAME: _____ TITLE: _____

WITNESS: _____ NAME: _____ TITLE: _____

END OF DOCUMENT.





FLOWERY BRANCH CITY COUNCIL

EXECUTIVE SUMMARY



SUBJECT: Consider May 18, 2023 City Council Meeting Minutes

COUNCIL MEETING DATE: June 1, 2023

HISTORY:

FACTS AND ISSUES:

OPTIONS:

IF FUNDING IS INVOLVED, ARE FUNDS APPROVED IN THE CURRENT BUDGET:

No

AMOUNT AND SOURCE OF FUNDS:

RECOMMENDATION:

SAMPLE MOTION:

COLLABORATING DEPARTMENT:

DEPARTMENT: Administration

Prepared by: Shelia Cooper

ATTACHMENTS

- [Unofficial May 18, 2023 City Council Meeting Minutes.pdf](#)



**City of Flowery Branch
City Council Meeting
Thursday, May 18, 2023, 6:00 PM
City of Flowery Branch City Hall
5410 Pine Street, Flowery Branch, GA 30542**



CALL WORK SESSION TO ORDER:

Mayor Pro Tempore Anglin called the council meeting to order at 6:00 p.m.

Present: Mayor Pro Tempore Anglin and Council Members Oliver McClellan, William McDaniel, Joseph Mezzanotte, and Chris Mundy.

Also present were City Manager Tonya Parrish, City Clerk Shelia Cooper, Planning & Community Development Director Rich Atkinson, Public Works & Utilities Director Bill Whidden, Finance Director Matthew Hamby, Community Relations Director Renee Carden, Police Chief Chris Hulsey, and City Attorney Karen Thomas.

Absent: Mayor Edward Asbridge

PLEDGE OF ALLEGIANCE:

Mayor Pro Tempore Anglin led the Pledge of Allegiance.

ADOPTION OF AGENDA:

There was a motion made to approve the agenda as presented.

MOTION: Oliver McClellan

SECOND: William McDaniel

AYES: Oliver McClellan, William McDaniel, Joseph Mezzanotte, Chris Mundy

NAYS: None

Motion carried

WEST HALL HIGH SCHOOL IB SENIOR ART STUDENTS' PRESENTATION TO THE CITY:

Ms. Jennifer Griner, Art Instructor with West Hall High School and several IB Senior Art Students presented artwork to the City. The City is honored to have been presented with this beautiful display of art from West Hall High School and it will be hung in the lobby of City Hall.



NEW BUSINESS -WORK SESSION:

Consider Distilled Spirits License for PCL Restaurant Group, dba Peyton's Pie Pizza located at 5609 Main Street, Flowery Branch, GA

Municipal Clerk Kelsey Cash led a discussion regarding a distilled spirits license for PCL Restaurant Group, dba Peyton's Pie Pizza located at 5609 Main Street, Flowery Branch, Georgia. Peyton's Pie has been in business since 2020 and they have had no alcohol violations.

There were no questions from Council.

FY2024 Budget Presentation

Finance Director Hamby presented the FY2024 Budget Presentation. Director Hamby discussed the goals and objectives of the City and he explained that in any budget development the goals are the driving force behind how the budget is developed.

There were no questions from Council.

DEPARTMENT REPORTS:

Community Relations Report:

Community Relations Director Carden reminded citizens to download the My Flowery Branch app to stay up to date with all the events happening in the City. The first concert will be on Sunday, June 4 and the first Block Party will be on June 9. The City of Flowery Branch Grand Opening Celebration will be on Thursday, June 22, 2023, from 3:00 p.m. until 5:00 p.m.

City Manager Report:

City Manager Parrish thanked Director Hamby and Krystle Hightower and the finance team for all their hard work on the budget. City Manager Parrish recognized the employees from the Wastewater Treatment Plant for all their hard work cleaning out the EQ tank. Specifically, she thanked Peter Woerner and Rick Haff for their hard work of cleaning out the waste from the tank.

ADJOURNMENT WORK SESSION:

Mayor Pro Tempore Anglin adjourned the work session at 6:20 p.m.

VOTING SESSION AGENDA

CALL VOTING SESSION TO ORDER:

Mayor Pro Tempore called the voting session to order at 6:20 p.m.

PUBLIC COMMENTS:

Aubrey Duke, 7016 Tree House Way, Flowery Branch, GA 30542

Mr. Duke wanted to express how beautiful the City looks.

Mark Weber, 6114 Stella Light Drive, Flowery Branch, GA 30542

Mr. Weber is concerned with the amount of parking in the City.

CONSENT AGENDA:

- Consider Distilled Spirits License for PCL Restaurant Group, dba Peyton's Pie Pizza located at 5609 Main Street, Flowery Branch, GA
- Consider May 4, 2023 City Council Meeting Minutes
- Consider May 4, 2023 Executive Session Minutes

There was a motion made to approve the consent agenda as presented.

MOTION: Chris Mundy

SECOND: William McDaniel

AYES: Oliver McClellan, William McDaniel, Joseph Mezzanotte, Chris Mundy

NAYS: None

Motion carried

UNFINISHED BUSINESS - VOTING SESSION:

Consider the Second Reading of Ordinance 693, a variance request submitted by Stanton E. Porter allowing fuel pumps to be located in front of the primary structure at 4603 Atlanta Highway.

City Attorney Thomas read the caption to Ordinance 693.

There was a motion made to approve the Second Reading of Ordinance 693.

MOTION: Chris Mundy

SECOND: William McDaniel

Council held a discussion regarding Ordinance 693 and concerns with the landscape plan that was submitted. There are also concerns about the monument sign and they would like to see consistency with the signs around the City and it should be approved by City Staff. Director Atkinson stated that the monument sign will be mirrored with the monument sign at the Burger King. Director Atkinson advised he will ask about a landscape plan and the lighting plan.

There was a motion made to table Ordinance 693 until the June 1, 2023, Council Meeting to allow for a better submission of the site plan.

MOTION: Joe Mezzanotte

SECOND: Chris Mundy

AYES: Oliver McClellan, William McDaniel, Joseph Mezzanotte, Chris Mundy

NAYS: None

Motion carried

NEW BUSINESS - VOTING SESSION:

Consider the First Reading of Ordinance 694, a Text Amendment Implementing Zoning Ordinance Changes.

City Attorney Thomas read the caption to Ordinance 694.

There was a motion made to approve the First Reading of Ordinance 694.

MOTION: Oliver McClellan

SECOND: Chris Mundy

Council held a discussion on Ordinance 694.

There was a motion made to amend Ordinance 694, Chart 8.2 Dimensional Requirements for Maximum Density (units per acre). The chart originally stated maximum density was 6 units per acre and it will be amended to state 6 units for 50 acres or less and 5 units for over 50 acres.

MOTION: Joe Mezzanotte
SECOND: Chris Mundy
AYES: Oliver McClellan, William McDaniel, Joseph Mezzanotte, Chris Mundy
NAYS: None
Motion carried

There was a vote to approve the First Reading of Ordinance 694 with the amendment to Chart 8.2 Dimensional Requirements for Maximum Density.

MOTION: Oliver McClellan
SECOND: Chris Mundy
AYES: Oliver McClellan, William McDaniel, Joseph Mezzanotte, Chris Mundy
NAYS: None
Motion carried

EXECUTIVE SESSION: There was no executive session held.

ADJOURNMENT:

There was a motion made to adjourn the meeting at 6:50 p.m.

MOTION: Oliver McClellan
SECOND: William McDaniel
AYES: Oliver McClellan, William McDaniel, Joseph Mezzanotte, Chris Mundy
NAYS: None
Motion carried

Edward R. Asbridge, Mayor

Date

Shelia Cooper, City Clerk



FLOWERY BRANCH CITY COUNCIL

EXECUTIVE SUMMARY



SUBJECT: Consider May 2023 Per Diem for Mayor Asbridge

COUNCIL MEETING DATE: June 1, 2023

HISTORY:

FACTS AND ISSUES:

OPTIONS:

IF FUNDING IS INVOLVED, ARE FUNDS APPROVED IN THE CURRENT BUDGET:

Yes

AMOUNT AND SOURCE OF FUNDS:

\$250.00

RECOMMENDATION:

SAMPLE MOTION:

COLLABORATING DEPARTMENT:

DEPARTMENT: Administration

Prepared by: Shelia Cooper

ATTACHMENTS

- [Mayor Per Diem - May 2023.pdf](#)



City of Flowery Branch
Mayor & Council Attendance Sheet Per Diem Pay

Name: Mayor Edward Asbridge Month/Year: May 2023

Meeting Date	Description of Meeting
May 9, 2023	HCMPO Meeting
May 12, 2023	Chamber Economic Development Meeting
May 16, 2023	Employee Appreciation Day
May 17, 2023	Chamber Issues Committee
May 23, 2023	Chamber Executive Committee

My signature certifies that I am eligible to be paid for 5 meeting dates, a maximum of 5 per month, in accordance with the Per Diem Pay as described in Ordinance 477 and at a rate of \$50.00 per meeting.

Total of \$250.00

Signature



FLOWERY BRANCH CITY COUNCIL

EXECUTIVE SUMMARY



SUBJECT: Consider the Second Reading of Ordinance 693, a variance request submitted by Stanton E. Porter allowing fuel pumps to be located in front of the primary structure at 4603 Atlanta Highway.

COUNCIL MEETING DATE: June 1, 2023

HISTORY:

This request was tabled to the June 1 meeting. Council requested more information regarding landscaping and the monument sign.

FACTS AND ISSUES:

Applicant wishes relief from Article 10, section 10.9 (f) of the zoning ordinance which requires fuel pumps to be located behind the primary structure.

OPTIONS:

IF FUNDING IS INVOLVED, ARE FUNDS APPROVED IN THE CURRENT BUDGET:

No

AMOUNT AND SOURCE OF FUNDS:

RECOMMENDATION:

Approve as conditioned

SAMPLE MOTION:

I make a motion to approve Ordinance 693.

COLLABORATING DEPARTMENT:

DEPARTMENT: Planning

Prepared by: Shelia Cooper

ATTACHMENTS

- [letter of intent.pdf](#)
- [Thurmond Tanner Pkwy Retail Center Site Plan_6-24-22.pdf](#)
- [signed variance app.pdf](#)

- [Landscape plan.pdf](#)
- [Staff Report.pdf](#)
- [ORDINANCE 693 FINAL READ JUNE 1.pdf](#)

STANTONPORTER LAW

Winder:
73 Church Street
P.O. Box 88
Winder, Georgia 30680
470.997.2010
stanton@stantonporter.com

Athens:
2005 South Milledge Avenue
Suite 101
Athens, Georgia 30606
(By Appointment Only)

February 9, 2023

City of Flowery Branch
5410 Pine Street
Flowery Branch, Georgia 30542

Re: Variance Application for Flowery Branch Development

Greetings:

This variance application concerns a variance necessary for the development of one tract of land located at 4603 Atlanta Highway. The end product will be a convenience store with fuel pumps as shown on the included concept plan. The variance needed is as follows:

1. *Section 10.9(f) Activity Centers Including Automobile-Related Establishments:* The code requires that a convenience store should locate fuel pumps behind the principal structure in order to screen the pumps from the street. It further provides that if the fuel pumps are not located in the rear of the primary structure, then landscaping should be required. **(Since there will be two entrances, a variance is needed to allow for the gas pumps to be placed in front of the convenience store as shown on the concept plan).**

Regarding the factors that the Board should consider, the following is provided:

1. The variance requested is the minimum variance that will make possible the proposed use of the property.
2. There are extraordinary and exceptional conditions or practical difficulties pertaining to the particular piece of property due to its size and shape that are not applicable to other properties in the same district. The Planning Director's own emails agree that it isn't possible to comply with the code at this site with a variance. I have included said emails.
3. This variance request would not adversely affect the existing use or usability of adjacent or nearby property.
4. This variance request will not result in a use which will or could cause an excessive or burdensome use of existing streets, transportation facilities, utilities, or schools.

The denial of this variance, will result in substantial monetary damage to the owner. Pursuant to the email correspondence with the City, the property owner was informed that a variance would not be needed for the subject property only to be informed later that a variance application

will be required. Furthermore, the denial of this request will violate the owner's rights of due process and equal protection, procedural and substantive, and violation of Article I, Section I, Paragraphs 1 and 2, and Article I, Section III, Paragraph 1 of the Georgia Constitution and the Fifth and Fourteenth Amendments to the United States Constitution. Denial of the variance request will destroy owner's property rights without first paying just compensation. A denial of this application would constitute an arbitrary and capricious act by the City of Flowery Branch without any rational basis therefor, constituting an abuse of discretion. A refusal to grant the variance for the subject property so as to permit the only feasible economic use of the property would be unconstitutional and would discriminate in an arbitrary and capricious and unreasonable manner between the owner and owners' of similarly situated property. This application meets the prescribed test set out by the Georgia Supreme Court to be used in establishing the constitutional balance between private property rights and zoning as an expression of the government's police power.

For the foregoing reasons, the applicant and owner respectfully request that this variance be approved.

Sincerely,

Stanton Porter Law, LLC

By:


Stanton E. Porter

Meghan Wyatt

From: HH <hhamirani@gmail.com>
Sent: Friday, December 16, 2022 4:19 PM
To: Stanton Porter
Subject: Fwd: FW: proposed site at Atlanta Hwy and Thrumond Tanner Pkwy
Attachments: Thurmond Tanner Pkwy Retail Center Site Plan_6-24-22.pdf

----- Forwarded message -----

From: Jon Evans <jevans@evansdg.com>
Date: Mon, Dec 12, 2022 at 3:55 PM
Subject: FW: proposed site at Atlanta Hwy and Thrumond Tanner Pkwy
To: HH <hhamirani@gmail.com>

Husein,

In our coordination with Rich Atkinson with the City of Flowery Branch to submit this project in for review he responded below. This is contrary to the email (scroll down further in this email chain) and meeting I had with him in July. He is now saying either apply for variance or change layout to have pumps in the front. I have called him to discuss further, but got his voicemail.

Jon M. Evans, P.E.

Evans Design Group, Inc.

4755 Summer Song Court

Buford, GA 30519

678-207-6830

From: Richard Atkinson <rich@flowerybranchga.org>
Sent: Thursday, December 8, 2022 10:52 AM
To: Ryder Amthor <ramthor@evansdg.com>
Subject: Re: proposed site at Atlanta Hwy and Thrumond Tanner Pkwy

Good Morning

Our city attorney has informed me that the practice of allowing the pumps to be installed in front of the primary structure is not legal without a variance. Having two entrances does not matter. He just overturned my decision last week on another case. Sorry, but I am no longer allowed to approve the plan as shown. You will need to adjust the plan or apply for a variance.

Rich Atkinson

Director of Planning & Community Development

5410 Pine Street

P.O Box 757

Flowery Branch, GA 30542

(770) 967.6378

From: Ryder Amthor <ramthor@evansdg.com>
Sent: Wednesday, December 7, 2022 4:42 PM
To: Richard Atkinson <rich@flowerybranchga.org>
Cc: Jon Evans <jevans@evansdg.com>
Subject: RE: proposed site at Atlanta Hwy and Thrumond Tanner Pkwy

CAUTION: This email originated from outside of the City of Flowery Branch, GA email system. Maintain caution when opening external links/attachments

Rich,

Can you let me know what the LDP submittal requirements and process are?

Thanks,

Ryder Amthor

Evans Design Group, Inc.

678-548-6629

4755 Summer Song Court

Buford, GA 30519

From: Jon Evans <jevans@evansdg.com>

Sent: Wednesday, December 7, 2022 4:28 PM

To: Ryder Amthor <ramthor@evansdg.com>

Subject: FW: proposed site at Atlanta Hwy and Thrumond Tanner Pkwy

Jon M. Evans, P.E.

Evans Design Group, Inc.

4755 Summer Song Court

Buford, GA 30519

678-207-6830

From: Richard Atkinson <rich@flowerybranchga.org>

Sent: Wednesday, July 6, 2022 3:27 PM

To: Jon Evans <jevans@evansdg.com>

Subject: RE: proposed site at Atlanta Hwy and Thrumond Tanner Pkwy

5410 Pine Street

Sent from Mail for Windows

From: Jon Evans
Sent: Wednesday, July 6, 2022 3:17 PM
To: Richard Atkinson
Subject: RE: proposed site at Atlanta Hwy and Thrumond Tanner Pkwy

2:00 works for me. Can you confirm your address to meet?

Jon M. Evans, P.E.

Evans Design Group, Inc.

4755 Summer Song Court

Buford, GA 30519

678-207-6830

From: Richard Atkinson <rich@flowerybranchga.org>
Sent: Wednesday, July 6, 2022 3:05 PM
To: Jon Evans <jevans@evansdg.com>
Subject: Re: proposed site at Atlanta Hwy and Thrumond Tanner Pkwy

I can do 2:00 or 2:30.

Get Outlook for iOS

From: Jon Evans <jevans@evansdg.com>
Sent: Wednesday, July 6, 2022 2:59:23 PM
To: Richard Atkinson <rich@flowerybranchga.org>
Subject: FW: proposed site at Atlanta Hwy and Thrumond Tanner Pkwy

Rich,

Did you have a few minutes tomorrow we could meet and look at this?

Jon M. Evans, P.E.

Evans Design Group, Inc.

4755 Summer Song Court

Buford, GA 30519

678-207-6830

From: Jon Evans

Sent: Wednesday, July 6, 2022 8:54 AM

To: Richard Atkinson <rich@flowerybranchga.org>

Subject: RE: proposed site at Atlanta Hwy and Thrumond Tanner Pkwy

Rich,

I can meet tomorrow to discuss this. What time is good for you?

Thank you,

Jon M. Evans, P.E.

Evans Design Group, Inc.

4755 Summer Song Court

Buford, GA 30519

678-207-6830

From: Richard Atkinson <rich@flowerybranchga.org>
Sent: Tuesday, July 5, 2022 3:06 PM
To: Jon Evans <jevans@evansdg.com>
Subject: Re: proposed site at Atlanta Hwy and Thrumond Tanner Pkwy

John

Normally yes, BUT because of the two entrances the intent of locating the pumps behind the primary structure (which is to shield the pumps from view) is unattainable on this site. Therefore, you have to landscape /berm as much as possible to screen the pumps from Thurmon Tanner and Atlanta Highway. I'm behind on some ordinances and staff reports but we can discuss or meet this Thursday if that would be easier.

Thanks,

Rich

Rich Atkinson

Director of Planning & Community Development

5410 Pine Street

P.O Box 757

Flowery Branch, GA 30542

(770) 967.6378

From: Jon Evans <jevans@evansdg.com>
Sent: Tuesday, July 5, 2022 3:00 PM
To: Richard Atkinson <rich@flowerybranchga.org>
Subject: RE: proposed site at Atlanta Hwy and Thrumond Tanner Pkwy

Rich,

So from what you are saying below, if the owner wanted to keep the pumps in front of the building, he would have to apply for a variance?

Thanks,

Jon M. Evans, P.E.

Evans Design Group, Inc.

4755 Summer Song Court

Buford, GA 30519

678-207-6830

From: Richard Atkinson <rich@flowerybranchga.org>

Sent: Tuesday, July 5, 2022 2:17 PM

To: Jon Evans <jevans@evansdg.com>

Subject: Re: proposed site at Atlanta Hwy and Thrumond Tanner Pkwy

With two entrances you cannot screen the pumps with the primary structure - you will see them from either Atlanta Highway or Thurmon Tanner - so you will need to landscape appropriately. The ordinance that is officially adopted states that they shall be located behind the primary structure - but I don't think it would make any difference here and would not meet the intent of the requirement. Sorry for any confusion.

Rich Atkinson

Director of Planning & Community Development

5410 Pine Street

P.O Box 757

Flowery Branch, GA 30542

(770) 967.6378

From: Jon Evans <jevans@evansdg.com>

Sent: Tuesday, July 5, 2022 1:56 PM

To: Richard Atkinson <rich@flowerybranchga.org>

Subject: RE: proposed site at Atlanta Hwy and Thrumond Tanner Pkwy

Rich,

In the attached version of this part your ordinance (from 12-22-2020) the 10.9(f) reads differently. In this newer version, than the 2018 version you sent me, it states "Convenience stores should be located in the rear of the building for effective screening. But goes on to say "however, if fuel pumps are not located in the rear of the building, then additional landscaping should be required. So is this a matter of just designing additional landscaping in the front if pumps stay in front of the store? Or would it require a variance to keep pumps in front of the building? it seems that since it says should then goes on to mention the extra landscaping that it is a case by case decision by maybe yourself or others in your department to allow pumps to be in front of the building. Please advise.

Thank you,

Jon M. Evans, P.E.

Evans Design Group, Inc.

4755 Summer Song Court

Buford, GA 30519

678-207-6830

From: Richard Atkinson <rich@flowerybranchga.org>

Sent: Thursday, June 30, 2022 4:17 PM

To: Jon Evans <jevans@evansdg.com>

Subject: Re: proposed site at Atlanta Hwy and Thrumond Tanner Pkwy

Hey Jon

Take a look at the attached. I think you can make the argument that you are unable to meet the pumps behind the primary structure requirement as you have two entrances, but you would need to provide heavy landscaping to attempt to shield the pumps. There are some other requirements you should review before a formal submittal. If you have any questions let me know. I will be out of the office until Tuesday.

Enjoy your 4th!

Rich

Rich Atkinson

Director of Planning & Community Development

5410 Pine Street

P.O Box 757

Flowery Branch, GA 30542

(770) 967.6378

From: Richard Atkinson <rich@flowerybranchga.org>

Sent: Monday, June 27, 2022 9:19 AM

To: Jon Evans <jevans@evansdg.com>

Subject: RE: proposed site at Atlanta Hwy and Thrumond Tanner Pkwy

Hey John

Yes, I will take a look this week.

Thanks,

Rich

Rich Atkinson

Director of Planning & Community Development



From: [Jon Evans](#)

Sent: Friday, June 24, 2022 1:35 PM

To: [Richard Atkinson](#)

Subject: proposed site at Atlanta Hwy and Thrumond Tanner Pkwy

Rich,

Could you please look over the attached proposed site plan for this property and provide feedback on the proposed layout and any other important information you may be able to share?

Thank you,

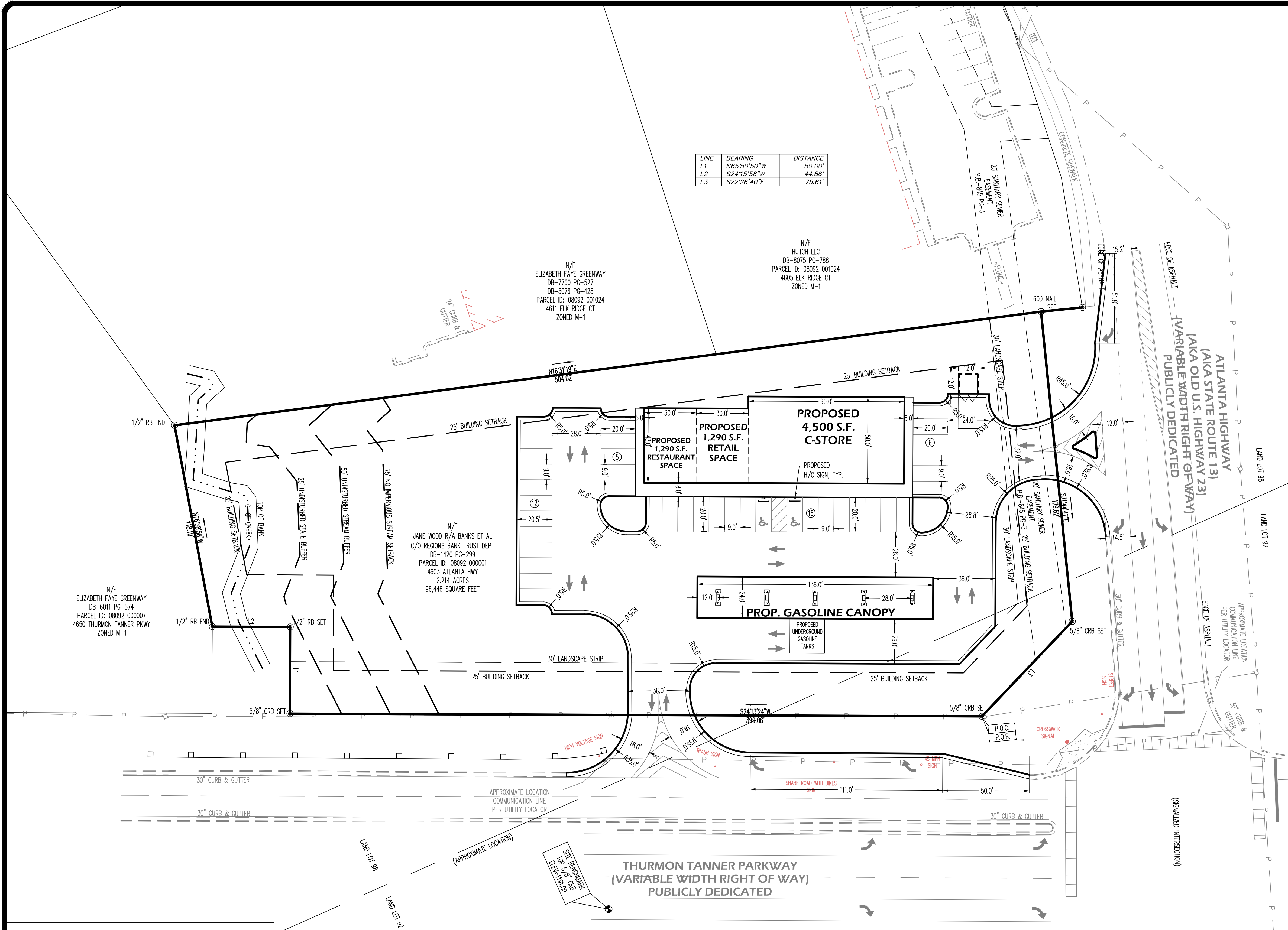
Jon M. Evans, P.E.

Evans Design Group, Inc.

4755 Summer Song Court

Buford, GA 30519

678-207-6830



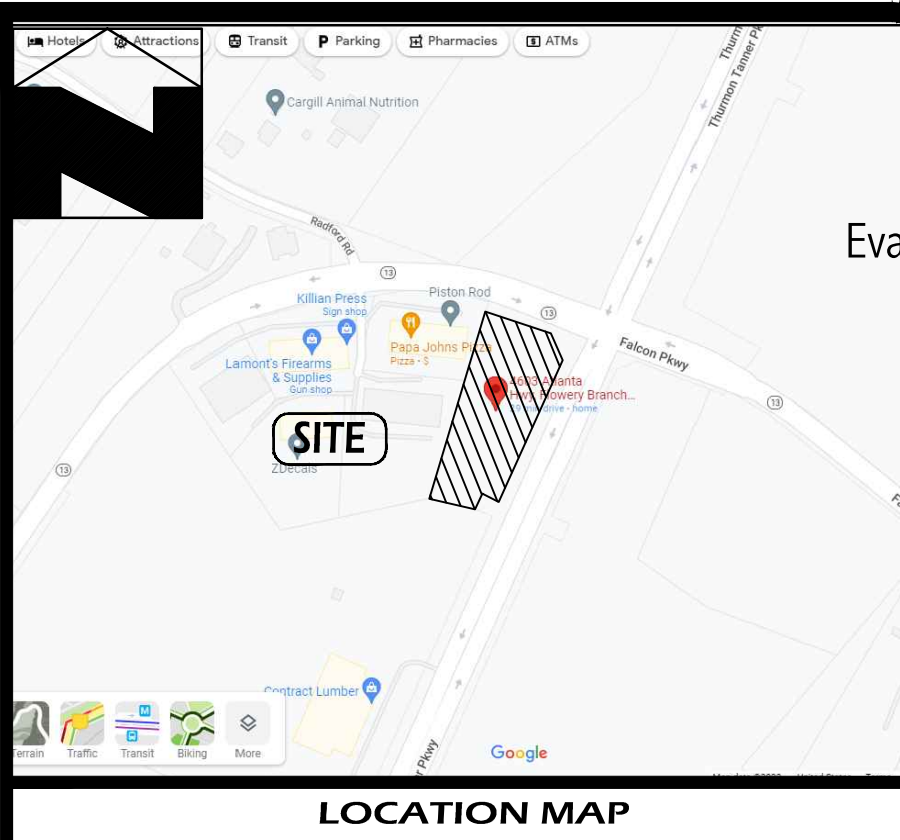
LINE	BEARING	DISTANCE
L1	N65°50'30"W	50.00'
L2	S24°15'58"W	44.86'
L3	S22°26'40"E	75.61'

N/F
HUTCH LLC
DB-8075 PG-788
PARCEL ID: 08092 001024
4605 ELK RIDGE CT
ZONED M-1

N/F
ELIZABETH FAYE GREENWAY
DB-7760 PG-527
DB-5076 PG-428
PARCEL ID: 08092 001024
4611 ELK RIDGE CT
ZONED M-1

N/F
JANE WOOD R/A BANKS ET AL
C/O REGIONS BANK TRUST DEPT
DB-1420 PG-230
PARCEL ID: 08092 000001
4603 ATLANTA HWY
2.214 ACRES
96,446 SQUARE FEET

N/F
ELIZABETH FAYE GREENWAY
DB-6011 PG-574
PARCEL ID: 08092 000007
4650 THURMON TANNER PKWY
ZONED M-1



ZONING DATA TABLE:

CURRENT ZONING:	M-1 MANUFACTURING & INDUSTRIAL LIGHT
PROPOSED ZONING:	N/A
OVERLAY DISTRICT:	N/A
PROPOSED USE ALLOWED IN ZONING:	YES
MINIMUM LOT AREA:	N/A
MINIMUM LOT WIDTH:	100
MINIMUM ROAD FRONTAGE:	
MAXIMUM BUILDING HEIGHT:	75'
MAXIMUM COVER:	70%
BUILDING SETBACKS:	
FRONT:	25'
SIDE:	25'
REAR:	25'
LANDSCAPE STRIPS:	
ALONG ROW:	30'
OTHER:	N/A
BUFFERS:	
ZONING BUFFER:	50' NATURAL BUFFER ABUTTING AN R-1, R 2, R-3, TND, or PUD DISTRICT (feet)
OTHER:	
THIS PROPERTY DOES NOT LIE IN A 100-YR FLOOD ZONE AS SHOWN ON FIRM COMMUNITY PANEL NO. 13121C0066F, DATED SEPTEMBER 18, 2013.	

PARKING REQUIREMENTS:

CITY REQUIREMENT:	REQUIRED MAXIMUM	REQUIRED MINIMUM	TOTAL PARKING
CONVENIENCE STORE & RETAIL SPACE			
C-STORE 1 SPACE PER 200 S.F. (MIN)	(4,500 S.F.)	30	23
C-STORE 1 SPACE PER 150 S.F. (MAX)			23*
RETAIL 1 SPACE PER 275 S.F. (MIN)	(1,290 S.F.)	6	5
RETAIL 1 SPACE PER 250 S.F. (MAX)			5
RESTAURANT 1 SPACE PER 125 S.F. (MIN)	(1,290 S.F.)	18	11
RESTAURANT 1 SPACE PER 75 S.F. (MAX)			11
TOTAL	54	39	39*

* INCLUDES 2 A.D.A. SPACES (2 REQUIRED)

OWNER/DEVELOPER:

NAME
ADDRESS

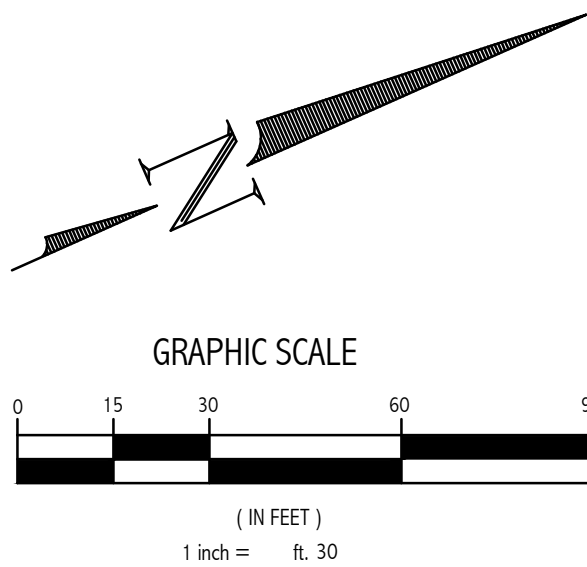
PHONE
EMAIL

24-HR CONTACT:

NAME
PHONE
EMAIL

ENGINEER:

EVANS DESIGN GROUP, INC.
4755 SUMMER SONG COURT
BUFORD, GA 30519
678.207.6830 (Ph)
CONTACT: JON M. EVANS, P.E.



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Evans Design Group, Inc.
Civil Engineering /
Site Planning /
Land Development Services
4755 Summer Song Court
Buford, GA 30519
(Ph) 678.207.6830
jevans@evansdg.com



GSWCC LEVEL II CERT. # 10877

PROJECT NAME

**FLOWERY
BRANCH
C-STORE
& RETAIL**

**4603 ATLANTA HWY
L.I. 92, 8th DIST.
CITY OF FLOWERY
BRANCH, GEORGIA**

DATE:

6/16/22

DESIGN BY: JME DRAWN BY: JME CHECKED BY: JME

☒ Not Released For Construction
☐ Released For Construction

OWNER/DEVELOPER

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REVISIONS

JOB NUMBER:

22-029

SHEET TITLE

**SITE
PLAN**

C-4



VARIANCE APPLICATION

Address of Request:

4603 Atlanta Highway, Flowery Branch, Georgia 30542

Type of Variance Requested

Complete requirements for variances can be found in the Flowery Branch Code of Ordinances; Appendix C, "Zoning Ordinance", Article 37;

Please verify all the requirements of the Flowery Branch Code of Ordinances; Appendix C, "Zoning Ordinance", Article 37, section 37.5 are being met.
Explain below:

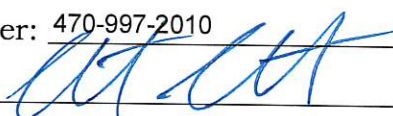
The requested variance will be in harmony with the purpose and intent of this ordinance and will not be injurious to the neighborhood or to the general welfare. Additionally, the special circumstances are not the result of the actions of the applicant and the variance requested is the minimum variance that will make possible the proposed use of the land, building, or structure in the use district proposed.

Applicant: Stanton E. Porter

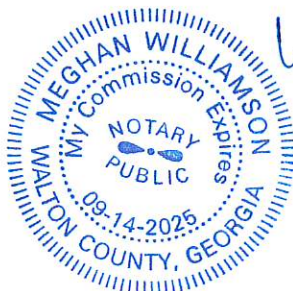
Address: P.O. Box 88, Winder, Georgia 30680

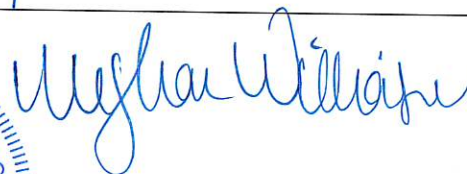
E-mail address: stanton@stantonporter.com

Phone number: 470-997-2010

Signature: 

Notary Seal:







Property owner information (if different than the applicant)

Property owner (please print): 1618 Land Holdings, LLC

Signature of property owner: _____

Notary Seal:

Please provide the following at time of submittal:

- Payment of \$325.00
- Legal description – one hard copy and on a flash drive
- Current survey of property – one hard copy and on a flash drive
- Site plan – one hard copy and on a flash drive
- Detailed description of request
- Conflict of interest disclosure (attached)
- Disclosure of campaign contributions (attached)



Conflict of Interest Disclosure

Identify all members of the City Council of the City of Flowery Branch and Employees of the City of Flowery Branch Community Development Department who

Have a property interest in the real property affected by this request

None.

Have a financial interest (direct ownership interest) of the total assets or capital stock of a business entity where such ownership interest is more than 10% in any business entity which has a property interest in the real property affected by this request

None.

Have a member of the family (spouse, mother, father, brother, sister, son or daughter) having a property financial interest as herein defined, in the real property affected by this request

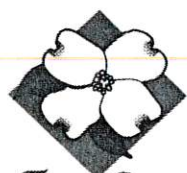
None.

Disclosure of Campaign Contributions

List below the names of local government officials of the City of Flowery Branch to whom campaign contributions were made, within two (2) years immediately preceding the filing of this application, which campaign contributions total \$250.00 or more or to whom gifts were made having a total value of \$250.00 or more.

Elected Officials Name

Amount of Description of Gift



Flowery Branch

PLANT LIST:				
QTY	SYM	BOTANICAL NAME	COMMON NAME	%TOTAL SIZE
CANOPY TREES				
5	Ar	Acer rubrum	Red Maple	31.3 3"
6	Up	Ulmus parvifolia 'Athena'	Athena Chinese Elm	37.5 3"
5	Zs	Zelkova serrata	Japanese Zelkova	31.3 3"
16	TREE TOTALS			

PARKING LOT TREES:

ONE (1) TREE FOR EACH 10 PARKING SPACES

39 PROPOSED PARKING SPACES

4 TREES REQUIRED

4 TREES PROVIDED

30' LANDSCAPE STRIP:

ONE (1) TREE FOR EACH 40 LINEAR FEET OF LANDSCAPE STRIP

320.0 L.F. ALONG THURMON TANNER PARKWAY

EXCLUDING BUFFERS AND DRIVEWAYS

8 TREES REQUIRED

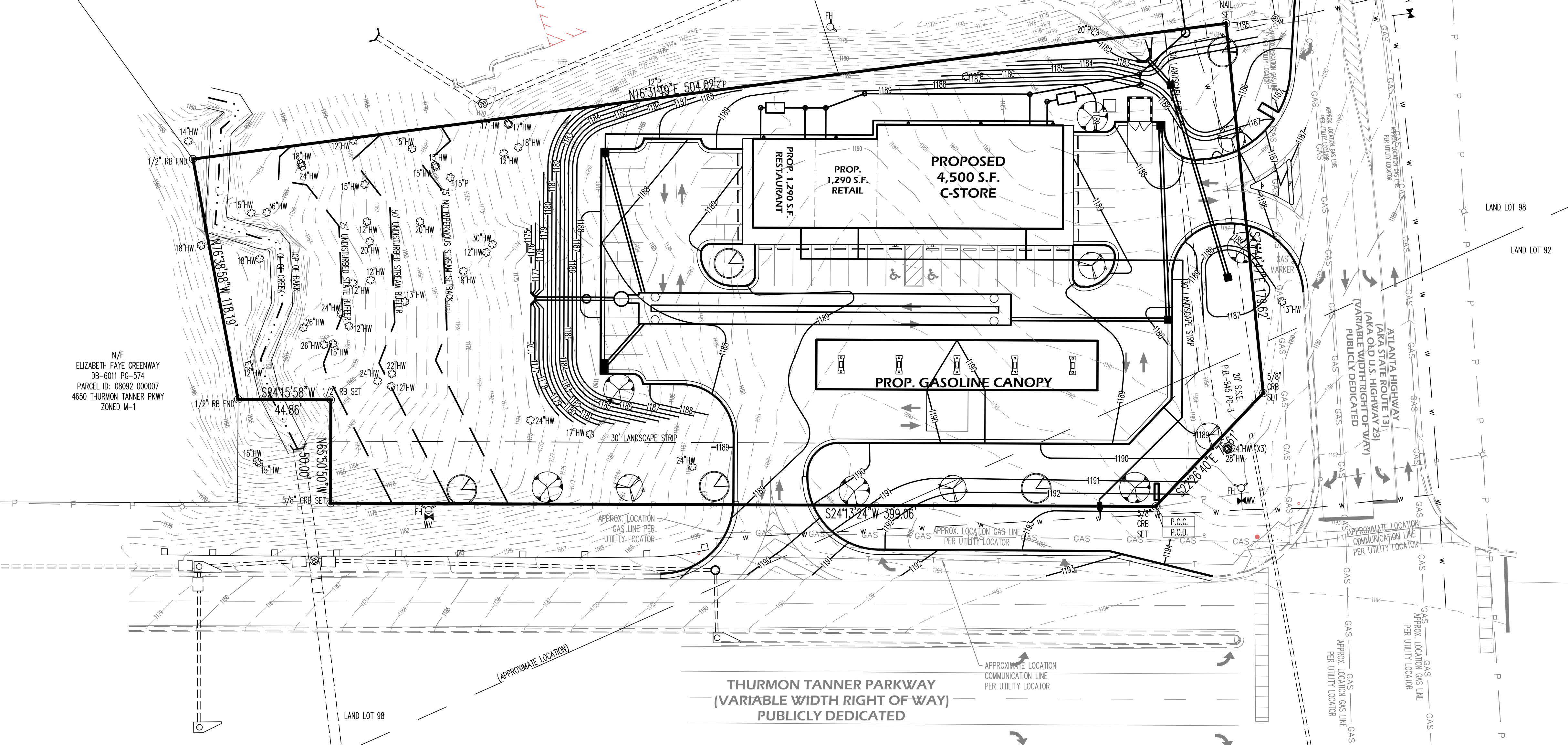
8 TREES PROVIDED

160.0 L.F. ALONG ATLANTA HIGHWAY

EXCLUDING BUFFERS AND DRIVEWAYS

4 TREES REQUIRED

5 TREES PROVIDED



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PLANT LEGEND:

- Athena Chinese Elm
- Japanese Zelkova
- Red Maple

OWNER/DEVELOPER:

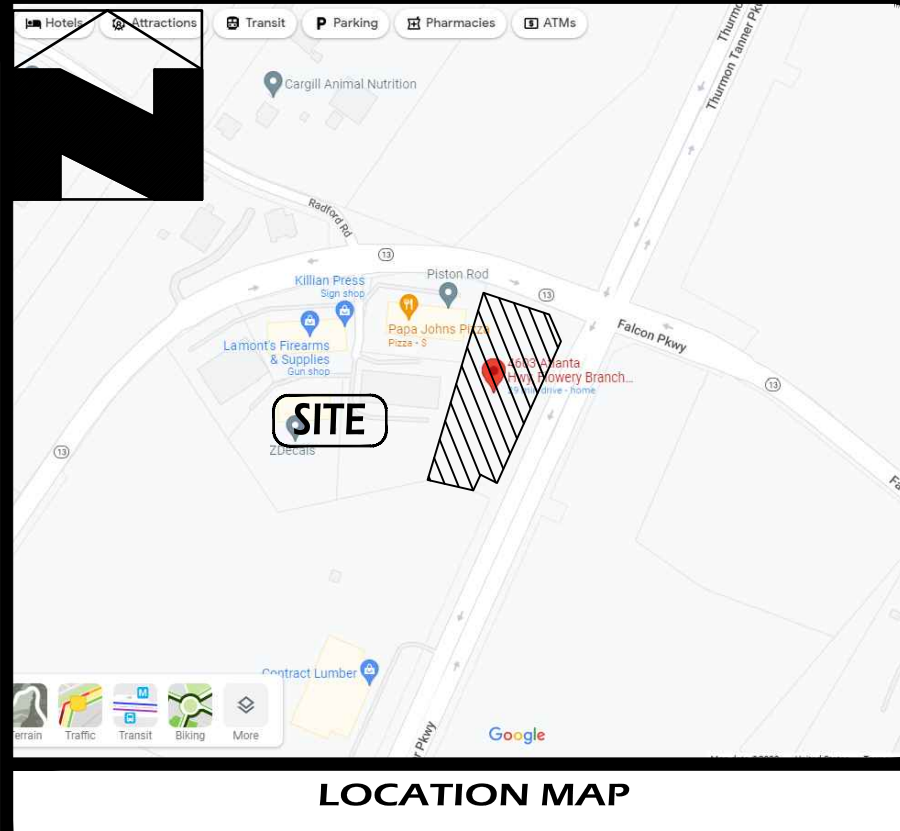
1618 LAND HOLDINGS LLC
1550 N BROWN RD SUITE 130,
LAWRENCEVILLE, GA 30043
LEAH CRUZ

24-HR CONTACT:

YUSUF ALI
770.617.4527

ENGINEER:

EVANS DESIGN GROUP, INC
4755 SUMMER SONG COURT
BUFORD, GA 30519
678.207.6830 (Ph)
CONTACT: JON M. EVANS, P.E.



LOCATION MAP

GRAPHIC SCALE
0 15 30 60 90
(IN FEET)
1 inch = ft. 30

Evans Design Group, Inc.
Civil Engineering /
Site Planning /
Land Development Services
4755 Summer Song Court
Buford, GA 30519
(Ph) 678.207.6830
jevans@evansdg.com

JON M. EVANS
REGISTERED PROFESSIONAL ENGINEER
NO. 28681
STATE OF GEORGIA
12-22-22
CSWCC LEVEL II CERT. # 10877

PROJECT NAME
**FLOWERY
BRANCH
C-STORE &
RETAIL**

**4603 ATLANTA HWY
I.I. 92, 8th DIST.
CITY OF FLOWERY
BRANCH, GEORGIA**

DATE:
6/16/22

DESIGN BY	DRAWN BY	CHECKED BY
JME	JME	JME

☒ Not Released For Construction
☐ Released For Construction

OWNER/DEVELOPER

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REVISIONS	
1	12-22-22
FIRST SUBMITTAL	

JOB NUMBER:
22-029

SHEET TITLE
**LANDSCAPE
PLAN**
C-11

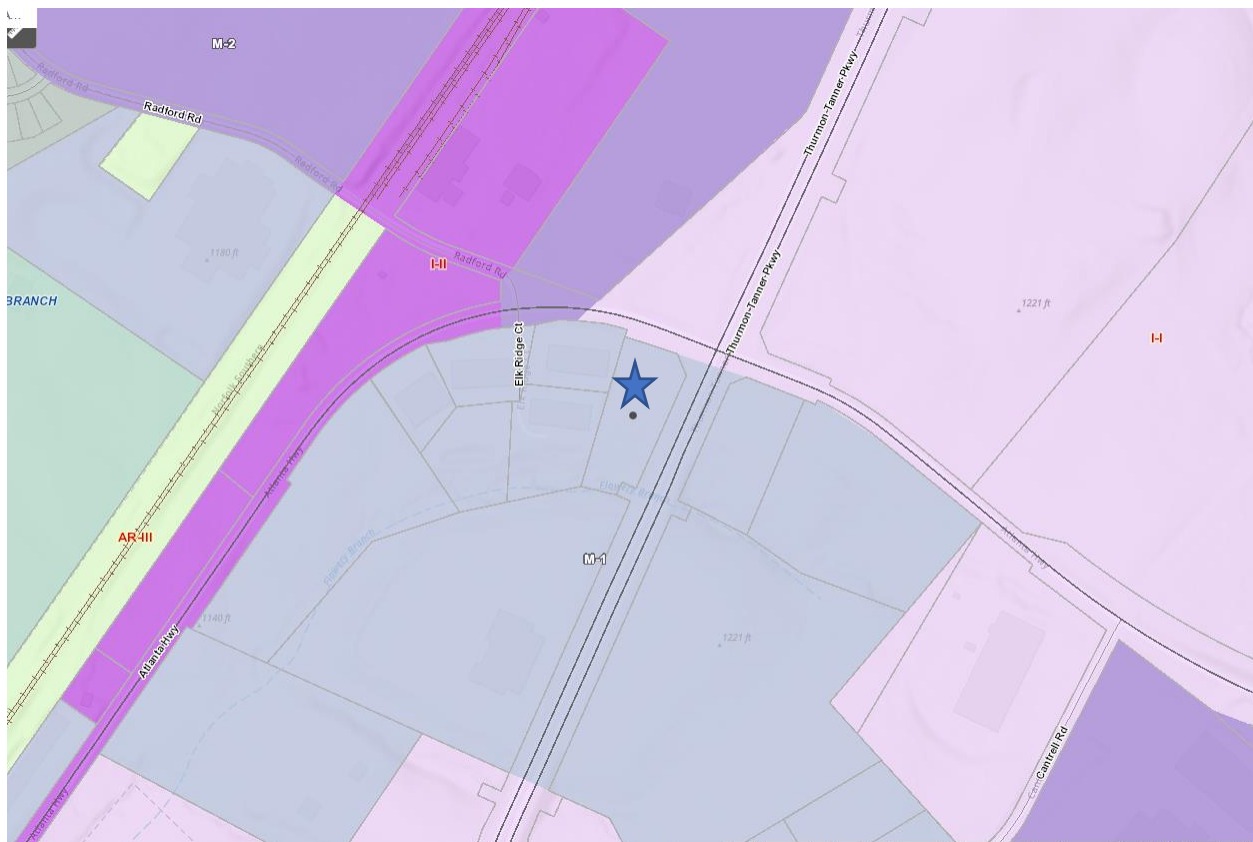


VARIANCE
4603 Atlanta Highway
Parcel# 08092 000001

Applicant is Stanton E. Porter; the current owner of the property is 1618 Land Holdings. LLC.

Variance from the requirements set forth in the City of Flowery Branch Zoning Ordinance;
Article 10, Development Requirements and Guidelines section 10.9 (f):
Convenience stores shall locate gas pumps behind the principal structure in order to effectively screen the pumps from view of the street.

The 2.21 +/- property is currently zoned Light Industrial (M1) and the use (gas station) is inherently allowed.







Public Hearing Published 03/15/2023
Public Hearing 04/20/2023

First Reading 05/04/2023
Adopted 06/01/2023

ORDINANCE 693

AN ORDINANCE GRANTING A VARIANCE FROM THE REQUIREMENTS OF ARTICLE 10, SECTION 10.9.(F) OF THE FLOWERY BRANCH ZONING ORDINANCE TO 4603 ATLANTA HIGHWAY, TAX PARCEL IDENTIFICATION NO.08092 000001, OWNED BY 1618 LAND HOLDINGS, LLC, AS SHOWN ON EXHIBIT "A", DESCRIBED ON EXHIBIT "B", AND SUBJECT TO THE CONDITIONS SET FORTH IN EXHIBIT "C", BY ALLOWING FUEL PUMPS TO BE LOCATED IN FRONT OF THE PRIMARY STRUCTURE; PROVIDING FOR SEVERABILITY; REPEALING CONFLICTING ORDINANCES; PROVIDING FOR AN EFFECTIVE DATE; AND FOR ALL OTHER LAWFUL PURPOSES.

WHEREAS, 1618 Land Holdings, LLC. has submitted a written and signed application to the City of Flowery Branch, Georgia requesting a specific variance for property located at 4603 Atlanta Highway; and

WHEREAS, a survey and complete description of the property subject to the requested variance is included in the application; and

WHEREAS, the City Council of the City of Flowery Branch, Georgia held a public hearing on April 20, 2023, to consider the application, which was duly noticed as prescribed by law and published in the Gainesville Times, as shall be set forth in the minutes of said meeting; and

WHEREAS, the City Council of the City of Flowery Branch, Georgia has considered the subject variance application of 1618 Land Holdings, LLC, in conjunction with the standards set forth in Article 37, Section 37.5 of the Zoning Ordinance.

NOW THEREFORE, THE COUNCIL OF THE CITY OF FLOWERY BRANCH HEREBY ORDAINS AS FOLLOWS:

SECTION 1. FINDINGS:

The City Council finds that the proposed variance from the City of Flowery Branch Zoning Ordinance Article 10, Section 10.9.(f) is consistent with the adopted standards for governing the exercise of the zoning power consistent with O.C.G.A. § 36-66-5 and requirements of Article 37, Section 37.5 of the City of Flowery Branch Zoning Ordinance as identified below.

Sec. 37.5. Criteria for Granting Variances.

Any applicant requesting consideration of a variance to any provision of the zoning ordinance shall provide a written justification that one or more of the following condition(s) exist. The City Council shall not approve a variance application unless it shall have adopted findings that one or more of the following conditions exist:

- (a) There are extraordinary and exceptional conditions or practical difficulties pertaining to the particular piece of property in question because of its size, shape or topography that are not applicable to other lands or structures in the same district;

- (b) A literal interpretation of the provisions of this ordinance would effectively deprive the applicant of rights commonly enjoyed by other properties of the district in which the property is located;
- (c) Granting the variance requested will not confer upon the property of the applicant any special privileges that are denied to other properties of the district in which the applicant's property is located;
- (d) The requested variance will be in harmony with the purpose and intent of this ordinance and will not be injurious to the neighborhood or to the general welfare;
- (e) The special circumstances are not the result of the actions of the applicant;
- (f) The variances requested are the minimum variances that will make possible the proposed use of the land, building, or structure in the use district proposed; and
- (g) The variance shall not permit a use of land, buildings or structures, which is not permitted by right in the zoning district or overlay district involved.

SECTION 2. LEGAL DESCRIPTION, VARIANCES GRANTED AND CONDITIONS IMPOSED:

The properties as shown in attached Exhibit "A" and as legally described in Exhibit "B" shall be granted the following variance from the requirements set forth in the Flowery Branch Zoning Ordinance Article 10, Section 10.9.(f):

1. Fuel pumps shall be allowed to be placed in front of the primary structure

Conditions set forth in Exhibit "C" are imposed on said property. Said Exhibits are incorporated by reference as if fully set forth herein.

SECTION 3. SEVERABILITY.

Should any section or provision of this Ordinance be declared invalid or unconstitutional by any court of competent jurisdiction, such declaration shall not affect the validity of this Ordinance as a whole or any part thereof which is not specifically declared to be invalid or unconstitutional.

Public Hearing Published 03/15/2023
Public Hearing 04/20/2023

First Reading 05/04/2023
Adopted 06/01/2023

SECTION 4. EFFECTIVE DATE.

The effective date of this Ordinance shall be upon adoption by the City Council of the City of Flowery Branch, Georgia.

SECTION 5. REPEALER.

All ordinances and parts of ordinances in conflict herewith are hereby repealed to the extent of the conflict.

Adopted this 1st day of June 2023.

Edward R. Asbridge, Mayor

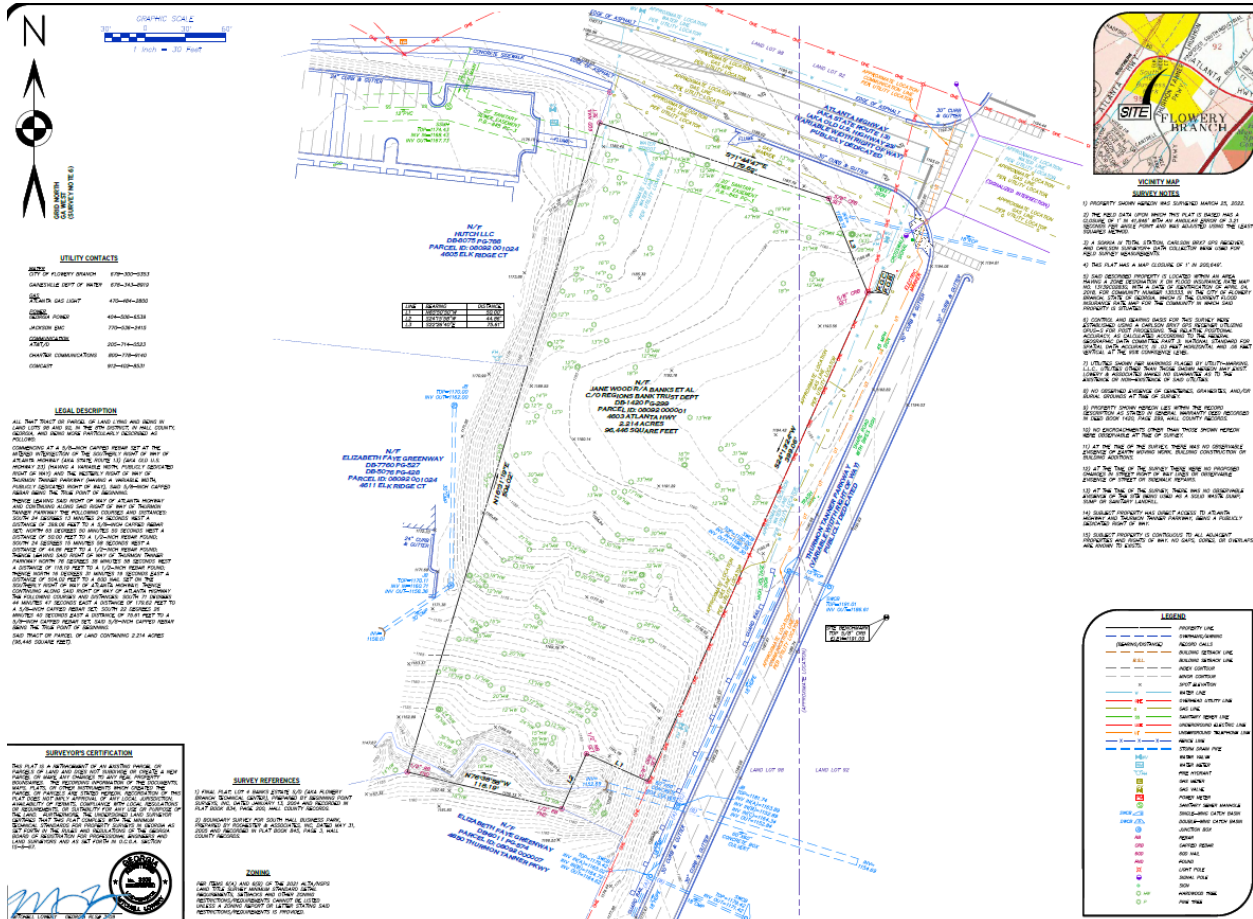
ATTEST:

Shelia R. Cooper, City Clerk

APPROVED AS TO FORM:

Karen Thomas, City Attorney

Exhibit "A"



Public Hearing Published 03/15/2023
Public Hearing 04/20/2023

First Reading 05/04/2023
Adopted 06/01/2023

Exhibit "B"

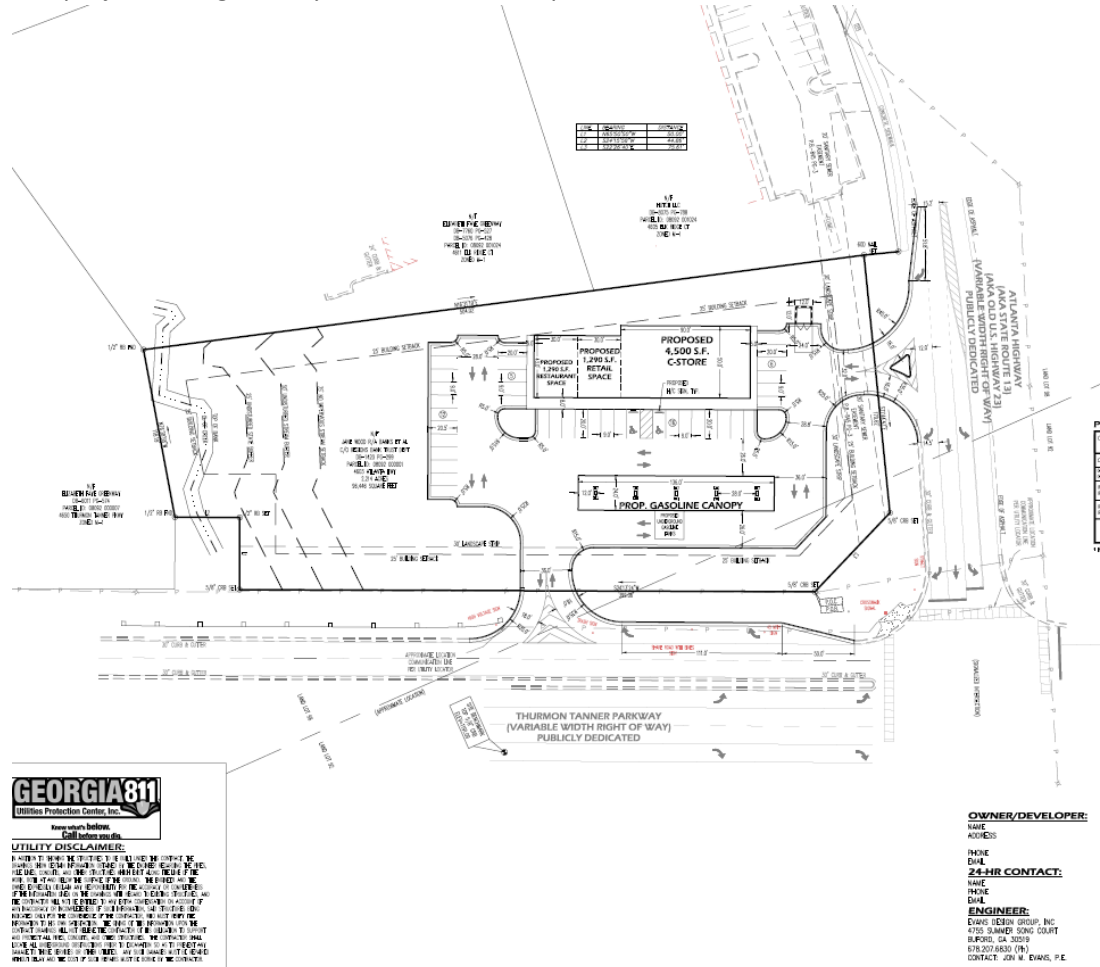
LEGAL DESCRIPTION

All that tract or parcel of land lying and being in Land Lots 92 and 98, 3th Land District, Hall County, Georgia, being Lot 3 as shown on a survey for South Hall Business Park, dated September 20, 2001, last revised October 3, 2001, prepared by Rochester & Associates, Inc., Georgia Registered Land Surveyors, and recorded in Plat Slide 805, page 105A of the Hall County, Georgia Plat Records, last revised at Plat Book 845, Page 3, Hall County, Georgia Records. Said plat and the record thereof are incorporated herein by reference for a more complete description of said property.

Exhibit "C"

Conditions of Zoning

1. The project shall generally adhere to the site plan as shown below:



2. Sewer shall be provided to the project by the City of Flowery Branch.
3. Water shall be supplied by the City of Gainesville.
4. Welcome to Flowery Branch monument sign. Sign must be approved by City Staff prior to the issuance of a certificate of occupancy.
5. Exterior building material shall be brick and stone on all 4 sides.
6. The dumpster enclosure shall be brick.
7. Gas canopy pillars shall be brick.
8. Detailed professionally drawn landscape plan required to be submitted and approved by staff prior to the issuance of a building permit.
9. A lighting plan shall be submitted and approved by staff prior to the issuance of a building permit.

Public Hearing Published 03/15/2023
Public Hearing 04/20/2023

First Reading 05/04/2023
Adopted 06/01/2023

10. Five (5) foot sidewalks required along the property length of Thurmon Tanner and Atlanta Highway.
11. The following uses shall be prohibited in the additional retail space attached to the primary structure (convenience store): vape or smoke shop, massage parlor, tattoo shop, or health spa.
12. Development shall be serviced by right-in-right out entrance/exit as shown on approved plan.



FLOWERY BRANCH CITY COUNCIL

EXECUTIVE SUMMARY



SUBJECT: Consider the Second Reading of Ordinance 694, a Text Amendment Implementing Zoning Ordinance Changes.

COUNCIL MEETING DATE: June 1, 2023

HISTORY:

City Council requested certain changes and updates to the current zoning ordinance to better present the standards and expectations of the City's vision for responsible development. Additionally, there are legal updates that need to be adopted regarding advertising time lines for rezonings, conditional use permits, and variances.

FACTS AND ISSUES:

Articles 6, 8, 9, 10, 33, 34, 37, and 38 of the Zoning Ordinance are attached as part of Ordinance 694.

OPTIONS:

.

IF FUNDING IS INVOLVED, ARE FUNDS APPROVED IN THE CURRENT BUDGET:

No

AMOUNT AND SOURCE OF FUNDS:

RECOMMENDATION:

Approve the Second Read of Ordinance 694

SAMPLE MOTION:

I make a motion to approve Ordinance 694.

COLLABORATING DEPARTMENT:

DEPARTMENT: Planning

Prepared by: Shelia Cooper

ATTACHMENTS

- [Ordinance 694 JUNE 1.pdf](#)

ORDINANCE NO. 694

AN ORDINANCE AMENDING THE ZONING ORDINANCE OF THE CITY OF FLOWERY BRANCH, GEORGIA, ORDINANCE NO. 694, TO STRIKE ARTICLE 6, (AGRICULTURAL AND CONVENTIONAL REIDENTIAL ZONING DISTRICTS), SECTIONS 6.1, 6.2, 6.3, 6.4, TABLE 6.1, AND TABLE 6.2, ARTICLE 8 (PUD), ARTICLE 9 (NONRESIDENTIAL ZONING DISTRICTS) SECTION 9.3, AND TABLE 9.1, ARTICLE 10 (DEVELOPMENT REQUIREMENTS AND GUIDELINES) ADDING SECTIONS 10.21 (RESIDENTIAL STREET DESIGN REQUIREMENTS) AND SECTION 10.22 (OPEN SPACE REQUIREMENTS), ARTICLE 33 (TEXT AMENDMENTS), ARTICLE 34 (REZONING AND CONDITIONAL USE APPLICATIONS), ARTICLE 37 (VARIANCES), AND ARTICLE 38 (ADMINISTRATIVE VARIANCES), TO BE REPLACED BY NEW ARTICLES , SECTIONS AND TABLES (AS SHOWN ON ATTACHED EXHIBIT “A”); PROVIDING FOR SEVERABILITY, REPEALING CONFLICTING ORDINANCES, AND FOR ALL OTHER LAWFUL PURPOSES.

WHEREAS, the Zoning Ordinance of the City of Flowery Branch, Georgia, authorizes the amendment of the text of the City of Flowery Branch Zoning Ordinance by the City Council; and

WHEREAS, the Zoning Administrator is authorized, pursuant to Section 33.2 of the Zoning Ordinance, to initiate an amendment to the zoning ordinance for consideration by the City Council; and

WHEREAS, it is in the public interest to update existing codes; and

WHEREAS, the changes to the code enhance the health, safety, and overall general welfare of the citizens of Flowery Branch; and

WHEREAS, the City has complied with the Zoning Procedures Law and the requirements of Article 33 of the Zoning Ordinance with regard to text amendments, including the holding of an advertised public hearing; and

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF FLOWERY BRANCH HEREBY ORDAINS THAT THE FLOWERY BRANCH ZONING ORDINANCE IS AMENDED AS FOLLOWS:

SECTION 1. AMENDMENT.

Strike Article 6, (Agricultural and Conventional Residential Zoning Districts), Sections 6.1, 6.2, 6.3, 6.4, Table 6.1, and Table 6.2, Article 8 (PUD), Article 9 (Nonresidential Zoning Districts) Section 9.3, and Table 9.1, Article 10 (Development Requirements and Guidelines) adding Section 10.21 (Residential Street Design Requirements) and Section 10.22 (Open Space Requirements), Article 33 (Text Amendments), Article 34 (Rezoning and Conditional Use

Applications), Article 37 (Variances), and Article 38 (Administrative Variances), replacing same articles, sections, and tables as shown on Exhibit “A”.

SECTION 2. SEVERABILITY.

Should any section or provision of this Ordinance be declared invalid or unconstitutional by any court of competent jurisdiction, such declaration shall not affect the validity of this Ordinance as a whole or any part thereof which is not specifically declared to be invalid or unconstitutional.

SECTION 3. EFFECTIVE DATE.

The effective date of this Ordinance shall be upon approval by the City Council of the City of Flowery Branch, Georgia.

SECTION 4. REPEALER.

All ordinances and parts of ordinances in conflict herewith are hereby repealed to the extent of the conflict.

Approved this XXX day of June 2023.

Edward R. Asbridge, Mayor

ATTEST:

Shelia R. Cooper, City Clerk

APPROVED AS TO FORM:

Karen Thomas, City Attorney

Exhibit "A"

ARTICLE 6
AGRICULTURAL AND CONVENTIONAL
RESIDENTIAL ZONING DISTRICTS

ARTICLE 6. - AGRICULTURAL AND CONVENTIONAL RESIDENTIAL ZONING DISTRICTS

Sec. 6.1. - A, Agricultural District.

- (a) *Purpose and Description.* The Agricultural District is established to maintain those areas within the City of Flowery Branch that are not intended to convert to urban or suburban development in the short term.
- (b) *Permitted and Conditional Uses.* Permitted and conditional uses shall be as provided in Table 6.1, "Permitted and Conditional Uses in Agricultural and Conventional Residential Zoning Districts."
- (c) *Dimensional Requirements.* Dimensional requirements shall be as provided in Table 6.2, "Dimensional Requirements in Agricultural and Conventional Residential Zoning Districts."
- (d) *Design Requirements.* See Articles 10, 12 and 40 of this Zoning Ordinance.

Sec. 6.2. – R-1, Residential, Detached Single Family, Low-Density District.

- (a) *Purpose and Description.* This zoning district is established to accommodate single-family residences at low suburban densities and to protect the future development of land in accordance with the comprehensive plan. This district consists predominantly of detached single-family dwellings (site built or modular) and is "" intended to implement the "suburban residential" character area established in the comprehensive plan. The regulations that apply to the R-1 district are designed to encourage the formation and continuance of a stable, healthy, and attractive living environment for its residents.
- (b) *Permitted and Conditional Uses.* Permitted and conditional uses shall be as provided in Table 6.1, "Permitted and Conditional Uses in Agricultural and Conventional Residential Zoning Districts."
- (c) *Dimensional Requirements.* Dimensional requirements shall be as provided in Table 6.2, "Dimensional Requirements in Agricultural and Conventional Residential Zoning Districts."
- (d) *Design Requirements.* See Articles 10, 12 and 40 of this Zoning Ordinance.

Sec. 6.3. - R-2, Residential, Detached Single Family

- (a) *Purpose and Description.* This zoning district is established to accommodate single-family residences at moderate suburban densities and to protect the future development of land in accordance with the comprehensive plan. This district consists of detached single-family dwellings (site built or modular) and is intended to implement the "suburban residential" character area established in the comprehensive plan. The regulations that apply to the R-2

district are designed to encourage the formation and continuance of a stable, healthy, and attractive living environment for its residents.

- (b) *Permitted and Conditional Uses.* Permitted and conditional uses shall be as provided in Table 6.1, "Permitted and Conditional Uses in Agricultural and Conventional Residential Zoning Districts."
- (c) *Dimensional Requirements.* Dimensional requirements shall be as provided in Table 6.2, "Dimensional Requirements in Agricultural and Conventional Residential Zoning Districts."
- (d) *Design Requirements.* See Articles 10, 12 and 40 of this Zoning Ordinance.

Sec. 6.4. - MHP, Manufactured Home Park District.

- (a) *Purpose and Description.* This zoning district is intended exclusively for the placement of manufactured homes in manufactured home parks and for the development of land in accordance with the comprehensive plan. This district is also intended to implement the "urban density community" character area established in the comprehensive plan, as it pertains to existing manufactured home park use. The regulations that apply to the MHP district are designed to encourage the formation and continuance of a stable, healthy, and attractive living environment for its residents.
- (c) *Permitted and Conditional Uses.* Permitted and conditional uses shall be as provided in Table 6.1, "Permitted and Conditional Uses in Agricultural and Conventional Residential Zoning Districts."
- (d) *Dimensional Requirements.* Dimensional requirements shall be as provided in Table 6.2, "Dimensional Requirements in Agricultural and Conventional Residential Zoning Districts." Dimensional requirements such as specifications for manufactured home spaces shall be as designated on an approved site plan.
- (e) *Limitations on Rezoning.* There shall be no rezoning to the MHP zoning district, unless it is contiguous to an existing MHP zoning district, or unless it is designated MHP at the time of annexation into the city limits.
- (f) *Design Requirements.* See Articles 10 and 40 of this Zoning Ordinance.

Table 6.1
Permitted and Conditional Uses in
Agricultural and Conventional Residential Zoning Districts
(P = Permitted Use C = Conditional Use X = Prohibited)

Use	A	R-1	R-2	MHP
Accessory apartment, attached	X	X	C	X
Accessory apartment, detached	X	C	C	X
Accessory building, structure, or use	P	P	P	P
Agriculture, production of field crops, fruits, nuts, and vegetables	P	P	X	X
Agriculture, raising of poultry or livestock	P	C	X	X
Cemetery	P	C	C	X
Church, temple, synagogue, or place of worship, including specified accessory uses (see Sec. 14.3) (Ord. 348-11)	C	C	C	X
Club or lodge, nonprofit, sponsored by a civic or similar organization	C	C	C	X
Community recreation	P	P	P	P
Conservation areas and passive recreational facilities	P	P	P	P
Conservation subdivision	C	C	P	P
Construction field office (temporary use)	X	X	P	P
Dwelling, single-family detached, fee-simple	P	P	P	X
Dwellings, single-family detached, condominium	X	X	X	X
Dwelling, townhouse (single-family attached, fee-simple)	X	X	X	X
Dwelling, two-family (duplex)	X	X	X	X
Dwelling, multi-family (apartment, attached residential condominium)	X	X	X	X
Garden, non-commercial, accessory to single-family detached dwelling	P	P	P	X
Golf course	P	P	P	X
Greenhouse, non-commercial, accessory to single-family detached dwelling	P	P	P	X
Guest house (accessory building/use)	P	P	P	X
Home occupation (Office Use Only)	P	P	P	P
Horse stables, non-commercial, as accessory to single-family residential use	P	C	X	X
Leasing or sales office for a subdivision or residential development (accessory or principal use)	P	P	P	P

Manufactured home, Class A	C	X	X	P
Use	A	R-1	R-2	MHP
Model home for single-family subdivision or townhomes (temporary)	P	P	P	X
Public or semi-public use	P	P	P	X
School, private, elementary, middle, or high (Ord. 348-11)	C	C	x	X
School, public	P	x	x	X
School, special	C	x	x	X
Temporary use	P	P	P	X

Table 6.2
Dimensional Requirements for Agricultural and
Conventional Residential Zoning Districts

Requirement (measurement unit)	A	R-1	R-2	MHP
Maximum height (feet)	75	35	35	35
Maximum height (number of stories)	3	3	3	1
Maximum density (units per acre)	0.333	2.18	4	4
Minimum lot size for detached single-family dwelling (square feet) (1)	130,680	20,000	15,000	10,000
Minimum lot size for two-family dwelling (square feet) (1)	N/A	N/A	N/A	N/A
Minimum lot size for other uses (square feet) (1)	130,680	43,560	15,000	10,000
Minimum lot width (feet)	200	90	75	50
Minimum heated floor area per dwelling unit (square feet)	1,500	2,200	1,800	1,000
Minimum front yard setback from lot line, all principal buildings (feet)	80	35	25	25
Minimum side setback, interior lot line, all principal buildings (feet)	25	25	15	20
Minimum side setback, corner lot, all principal buildings (feet)	60	35	25	20
Minimum rear setback, all principal buildings (feet)	35	25	20	20

Minimum setback, all principal or accessory buildings and structures abutting an R-1, R-2, or R-3 district (feet)	Side and rear setbacks shall apply	50		
Minimum width of natural buffer abutting R-1, R-2, or R-3 district (feet)	None			40
Minimum landscape strip required along right-of-ways for any nonresidential use if permitted (width in feet)	15	15	10	10
Minimum landscape strip required along right-of-ways for any apartment or condominium (multi-family residential) use (width in feet)	N/A	N/A	N/A	N/A
Minimum landscape strip required along side property lines for any nonresidential use if permitted (width in feet)	5	5	5	5
Maximum coverage of principal and accessory buildings (percent of lot)	25	25	35	50
Minimum landscaped open space, all principal uses except detached, single-family residential lots (percent)	20	20	15	15

(1) Where an on-site sewage system is used, minimum lot size requirements of the Hall County Environmental Health Department shall be required and may exceed these minimums.

ARTICLE 8. - MIXED-USE DEVELOPMENT DISTRICT

Sec. 8.1. - Description and Intent.

This zoning district is intended to implement certain residential and mixed-use developments in a way that meets objectives that cannot necessarily be accomplished by conventional residential zoning districts. It is specifically intended to primarily implement the “mixed use – neighborhood” character area.

Sec. 8.2. - Objectives.

The Mixed-Use Development District is intended to meet the following objectives:

- (a) Allow mixes of land uses, that are not elsewhere permitted in conventional zoning districts.
- (b) Permit a broader mix of residential housing types, including detached and attached dwellings, and specific commercial uses to be developed in one cohesive development.
- (c) Allow the development of tracts of land as single developments that are planned neighborhoods or communities, including residential and commercial uses that help to make up a community.
- (d) Preserve the natural amenities of the land through maintenance of conservation areas and open spaces within developments.
- (e) Provide a more desirable living environment than would be possible through the strict application of conventional residential zoning requirements.
- (f) Ensure that the design of building forms is interrelated and architecturally harmonious.

Sec. 8.3. - Character.

Design of detached single-family neighborhoods and residential communities in the MU district may follow principles of conventional suburban subdivision design which include curvilinear streets with some cul-de-sacs. However, MU districts are intended to differ from conventional subdivisions in that they provide greater pedestrian access and interconnections between and among units of the neighborhood.-This district is primarily envisioned to apply to urban and suburban areas with sanitary sewer and public water service, though it may be used to provide for imaginative site arrangements in rural areas at exurban/rural densities.

Chart 8.1 Permitted Uses

Dwelling, single-family detached, fee simple
Dwelling, townhome, single-family attached
Dwelling, two-family, duplexes
Dwelling, multi-family, apartment, attached residential condominium
Home Occupation (office Use Only)
Commercial uses as allowed per the Neighborhood Shopping District

Chart 8.2 Dimensional Requirements

Requirement (measurement unit)	MU
Maximum density (units per acre)	50 acres or less - 6 50+ acres - 5
Minimum lot width, single-family detached (feet)	50
Minimum heated floor area per dwelling unit (square feet)	1,200
Minimum width of natural buffer abutting R-1, R-2, or R-3 district (feet)	None
Minimum landscape strip required along right-of-ways for any nonresidential use if permitted (width in feet)	25
Minimum landscape strip required along right-of-ways for any apartment or condominium (multi-family residential) use (width in feet)	25
Minimum landscape strip required along side property lines for any nonresidential use if permitted (width in feet)	25
Minimum landscaped open space	See Article 10

Sec. 8.4. - Design Requirements

The following requirements are a part of the rezoning approval process. Substantial deviation from, or inconsistency with, the guidelines in this Section shall be grounds for denial of a rezoning to the MU district.

- (a) Open spaces. Open spaces such as town greens and public squares, within developed portions of the development, should be located and designed to add to the visual amenities of the development. Greens and squares shall be spatially defined and distributed throughout the development so that no lot is more than a walking distance of 1,500 feet from a green, square, park or open space. Greens and squares should not be less than 8,000 square feet in area. A mix of peripheral as well as internal green space shall be provided. If two MUs are developed next to each other, there should be contiguous open space between the two MU's-
- (b) Greenspace. Preserve patches of high-quality habitat, as large and circular as possible, feathered at the edges, and connected by wildlife corridors. When continuous greenspace corridors cannot be provided or must be broken up for road access or other valid reasons, patches should be retained as "stepping stones" for wildlife corridors.
- (c) Residential portion of the project must include a minimum of 50% single-family detached homes.
- (d) A minimum of 50% of the residential portion of the project must be served by rear loaded, alley fed, two car garages.
- (e) All structures are required to meet all design and material requirements of the zoning ordinance.
- (f) Additional requirements when the development exceeds 35 residential units:
 - 1. Outdoor activities space such as neighborhood pocket park(s). Pedestrian-friendly paving should be used.

Placement:

- Outdoor activities space should be designed at a location well connected with most residential units.
- Those semi-public use should be located adjacent to outdoor activities space.
- Sidewalk shall be constructed at least 8 feet wide but not exceed 15 feet wide.

2. Landscape

- An additional enhanced landscape area of not less than 3% of the total property shall be provided. This area shall consist of accent plant materials including a minimum of 10% shrubs and 15% annuals or perennials. This area should also achieve 75% coverage within 3 years of planting while following nursery recommended spacing.
- Bioswales or any storm water retention solution should be considered as part of landscaping design.
- Fountains, drinking fountains, sculptures or other public art, decorative hardscape feature are encouraged.
- Underground sprinkle systems are required.
- Parking areas and sidewalks shall be illuminated.
- Natural green space should be located to ensure maximum exposure to sunlight.

3. Parking

- Automobile parking, PTV parking, and bicycle parking, shall be provided.

4. Amenities

- Outdoor benches shall be provided 1 for every 100 linear feet of sidewalk. It is encouraged to use creative outdoor table set, designer benches, or swing set as outdoor furniture enrichment.
- Trash and recycling cans shall be provided 1 for every 100 linear feet of sidewalk.
- Recreational facilities, dog run/exercise areas and health/fitness facilities should be considered.

(g) See also Article 10 of this Zoning Ordinance.

Sec. 9.3. NS, Neighborhood Shopping District.

- (a) Purpose and Description. This zoning district is intended to implement the “commercial” designation of the future land use plan contained within the

comprehensive plan of the City of Flowery Branch. It is also intended to implement the “neighborhood commercial” character area established in the comprehensive plan.

- (b) Character. Neighborhood commercial districts are intended to provide areas for limited, small-scale commercial uses of a convenience nature serving nearby residential neighborhoods as opposed to a regional market. This district provides for attractive, non-auto related neighborhood businesses and services, with distinctive architectural features and a scale compatible with pedestrians and connected to adjacent residential neighborhoods. Uses within neighborhood commercial character areas generally occur within enclosed buildings with no outside storage and limited outdoor display of goods and merchandise. Pedestrian accessibility is promoted via sidewalks connected to nearby neighborhoods but uses are mostly reliant on the automobile for access. Nonetheless, buildings and developments are scaled to be compatible with and promote pedestrian activity. Entrances, frontages, and building façades are softened with landscaping and low-lying identification signs.
- (c) Permitted and Conditional Uses. Permitted and conditional uses shall be as provided in Table 9.1, “Permitted and Conditional Uses in Nonresidential Zoning Districts.” Auto-related, highway-oriented commercial uses are not permitted. Neighborhood commercial districts are not intended to permit or accommodate automotive uses or other types of more intensive highway business activities, or those uses that generate excessive traffic, noise, odors, pollution, safety hazards, or other adverse impacts which would detract from the desirability of adjacent properties for residential use.
- (d) Dimensional Requirements. Dimensional requirements shall be as provided in Table 9.2, “Dimensional Requirements in Nonresidential Zoning Districts.” Business establishments do not exceed 2,500 square feet in any one tenant space, to keep the bulk and intensity in scale with the needs of adjacent neighborhoods. Open space is limited to suburban plazas or small open spaces. A three-story height limit is imposed.

Table 9.1
Permitted and Conditional Uses in Nonresidential Zoning Districts
(P = Permitted Use C = Conditional Use X = Prohibited)

Use	O-P	INST	NS	HB	CBD	M-1	M-2
Accessory building, structure, or use	P	P	P	P	P	P	P
Adaptive reuse of a detached single-family dwelling for a personal service establishment or enclosed retail establishment	C	C	P	P	P	X	X
Adult business (see Adult Entertainment of Code of Ordinances No. 360)	X	X	X	X	X	P	P
Agricultural processing	X	X	X	X	X	X	C
Aircraft landing area	X	X	X	X	X	X	C
Animal hospital or veterinary clinic	P	P	P	P	X	X	X
Animal rendering, slaughtering, and recycling plant	X	X	X	X	X	X	X
Animal shelter	X	P	X	C	X	P	P
Apparel manufacturing	X	X	X	X	X	P	P
Art gallery	P	P	P	P	P	X	X
Asphalt plant	X	X	X	X	X	X	C
Auction house or auction yard (excluding livestock)	X	X	X	X	X	P	P
Auction house or auction yard (including livestock)	X	X	X	X	X	X	P
Automated teller machines (accessory use)	P	P	P	P	X	P	P
Automobile sales and service establishment	X	X	X	P	X	X	X
Automobile sales without service	X	X	X	P	X	X	X
Automobile service establishment without sales	X	X	X	P	X	P	P

Bank or financial institution	P	P	P	P	P	X	X
Batching plant	X	X	X	X	X	X	C
Bed and breakfast inn	P	P	P	P	P	X	X
Big box commercial building	X	X	X	C	X	C	C
Borrow site	X	C	X	C	X	X	P
Botanical garden	P	P	P	C	X	X	X
Bottling or canning plant	X	X	X	X	X	C	P
Brewery or distillery	X	X	X	X	X	P	P
Broadcasting studio	P	P	P	P	X	P	P
Building material sales	X	X	X	C	X	P	P
Building sales establishment	X	X	X	C	X	P	P
Bulk storage	X	X	X	X	X	X	P
Business service establishment, not exceeding 2,500 square feet of gross floor area	C	C	P	P	P	P	P
Business service establishment, more than 2,500 square feet of gross floor area	X	X	X	P	P	P	P
Camp or campground	X	C	X	C	X	X	X
Car wash	X	X	X	C	X	P	P
Caretaker's residence	X	X	X	C	C	P	P
Carnival	X	X	X	C	X	X	P
Cemetery or mausoleum	X	P	X	C	X	P	P
Church, temple, synagogue, or place of worship, including specified accessory uses (see Sect. 14.3) (Ord. 348-11)	P	P	C	P	X	C	C
Clinic	P	P	P	P	X	X	X
Club or lodge, nonprofit, sponsored by a civic or similar organization	P	P	C	P	X	C	C

Club, private (Ord. 348-11)	X	C	X	C	X	X	X
Cold storage plant or frozen food locker	X	X	X	X	X	P	P
Co-generation facility	X	X	X	X	X	C	C
College or university (Ord. 348-11)	C	P	X	C	X	C	C
Commercial recreational facility, indoor (Ord. 348-11)	X	X	C	P	X	C	C
Commercial recreational facility, outdoor	X	X	X	C	C	C	C
Communication tower and antenna	P	P	X	P	X	P	P
Community recreation area	P	P	P	P	P	P	P
Composting facility	X	X	X	X	X	X	P
Use	O-P	INST	NS	HB	CBD	M-1	M-2
Conservation areas and passive recreational facilities	P	P	P	P	P	P	P
Construction field office and/or yard (temporary use)	X	P	X	P	X	P	P
Continuing care retirement community	C	P	X	P	C	X	X
Contractor's establishment	X	X	X	P	X	P	P
Convenience store, with or without gasoline pumps	X	X	X	C	X	X	X
Cottage industry	P	P	P	P	P	P	P
Crematorium in conjunction with a funeral home or mortuary (Ord. 348-13)	X	C	X	C	X	P	P
Crematorium not in conjunction with a funeral home or mortuary (Ord. 348-13)	X	X	X	X	X	X	P
Crisis center	C	P	X	P	X	P	P
Custom order shop	X	X	P	P	P	P	P
Day care center serving no more than 17 persons	P	P	P	P	X	C	C

Day care center serving 18 persons or more	X	P	C	P	X	C	C
Distribution center, including truck terminals	X	X	X	C	X	P	P
Dry cleaning plant	X	X	X	C	X	P	P
Dwelling, single-family detached, fee-simple	P	P	X	X	P	X	X
Dwelling, single-family detached, condominium	P	P	X	X	P	X	X
Dwelling, townhome (single-family attached fee-simple)	X	X	X	X	P	X	X
Dwelling, multi-family	X	X	X	X	C	X	X
Dwelling, two-family (duplex)	C	C	X	X	X	X	X
Dwelling, located within a building containing a nonresidential principal use	X	X	X	X	X	X	X
Explosives storage	X	X	X	X	X	X	C
Exterminating and pest control business or disinfecting service	X	X	C	P	X	P	P
Extraction and removal of sand, gravel, top soil, clay, dirt, precious metals, gems, and minerals	X	X	X	X	X	X	C
Fairgrounds	X	P	X	X	C	P	P
Finance, insurance, and real estate establishment, 2,500 square feet or less of gross floor area per establishment	P	P	P	P	P	P	P
Finance, insurance, and real estate establishment, more than 2,500 square feet of gross floor area per establishment	P	P	P	P	P	X	X
Food processing plant	X	X	X	X	X	X	P
Fuel oil distributor	X	X	X	X	X	P	P
Funeral home or mortuary	X	X	X	C	X	P	P
Gas tank sales	X	X	X	C	X	X	P
Greenhouse (commercial)	X	X	X	P	X	P	P

Group home	C	P	X	P	X	X	X
Growler							
Gym or exercise facility, not open 24 hours a day	P	P	P	P	P	P	P
Gym or exercise facility open 24 hours a day	P	P	X	P	P	P	P
Hazardous waste receiving, handling, and/or disposal facility, or volatile organic liquid handling and storage	X	X	X	X	X	X	C
Health spa	X	X	X	P	P	P	P
Hospital	C	P	X	P	C	C	C
Incinerator	X	X	X	X	X	X	C
Institutional residential living and care facility, serving no more than 17 persons	P	P	P	P	X	X	X
Institutional residential living and care facility, serving 18 persons or more	C	P	X	P	X	X	X
Junk/salvage yard	X	X	X	X	X	X	C
Kennel	X	X	X	P	X	P	P
Laboratory	P	P	C	P	X	P	P
Landfill (sanitary, construction/demolition, inert waste)	X	X	X	X	X	X	C
Landscaping company	X	X	X	P	X	P	P
Live/work unit	C	X	C	C	P	P	P
Lodging service (hotel, motel, motor hotel, inn)	X	C	X	P	P	X	X
Logging yard	X	X	X	X	X	X	P
Lumber yard	X	X	X	C	X	P	P
Machine shop	X	X	X	P	X	P	P
Manufactured home, "Class A"	X	X	X	X	X	X	X
Manufactured home other than "Class A"	X	X	X	X	X	X	X

Manufactured home park	X	X	X	X	X	X	X
Manufacturing, ceramics	X	X	X	X	X	C	P
Manufacturing, cosmetics or toiletries	X	X	X	X	X	P	P
Manufacturing, coating of cans, coils, fabrics, vinyl, metal furniture, appliance surfaces, wire, paper, and flat wood paneling	X	X	X	X	X	C	C
Manufacturing, electronics, camera, or photographic or communication equipment	X	X	X	X	X	P	P
Manufacturing, instrument assembly	X	X	X	X	X	P	P
Manufacturing, metal products	X	X	X	X	X	C	P
Manufacturing, pharmaceuticals and medical supplies	X	X	X	X	X	P	P
Manufacturing, textiles	X	X	X	X	X	P	P
Manufacturing, wood products	X	X	X	X	X	P	P
Manufacturing, processing, and assembling, within buildings, not otherwise specified	X	X	X	X	X	C	C
Marina	X	C	X	P	X	X	X
Materials recovery facility	X	X	X	X	X	X	C
Micro brewery	X	X	X	X	P	P	P
Mixed use building or development	C	X	P	P	P	C	X
Museum	P	P	P	P	P	P	P
Office	P	P	P	P	P	P	P
Office-warehouse	X	X	X	C	X	P	P
Open air business	X	X	X	P	C	C	C
Open storage yard (principal use)	X	X	X	C	X	P	P
Package Store	X	X					
Parking deck or structures, on-site or off-site	C	C	X	P	C	C	C
Parking lot, off-site	P	P	P	P	C	P	P

Personal service establishment	C	C	P	P	P	P	P
Petroleum bulk storage site	X	X	X	X	X	X	P
Power plant, private	X	X	X	X	X	X	C
Public or semi-public use	P	P	P	P	P	P	P
Rail yard	X	C	X	X	X	X	P
Railroad freight terminal	X	C	X	X	X	X	P
Recreational vehicle park	X	X	X	C	X	X	X
Recovered materials processing facility	X	X	X	X	X	X	C
Recycling center	X	X	X	X	X	C	C
Restaurant, excluding drive-ins or drive through facilities and fast-food restaurants as defined	X	C	P	P	P	P	P
Restaurant, including drive-ins or drive through facilities and fast-food restaurants as defined	X	X	X	P	X	C	C
Retail trade establishment, enclosed	X	X	P	P	P	P	P
Retreat center	P	P	X	P	X	X	X
Riding academy or equestrian center	X	X	X	P	X	C	C
Rooming or boarding house	C	X	X	C	X	X	X
Sawmill	X	X	X	C	X	X	P
School for the arts (Ord. 348-10; Ord. 348-11)	P	P	C	P	C	C	C
School, private, elementary, middle, or high (Ord. 348-11)	P	P	C	P	X	C	C
School, public	P	P	X	X	X	X	X
School, professional (Ord. 348-11)	P	P	C	P	X	C	C
School, special (Ord. 348-11)	P	P	X	X	X	C	C
School, trade (Ord. 348-11)	C	C	X	X	X	C	C
Self-service storage facility (mini-warehouse)	X	X	X	C	X	P	P

Service and fuel-filling station	X	X	X	P	X	P	P
Showroom	X	X	X	X	X	P	P
Slaughterhouse	X	X	X	X	X	X	C
Solid waste handling and/or transfer facility	X	X	X	X	X	X	C
Special event facility (Ord. 348-11)	C	P	C	P	X	X	X
Taxi cab and limousine service	X	X	X	X	X	X	X
Temporary use approved by the Zoning Administrator	P	P	P	P	P	P	P
Therapeutic camp	X	C	X	X	X	X	X
Tow service	X	X	X	P	X	C	P
Truck stop or truck terminal	X	X	X	C	X	X	P
Utility company	P	P	X	P	X	P	P
Use	O-P	INST	NS	HB	CBD	M-1	M-2
Utility company substation	P	P	P	P	P	P	P
Vehicle emission testing facility	X	X	X	P	X	P	P
Warehouse or storage building	X	X	X	C	X	P	P
Water plant or wastewater treatment facility	X	X	X	X	X	X	X
Wholesale trade establishment	X	X	X	C	C	P	P
Wireless telecommunications equipment	X	C	X	C	X	C	C
Wireless telecommunications facility	X	C	X	C	X	C	C
Wrecked motor vehicle compound	X	X	X	C	X	X	P
Yoga Studio	P	P	P	P	P	P	P

(Ord. 694)

10.21. Residential Street Design Requirements

10.21.1 General Landscaping Standards for Streets

The following is a list of general landscaping standards for all street landscaping. A full, detailed plan for the entire community must be submitted and approved as part of the land disturbance/civil plans.

1. Landscape Area grading and slopes shall not exceed 5:1 for turf areas and 4:1 for planting areas. If Landscape Area grading or slopes exceed these ratios, a retaining wall shall be required. All retaining walls over 4 feet in height shall be reviewed and approved by the City.
2. The minimum planting size for a tree shall be 15-gallon, with two-third (2/3) of all trees being 2" caliper or larger.
3. All street trees shall be selected from the approved City list
4. Street Trees shall be located every 25' on center spacing.
5. Secondary Trees or Accent Trees shall occur in informal groupings of three or five trees of the same species, planted between the sidewalk and adjacent land use property line. Mixed massings of flowering trees and evergreen species are required.
6. Street Trees and Secondary Trees or Accent trees shall be a combination of deciduous and evergreen trees for purposes of screening and creating seasonal change. A minimum of 30% of the Street Trees and Secondary or Accent trees on a particular street shall be evergreen species.
7. All trees planted within 10 feet of a street, sidewalk, paved trail, walkway or plaza element shall be separated by a tree root barrier to prevent damage to public improvements and private property. The tree root barrier shall be installed at time of planting of the tree.
8. A minimum distance of 10' is required between the center of a tree and all light standards.
- 9.. Shrub plantings adjacent to walls and fences shall be group massings, layered to provide visual interest. Variety in height is required. Multiple rows of layered plantings are encouraged where space is adequate.
10. All shrub planting (i.e. small, medium, large) along any Landscape Corridor and intersections containing entry monuments shall be a minimum of 5-gallon in size. When shrubs are planted to serve as a hedge or screen, the shrub shall be planted at a spacing relative to the plant species' mature width (a shrub with a four-foot-wide mature width shall be planted at four feet on center). Plants that are not commercially available in a 5-gallon size, may be substituted with a 1-gallon size.
11. When a particular size plant is specified across large sections of the proposed landscape plan, (i.e. medium shrub), the landscape architect shall use alternating groupings of plants to achieve a planting design that has different genus and species along the entire streetscape. This shall be done to prevent a monolithic plant palette extending along the street.
12. All groundcover planting shall be 1-gallon or grown in flats of up to 64 plants. Root cuttings from plants shall not be located greater than 12 inches on center spacing.

Containerized 1-gallon groundcover plants shall not be located greater than 3' on center spacing.

13. Groundcover plantings shall be located between all separated sidewalks and back of curb/right-of-way ("ROW") along all publicly maintained Landscape Corridors, or as determined by the City.
14. A 3" layer of walk-on type bark mulch shall be located in all planter areas around trees, shrubs and groundcover within all Landscape Corridors.
15. Locations of colored concrete enhanced paving shall be submitted and evaluated at the entitlement stage of each development project.
16. All bulbouts shall be planted in a combination of shrubs and groundcover, and/or concrete paving as applicable to adjacent land use.
17. All tree grates shall be located at back of curb. Tree guards shall not be installed.

10.21.2 Specific Residential Street Landscaping Requirements

1. Primary Residential Street

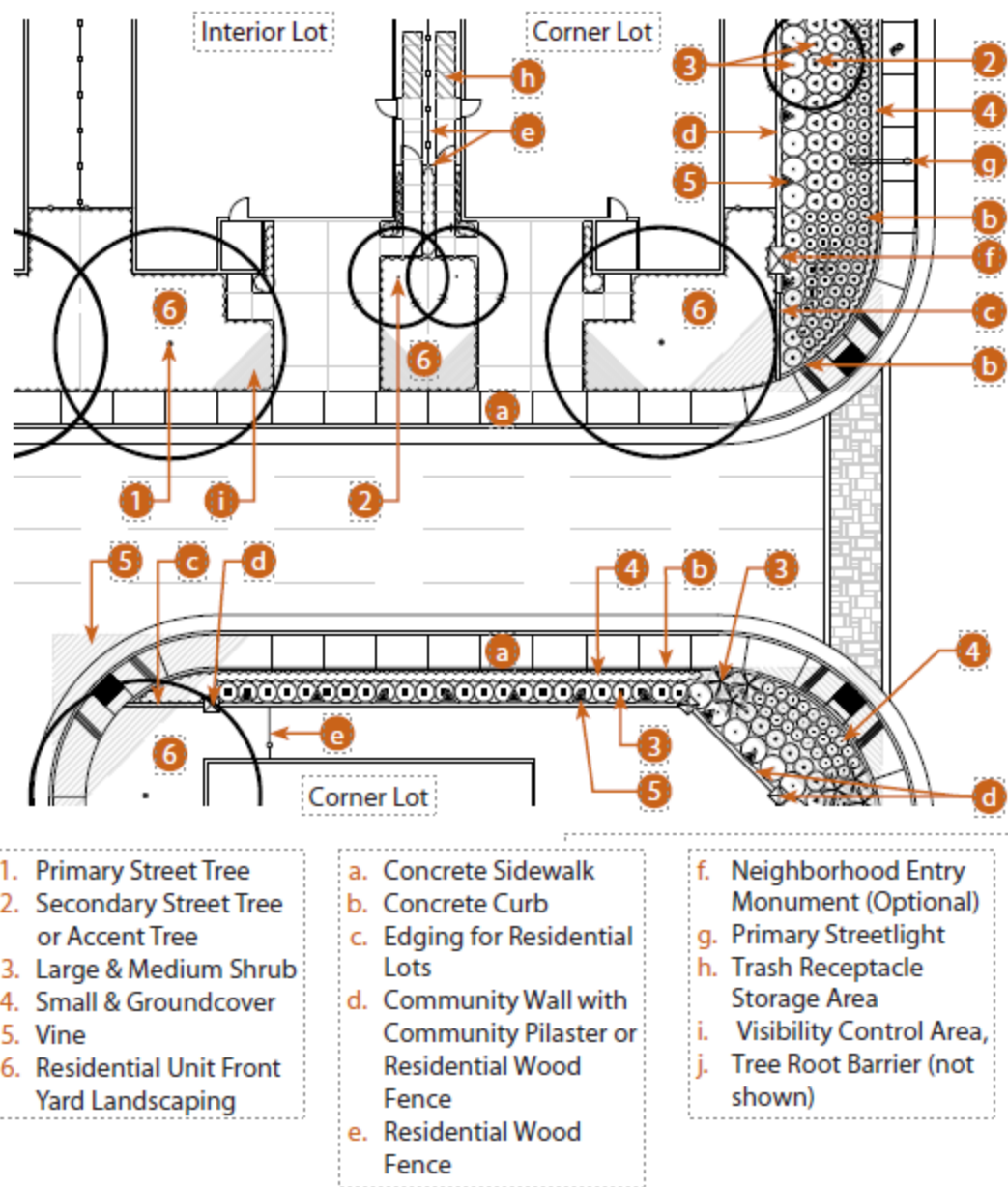
Primary Residential Streets provide access into and through the neighborhoods. When single-family residential houses back onto the street, a Community Wall is required at the property line and an additional 8' Landscape Area shall be required to provide screening of the Community Wall. In this application, all landscape improvements including the 8' Landscape Area and the landscaping within the separated sidewalk shall be considered public improvements and shall comply with all City requirements. When single-family residential houses fronts the street, the entire Landscape Area on that side of the street shall be private landscaping designed to the City's satisfaction and maintained by the landowner.

2. Local Residential Street

Local residential streets provide access into and through neighborhoods. Only residential houses will front a local residential street. Therefore, all landscape improvements shall be private landscaping designed to the City's satisfaction and maintained by the landowner.

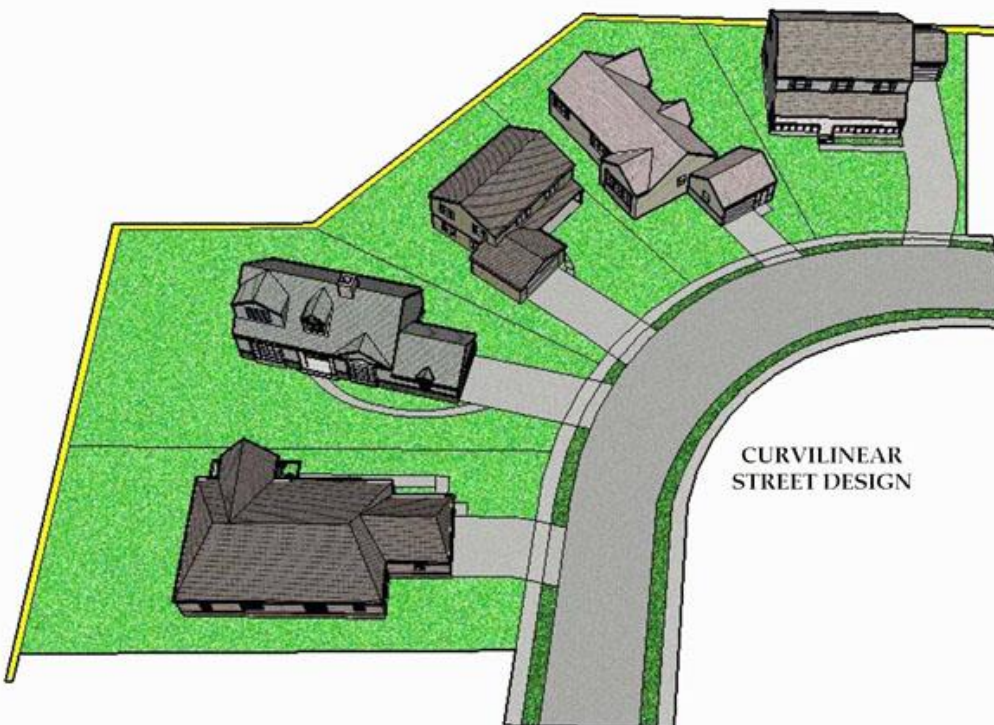
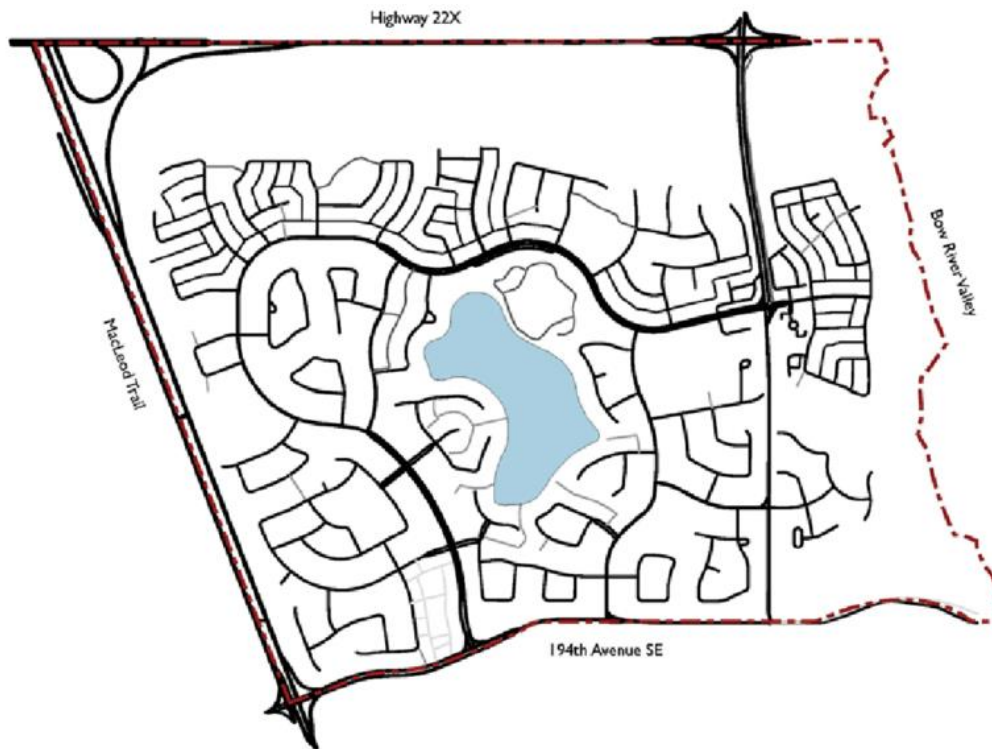
3. Corner Lot Landscaping Requirements

Residential corner lots are a critical component to the overall theme of a community. The individual residential unit improvements specified in this section are outside of the ROW for each associated street. Therefore, all landscape improvements shall be private landscaping designed to the City's satisfaction and maintained by the landowner. The standards in this chapter regarding corner lot landscaping are the minimum requirements. The builder/designer may deviate from the planting design as long as the design consistency is preserved throughout the community. Any deviation to the planting design shall be approved by the City.



10.21.3 Residential Street Design Requirements

All new residential streets shall be curvilinear. All streets more than three hundred and sixty (360) feet in length shall have at least twenty-five feet of lateral deviation from a straight course.



10.22 Open Space Requirements

Defined. Open space is the horizontal outdoor area of a site reserved to provide separation, resource protection, scenic enjoyment, recreation, or amenity. It includes two types: civic space and amenity space.

Minimum Requirements

Uses	Open Space minimum required percentage
Non-Residential (Sites Under 5 Acres)	Amenity Space + Civic Space: 15% min.
Non-Residential (Sites Over 5 Acres)	Civic Space: 10% min Amenity Space: 5% min
Residential	Civic Space: 10% min Amenity Space: 5% min

- New developments with a mix of residential and non-residential uses shall satisfy both requirements independently.

Development

- Restaurants with one or more exterior walls shall be subject to the following additional requirements:
 1. An outdoor dining area equal to at least 10% of the restaurant floor area shall be provided. When the outdoor dining area conforms to Sec. xxx it may be counted towards amenity space requirements.
 2. When the restaurant abuts a public street (including across an intervening parking lot) the required outdoor dining area shall be located along the portion of the façade facing such public street.
 3. The Director of Community Development has the authority to authorize the required outdoor dining to be placed in locations other than required by "b" above when:
 - a. There is insufficient area between the restaurant and the street to accommodate all the required outdoor dining; or
 - b. There are other unique circumstances not created by the applicant than render this requirement unfeasible.
- Civic Space. Civic space is the portion of open space for public use defined by the combination of certain physical constants including the relationships among their intended use, their size, their landscaping, and their adjacent buildings. Above-ground cistern design and appearance shall require approval by the Director of Community Development.
 1. Park. An open space available for structured or unstructured recreation. A park may be independent of surrounding buildings at its edges. Its landscape may consist of paths and trails, meadows and lawns, water bodies, runoff reduction measures such as bioretention areas, swales, cisterns, and woodlands.

Recreation fields and courts may also be included. The minimum size for a park is one acre.

2. **Square.** An open space available for unstructured recreation and civic purposes. A square is spatially defined by building or streets at its edges. Its landscape must consist of paths and trees and may also include runoff reduction measures such as bioretention areas and cisterns, lawns and non-asphalt paved surfaces. The minimum size for a square is one-half acre.
 3. **Plaza.** An open space, available for civic purposes and commercial activities. A plaza must be spatially defined by building or streets at its edges. Its landscape must consist primarily of non-asphalt paved surfaces and trees, and may include runoff reduction measures such as bioretention areas and cisterns. The minimum size for a plaza is one-quarter acre.
 4. **Pocket Park.** An open space, available for unstructured recreation. A pocket park may be spatially defined by buildings or streets at its edges. Its landscape must consist of lawn and trees and may include runoff reduction measures such as bioretention areas and cisterns. There is no minimum size for pockets parks.
 5. **Playground.** An open space designed and equipped for the recreation of children. A playground must be fenced and may include an open shelter. Playgrounds must be interspersed within residential areas, may be placed within a block, and may be included in parks and greens. There is no minimum size for playgrounds. Playgrounds may include runoff reduction measures such as bioretention and underground detention.
 6. **Performance Venues.** An open space available for outdoor performance. Performance venues typically include a stage surrounded by formal or informal seating on at least one side. Performance venues may have a combination of landscaped and hardscaped areas. The minimum size for a performance area is one-half acre.
 7. **Multi-Use Trails with Potential Connections to Offsite Trails.** A linear open space consisting of a conforming multi-use trail that includes a connection to existing or proposed off-site trails. There is no minimum size for this type of open space.
 8. **Park Overlooks.** An open space primarily intended for the viewing of parks and other open spaces. Park overlooks must include seating. There is no minimum size for park overlooks.
- **Amenity space.** Amenity space is the covered or uncovered, but unenclosed, outdoor areas of at least 100 square feet each for use by the occupants, invitees and guests of the development and specifically excluding Civic Spaces and required sidewalks. Amenity spaces may include, but are not limited to:
 1. Rooftop decks
 2. Balconies (min. 6' x 8')
 3. Patios and porches
 4. Outdoor dining areas;
 5. Pool areas;
 6. Tennis courts, basketball courts, and similar uses;
 7. Yards, lawns, and flower gardens;

8. Community gardens;
9. Hardscape areas improved for pedestrian enjoyment;
10. Wooded areas; and
11. Runoff reduction measures such as bioretention areas and cisterns.

Each amenity area approved must be available and accessible as exterior space appropriately improved for pedestrian amenity or for aesthetic appeal, subject to approved by Director of Community Development. Above-ground cistern design and appearance shall also require approval by the Director.

- Open space requirement may be met using existing and/or new open space, subject to approval of the Director of Community Development.
- Open space may be privately, or publicly owned. Private open space is open space that is owned by a corporation, individual, or homeowners' association. Public open space is open space owned by a governmental agency.
- Wetlands, lakes, ponds, streams, rivers, flood zones, and stream buffers may only be considered open space when located within one of the eight types of civic spaces identified in Sec. 2.10.C or within an amenity space that conforms Sec. 2.10.10.D, unless part of an approved stormwater management plan for the site that includes runoff reduction measures.
- No required buffer may be used to satisfy open space requirements, except for stream buffers that are improved with trails and other authorized amenities.
- Stormwater management facilities for the site may be used to satisfy open space requirements if they meet this Chapter's definition of open space. Open space credit may be given at the discretion of the Director of Community Development.
- No areas used for vehicles, except for incidental service, maintenance, or emergency actions, may be used to satisfy open space requirements.

Sec. 33.6. - Standards for Text Amendments.

The City Council shall consider the following standards in considering any proposal that would result in a change to the text of this Zoning Ordinance, giving due weight or priority to those factors that are appropriate to the circumstances of each proposal:

- (a) Is the proposed amendment consistent with the purpose of this Zoning Ordinance as stated under Article 1?
- (b) Does the proposed amendment further or is it compatible with the purpose and intent of the Comprehensive Plan?
- (c) Is the proposed amendment required to adequately address new or changing conditions or to properly implement the Comprehensive Plan?
- (d) Does the proposed amendment reasonably promote the public health, safety, morality or general welfare?

Copies of the standards for review, as outlined above, shall be printed and available for distribution to the general public at the public hearing held by the City Council.

Sec. 33.11. – Special Public Notice and Hearing Requirements for Text Amendments Pertaining to Single-Family Zoning Classifications and Multifamily Uses.

The procedures set forth in O.C.G.A. § 36-66-4(h)(1) shall apply:

- (a) Where a text amendment proposes to revise one or more zoning classifications or definitions related to single-family residential uses of property so as to authorize multifamily uses of property pursuant to such classification or definitions, or to grant blanket permission, under certain or all circumstances, for property owners to deviate from the existing zoning requirements of a single-family residential zoning; or
- (b) To any zoning decisions that provide for the abolition of all single-family residential zoning classifications within the territorial boundaries of a local government, or that result in the rezoning of all property zoned for single-family residential uses within the territorial boundaries of a local government to multifamily residential uses of property.

This Section shall not apply to zoning decisions for the rezoning of property from a single-family residential use of property to a multifamily residential use of property when the rezoning is initiated by the owner or authorized agent of the owner of such property.

Sec. 33.12. - Incorporation Clause.

This Article is intended to comply with the provisions of the Georgia Zoning Procedures Act, O.C.G.A. § 36-66-1 et seq., which Act is incorporated by reference in its entirety into this ordinance. Where any provision of this Article is in conflict with any provision of the Act, the Act shall control. Or where this Article is incomplete in having failed to incorporate a provision necessarily required for the implementation of the Act, such provision of the Act, so as to meet the mandate of the Act, shall be fully complied with.

**ARTICLE 33
TEXT AMENDMENTS**

- Sec. 33.1. Authority to Amend.
- Sec. 33.2. Initiation of Proposals for Text Amendments.
- Sec. 33.3. Application Requirements.
- Sec. 33.4. Limitation on Concurrent Consideration.
- Sec. 33.5. Notice of Public Hearing.
- Sec. 33.6. Public Hearing.
- Sec. 33.7. Decision.
- Sec. 33.8. Withdrawal of Text Amendment.
- Sec. 33.9. Refunds When Application is Withdrawn.
- Sec. 33.10. Notice of Action
- Sec. 33.11. Incorporation Clause.

Sec. 33.1. Authority to Amend.

The City Council may from time to time amend any regulation pertaining to any zoning district; or may amend any other Article or Section of this Zoning Ordinance.

Sec. 33.2. Initiation of Proposals for Text Amendments.

An application to amend the text of this Zoning Ordinance may be initiated by:

- (a) The City Council; or
- (b) Any person, firm, corporation or agency, provided said individual, firm, corporation or agency is the owner or owner's agent of the property for which an amendment is sought, and further provided that the applicant has attended a pre-application meeting with the Zoning Administrator; or
- (c) The Zoning Administrator.

Sec. 33.3. Application Requirements.

Applications to amend the text of this zoning ordinance shall require submittal of an application fee, application form, and proposed text amendment in a form approved in advance by the Zoning Administrator. The Zoning Administrator shall waive the application fee required by this Section when an application is initiated by the City Council or the Zoning Administrator.

Sec. 33.4. Limitation on Concurrent Consideration.

In cases where an applicant is proposing a text amendment to modify or create a new zoning district or to add a permitted or conditional use to an existing zoning district, and where the applicant also desires to rezone property to the new or modified zoning district (or establish a conditional use in accordance with the amendment), the two applications shall not be considered concurrently.

Sec. 33.5. Notice of Public Hearing.

At least thirty (30) but not more than forty-five (45) days prior to the date of the public hearing before the City Council, the city shall cause to be published within a newspaper of general circulation within the City a notice of the public hearing before Mayor and City Council. The notice shall state the time, place, and purpose of the public hearing.

Sec. 33.6. Public Hearing.

The City Council shall hold a public hearing on all text amendments in accordance with the public hearing procedures specified in Article 35 of this zoning ordinance.

Sec. 33.7. Decision.

- (a) Within a period ninety (90) calendar days from the date of the public hearing held by the City Council on any such application(s), the City Council shall render a decision on the application(s).

- (b) The City Council may approve or disapprove the proposed text amendment as written, or it may approve modifications of the text amendment as originally proposed.
- (c) In rendering a decision on any such application, the City Council shall consider all information supplied by the applicant and Zoning Administrator.

Sec. 33.8. Withdrawal of Text Amendment.

Any application for an amendment to the text of this zoning ordinance may be withdrawn at any time at the discretion of the person or agency initiating such a request, upon written notice to the Zoning Administrator.

Sec. 33.9. Refunds When Application is Withdrawn.

- (a) When any application for a text amendment is initiated by a party other than the City Council or the Zoning Administrator, and said text amendment is withdrawn within ten (10) calendar days from the date of approval for initiation by the Zoning Administrator, one half (1/2) of the entire application fee paid by the applicant shall be refunded to the applicant. The Administrator shall refund that portion of the application fee within thirty (30) calendar days of the date of withdrawal of the application.
- (b) No portion of a required application fee shall be refunded on any application withdrawn by an applicant later than ten (10) calendar days from the date of approval for initiation by the Zoning Administrator.

Sec. 33.10. Notice of Action.

When a text application is filed by a property owner, the Zoning Administrator shall notify the applicant of the action taken by the City Council on the application no later than five (5) working days from the date the City Council took action on said application.

Sec. 33.11. Incorporation Clause.

This Article is intended to comply with the provisions of the Georgia Zoning Procedures Act, O.C.G.A. § 36-66 et. seq., which Act is incorporated by reference in its entirety into this ordinance. Where any provision of this Article is in conflict with any provision of the Act, the Act shall control. Or where this Article is incomplete in having failed to incorporate a provision necessarily required for the implementation of the Act, such provision of the Act, so as to meet the mandate of the Act, shall be fully complied with.

**ARTICLE 34
REZONING AND CONDITIONAL USE APPLICATIONS**

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Sec. 34.1. Authority to Amend.

City Council may from time to time amend the boundaries of any zoning district established in this Zoning Ordinance, and it may consider upon application the approval, conditional approval, or denial of conditional use applications.

Sec. 34.2. Initiation of Proposals for Rezoning.

An application to amend the official zoning map of the City, thus changing the boundaries of a zoning district, may be initiated by:

- (d) City Council; or
- (e) Any person, firm, corporation or agency, provided said individual, firm, corporation or agency is the owner or owner's agent of the property for which an amendment is sought.

Sec. 34.3. Initiation of Conditional Use Applications.

An application for conditional use may be initiated by any person, firm, corporation or agency, provided said individual, firm, corporation or agency is the owner or owner's agent of the property for which the conditional use is sought.

Sec. 34.4. Application Requirements.

Applications to amend the official zoning map of this zoning ordinance or for a conditional use shall require submittal of an application requirements specified in this Section. The Zoning Administrator may waive the application fee and certain application requirements specified in this Section when an application for amendment of the official zoning map is initiated by City Council or authorized by the City Manager. (Ord. 348-11)

- (a) Application fee as specified by this ordinance or established by resolution of the City Council;
- (b) Application form furnished by the Zoning Administrator, including signed and notarized signature of property owner;
- (c) Legal description of the property;
- (d) Survey plat of the property;
- (e) Letter of intent describing the proposed use of the property or other action requested;
- (f) Site plan of the property at an appropriate engineering scale showing the proposed use and relevant information regarding proposed improvements;
- (g) Statistics regarding the proposed development;
- (h) Description of any special conditions voluntarily made a part of the request; and
- (i) Other information as may be required by the Zoning Administrator.

Sec. 34.5. Site Plan Requirements.

Applications described in this Article shall include a site plan, which shall at minimum include on the site plan information specified in this Section.

- (a) Existing and proposed buildings and structures;
- (b) Parking and internal circulation;
- (c) Proposed landscaping;
- (d) Buffers, where required; and
- (e) Other information as may be required by the Zoning Administrator.

Sec. 34.6. Development Statistics Required.

Applications described in this Article shall submit development statistics and specifications shall at minimum include on the site plan or in written form the information specified in this Section.

- (a) Maximum and proposed height of any structure;
- (b) Maximum and proposed gross square footage of the building area (nonresidential only);
- (c) Color renderings of any proposed structures;
- (d) Material list (with percentages) of any proposed structures;
- (e) Maximum and proposed number of dwelling units and minimum and proposed square footage of heated floor area for any dwelling unit (residential only);
- (f) Maximum and proposed lot coverage of building area (square feet and percent);
- (g) Minimum and proposed square footage of landscaped area (square feet and percent);
- (h) Minimum, maximum and proposed number of parking spaces; and
- (i) Other dimensional information as may be required by the Zoning Administrator.

Sec. 34.7. Analysis Requirements.

Applications to amend the official zoning map and applications for conditional uses shall provide a written analysis comparing the proposed action with the criteria in this Section. A zoning map amendment or conditional use application may be justified only if it bears a reasonable relationship to the public health, safety, morality, or general welfare, and after consideration of the analysis requirements which may in individual cases be considered criteria relevant to Zoning Administrator in making recommendations and by the City Council in the decision-making process.

- (a) Whether the proposal will permit a use that is suitable in view of the use and development of adjacent and nearby property.
- (b) Whether the proposal will adversely affect the existing use or usability of adjacent or nearby property.
- (c) Whether the property to be affected by the proposal can be used in accordance with the existing regulations and has a reasonable economic use as currently zoned.
- (d) Whether the proposal will result in a use which will or could cause an excessive or burdensome use of existing streets, transportation facilities, utilities, or schools
- (e) Whether the proposal is in conformity with the policy and intent of the comprehensive plan including but not limited to the character area map and future land use plan map.

- (f) Whether there are other existing or changing conditions affecting the use and development of the property which give supporting grounds for either approval or disapproval of the proposal
- (g) Existing use(s) and zoning of the subject property and nearby properties.
- (h) Existing value of the property under the existing zoning district classification, the extent to which the property value of the subject property is diminished by the existing zoning district, and the value of the property under the proposed zoning district; if such information is provided by the applicant or can be discerned. This consideration may include the length of time the property has been vacant or unused as currently zoned and efforts taken by the property owner(s) to use the property or sell the property under the existing zoning district classification.
- (i) Whether a proposed zoning map amendment or conditional use approval will be a deterrent to the value or improvement of development of adjacent property in accordance with existing regulations
- (j) The possible creation of an isolated zoning district unrelated to adjacent and nearby districts
- (k) Possible effects of the change in zoning district map, or change in use, on the character of a zoning district.
- (l) The possible impact on the environment, including but not limited to, drainage, soil erosion and sedimentation, flooding, air quality and water quality.
- (m) The relation that the proposed map amendment or conditional use bears to the purpose of the overall zoning scheme and the purposes of this Zoning Ordinance.

Sec. 34.8. Application Compliance and Completeness.

- (a) No application described in this Article shall be processed by the Zoning Administrator unless it complies with the procedural requirements of this Article and is found to be complete with regard to application materials, payment of fees, supportive materials, and any other application requirements specified by this Article.
- (b) If an application described and regulated by this Article does not comply with all provisions of this Article, the Zoning Administrator shall reject the application and refuse to process it.
- (c) In cases where more than one application (rezoning, conditional use, variance) pertaining to a particular piece of property is filed simultaneously, the applicant must prepare separate applications and meet all application requirements for each application filed; provided, however, that the Zoning Administrator may waive separate site plan, fees, and the letter of intent filing requirements when they would be unnecessarily duplicative.

Sec. 34.9. Administrative Processing of Applications.

The Zoning Administrator is hereby authorized to establish administrative deadlines for the receipt of applications specified in this Article. Upon a finding by the Zoning Administrator that an application is complete and complies with the requirements of this Article, including deadlines, the application shall be marked received and approved for initiation, and the date of such consideration shall be indicated in the file of the application.

Sec. 34.10. Concurrent Consideration of Applications.

- (a) Concurrent Conditional Use Applications. In cases where an applicant is proposing a rezoning (i.e., amendment to the official zoning map), and where the applicant files an application to obtain a conditional use at the same time of filing a rezoning application, the two applications may be processed simultaneously, but the conditional use application shall not be considered until the rezoning application is approved (which may be the same public hearing or meeting), since the conditional use would not otherwise be permitted without the rezoning.
- (b) Concurrent Variance Applications. In cases where an applicant is proposing a rezoning (i.e., amendment to the official zoning map), and where the applicant files an application to obtain a variance at the same time of filing a rezoning application, the two applications may be processed simultaneously, but the variance application shall not be considered until the rezoning application is approved (which may be the same public hearing or meeting), since the variance would not otherwise be permitted without the rezoning.

Sec. 34.11. Investigations and Recommendation.

- (a) Within a reasonable period of time after acceptance of a complete application, the Zoning Administrator may send the application out for review by internal municipal departments and external agencies as may be appropriate (i.e., inter-agency review). Such internal municipal agencies should include the police department and public works/utilities department. External agencies may include but are not limited to the Hall County Board of Education; Georgia Regional Transportation Authority, Georgia Department of Transportation; Georgia Mountains Regional Development Center, adjacent local governments, and various departments of Hall County Government.
- (b) Any written comments received in a timely manner shall be submitted to City Council for consideration, and any such comments shall become an official public record.
- (c) With respect to each rezoning or conditional use application, and any concurrent variances filed, the Zoning Administrator may investigate and make a recommendation regarding any or all of the relevant matters concerning the application. Any such investigation and recommendation shall if in writing be made available to the applicant and City Council and shall become an official public record.
- (d) Copies of the Zoning Administrator's findings and recommendations may be provided to the applicant prior to the public hearing and shall be available upon request to interested members of the public prior to or at public hearing on the matter.

Sec. 34.12. Notice of Public Hearing.

- (a) At least thirty (30) but not more than forty-five (45) days prior to the date of the public hearing before City Council, the city shall cause to be published within a newspaper of general circulation within the City a notice of the public hearing before Mayor and City Council, on each application that is the subject of this Article. The notice shall state the time, place, and purpose of the public hearing.
- (b) If the zoning decision of a local government is for the rezoning of property and the rezoning is initiated by a party other than the local government, then the notice shall include the location of the property, the present zoning classification, and the proposed zoning classification of the property.
- (c) Each public notice sign pertaining to a conditional use shall state the existing or proposed zoning classification and the proposed use of the property. Each public notice sign pertaining to a concurrent variance shall state the proposed zoning classification and the type of variance applied for.

Sec. 34.13. Public Notice Sign.

- (a) For all applications involving an amendment to the official zoning map, application for conditional use, or application for a concurrent variance, the Zoning Administrator shall cause to have posted in a conspicuous location on said property one (1) or more sign(s).
- (b) The public notice sign shall be erected not less than thirty (30) calendar days prior to the public hearing before the City Council pertaining to said application. Each public notice sign shall state the time, place, and purpose of the public hearing and the location of the property.
- (c) Each public notice sign pertaining to an amendment to the official zoning map shall state the present zoning classification and the proposed zoning classification of the property.
- (d) Each public notice sign pertaining to a conditional use shall state the existing or proposed zoning classification and the proposed use of the property.

Sec. 34.14. Special Notice Requirements for Halfway Houses and Related Uses.

This section is adopted pursuant to the specific requirements of the State Zoning Procedures Law. When a proposed zoning map amendment or conditional use application relates to or will allow the location or relocation of a halfway house, drug rehabilitation center, or other facility for treatment of drug dependency, a duly noticed public hearing shall be held by City Council on the proposed action in accordance with the procedures and requirements established in this zoning ordinance. In addition, the following requirements shall apply.

- (a) Such public hearing before the City Council shall be held at least six (6) months but not more than nine (9) months prior to the date of final action on the application.

- (b) All published or posted notices of the public hearing shall include a prominent statement that the proposed zoning map amendment or conditional use relates to or will allow the location or relocation of a halfway house, drug rehabilitation center, or other facility for treatment of drug dependency.
- (c) The published notice shall be at least six (6) column inches in size and shall not be located in the classified advertising section of the newspaper.

Sec. 34.15. Public Hearing.

City Council shall hold a public hearing on all rezoning and conditional use applications in accordance with the public hearing procedures specified in Article 35 of this zoning ordinance.

Sec. 34.16. Decision.

- (d) Within a period of ninety (90) calendar days from the date of the public hearing on any such application(s) described in this Article, City council render a decision on the application(s).
- (e) City Council may approve or disapprove the proposed rezoning or conditional use as applied for, or it may approve modifications of the application as originally proposed, and it may place conditions of approval on the application.
- (f) In rendering a decision on any such application, City Council shall consider all information supplied by the applicant and Zoning Administrator.

Sec. 34.17. Withdrawal of Application.

Any application described in this Article may be withdrawn at any time at the discretion of the person or agency initiating such a request, upon written notice to the Zoning Administrator.

Sec. 34.18. Refunds When Application is Withdrawn.

- (c) When any application described in this Article is initiated by a party other than City Council, and said application is withdrawn within ten (10) calendar days from the date of approval for initiation by the Zoning Administrator, one half (1/2) of the entire application fee paid by the applicant shall be refunded to the applicant. The Administrator shall refund that portion of the application fee within thirty (30) calendar days of the date of withdrawal of the application.
- (d) No portion of a required application fee shall be refunded on any application withdrawn by an applicant later than ten (10) calendar days from the date of approval for initiation by the Zoning Administrator.

Sec. 34.19. Limitations on the Frequency of Filing Applications.

- (a) No application regulated by this Article and affecting the same or any portion of property which was denied by the City Council shall be accepted for filing by a property owner until twelve (12) months shall have elapsed from the date of denial.
- (b) The same or any portion of property previously considered in a zoning map amendment or conditional use application which was denied by City Council may not again be initiated until the expiration of at least six (6) months immediately following denial.

Sec. 34.20. Notice of Action.

The Zoning Administrator shall notify the applicant of the action taken by City Council within five (5) working days from the date City Council took action on said application.

Sec. 34.21. Incorporation Clause.

This Article is intended to comply with the provisions of the Georgia Zoning Procedures Act, O.C.G.A. § 36-66 et. seq., which Act is incorporated by reference in its entirety into this ordinance. Where any provision of this Article is in conflict with any provision of the Act, the Act shall control. Or where this Article is incomplete in having failed to incorporate a provision necessarily required for the implementation of the Act, such provision of the Act, so as to meet the mandate of the Act, shall be fully complied with.

**ARTICLE 37
VARIANCES**

- Sec. 37.1. Authority to Grant Variances.
- Sec. 37.2. Initiation of Variance Applications.
- Sec. 37.3. Application Requirements.
- Sec. 37.4. Site Plan Requirements.
- Sec. 37.5. Criteria for Granting Variances.
- Sec. 37.6. Application Compliance and Completeness.
- Sec. 37.7. Administrative Processing of Applications.
- Sec. 37.8. Concurrent Variance Application.
- Sec. 37.9. Investigations and Recommendation.
- Sec. 37.10. Notice of Public Hearing.
- Sec. 37.11. Public Notice Sign.
- Sec. 37.12. Public Hearing.
- Sec. 37.13. Decision.
- Sec. 37.14. Withdrawal of Application.
- Sec. 37.15. Refunds When Application is Withdrawn.
- Sec. 37.16. Limitations on the Frequency of Filing Applications.
- Sec. 37.17. Notice of Action.

Sec. 37.1. Authority to Grant Variances.

The City Council shall have the power to authorize upon application in specific cases such variances from the terms of this zoning ordinance as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this zoning ordinance will in an individual case result in practical difficulty or unnecessary hardship, so that the spirit of this zoning ordinance shall be observed, public safety and welfare secured, and substantial justice done.

The City Council may upon application consider the approval, conditional approval, or denial of variances, subject to the requirements of this Article. In granting a variance, the City Council may impose such requirements and conditions with respect to the location, construction, maintenance and operation of any use or building, in addition to those expressly set forth in this zoning ordinance, as may be deemed necessary for the protection of adjacent properties and the public interest.

Sec. 37.2. Initiation of Variance Applications.

An application for variance may be initiated by any person, firm, corporation or agency, provided said individual, firm, corporation or agency is the owner or owner's agent of the property for which the variance is sought.

Sec. 37.3. Application Requirements.

Applications for variance shall require submittal of an application requirements specified in this Section.

- (j) Application fee as specified by this ordinance or established by resolution of the City Council;
- (k) Application form furnished by the Zoning Administrator, including signed and notarized signature of property owner;
- (l) Legal description of the property;
- (m) Survey plat of the property;
- (n) Letter of intent describing the proposed use of the property or other action requested;
- (o) Site plan of the property at an appropriate engineering scale showing the proposed use and relevant information regarding proposed improvements;
- (p) Statistics regarding the proposed development;
- (q) Written analysis of how the proposed action compares to decision criteria specified for deciding on the subject type of application;
- (r) Description of any special conditions voluntarily made a part of the request; and

- (s) Other information as may be required by the Zoning Administrator.

Sec. 37.4. Site Plan Requirements.

Applications for variance shall include a site plan, which shall at minimum include on the site plan information specified in this Section. The Zoning Administrator may waive one or more of the requirements of this Section in individual cases when he/she determines that one or more elements of the required information specified in this Section are not essential to the review process.

- (f) Existing and proposed buildings and structures;
- (g) Other information as may be required by the Zoning Administrator to describe and/or graphically depict the requested variance.

Sec. 37.5. Criteria for Granting Variances.

Any applicant requesting consideration of a variance to any provision of the zoning ordinance shall provide a written justification that one or more of the following condition(s) exist. The City Council shall not approve a variance application unless it shall have adopted findings that one or more of the following conditions exist:

- (a) There are extraordinary and exceptional conditions or practical difficulties pertaining to the particular piece of property in question because of its size, shape or topography that are not applicable to other lands or structures in the same district;
- (b) A literal interpretation of the provisions of this ordinance would effectively deprive the applicant of rights commonly enjoyed by other properties of the district in which the property is located;
- (c) Granting the variance requested will not confer upon the property of the applicant any special privileges that are denied to other properties of the district in which the applicant's property is located;
- (d) The requested variance will be in harmony with the purpose and intent of this ordinance and will not be injurious to the neighborhood or to the general welfare;
- (e) The special circumstances are not the result of the actions of the applicant;
- (f) The variance requested is the minimum variance that will make possible the proposed use of the land, building, or structure in the use district proposed; and
- (g) The variance shall not permit a use of land, buildings or structures, which is not permitted by right in the zoning district or overlay district involved.

Sec. 37.6. Application Compliance and Completeness.

- (d) No variance application shall be processed by the Zoning Administrator unless it complies with the procedural requirements of this Article and is found to be complete with regard to

application materials, payment of fees, supportive materials, and any other application requirements specified by this Article.

- (e) If the variance application does not comply with all application submittal requirements of this Article, the Zoning Administrator shall reject the application and refuse to process it.
- (f) In cases where more than one application (rezoning, conditional use, variance) pertaining to a particular piece of property is filed simultaneously, the applicant must prepare separate applications and meet all application requirements for each application filed; provided, however, that the Zoning Administrator may waive separate site plan or letter of intent filing requirements when they would be unnecessarily duplicative.

Sec. 37.7. Administrative Processing of Applications.

The Zoning Administrator is hereby authorized to establish administrative deadlines for the receipt of variance applications. Upon a finding by the Zoning Administrator that a variance application is complete and complies with the requirements of this Article, including deadlines, the application shall be marked received and approved for initiation, and the date of such consideration shall be indicated in the file of the application.

Sec. 37.8. Concurrent Variance Application.

In cases where an applicant is proposing a rezoning (i.e., amendment to the official zoning map) or conditional use, and where the applicant files an application to obtain a variance at the same time of filing a rezoning or conditional use application, the two applications may be processed simultaneously, but the variance application shall not be considered until the rezoning or conditional use application is approved (which may be the same public hearing or meeting), since the variance would not otherwise be permitted without the rezoning or conditional use.

Sec. 37.9. Investigations and Recommendation.

- (e) Within a reasonable period of time after acceptance of a complete application, the Zoning Administrator may send the application out for review by internal municipal departments and external agencies as may be appropriate (i.e., inter-agency review). Such internal municipal agencies should include the police department and public works/utilities department. External agencies may include but are not limited to the Hall County Board of Education; Georgia Regional Transportation Authority, Georgia Department of Transportation; Georgia Mountains Regional Development Center, adjacent local governments, and various departments of Hall County Government.
- (f) Any written comments received in a timely manner shall be submitted to the City Council for consideration, and any such comments shall become an official public record.
- (g) The Zoning Administrator may investigate and make a recommendation regarding any or all of the relevant matters concerning the application. Any such investigation and recommendation shall if in writing be made available to the applicant and City Council prior to the public hearing held by the City Council and shall become an official public record.

- (h) Copies of the Zoning Administrator's findings and recommendations shall be provided to the applicant prior to the public hearing and shall be available upon request to interested members of the public prior to or at public hearing on the matter.

Sec. 37.10. Notice of Public Hearing.

- (d) At least thirty (30) but not more than forty-five (45) days prior to the date of the public hearing before the City Council, the city shall cause to be published within a newspaper of general circulation within the City a notice of the public hearing before Mayor and City Council, on the variance application. The notice shall state the time, place, and purpose of the public hearing.
- (e) Each public notice sign pertaining to a concurrent variance shall state the proposed zoning classification and the section or sections of the Zoning Ordinance proposed to be varied.

Sec. 37.11. Public Notice Sign.

- (e) For all variance applications the Zoning Administrator shall cause to have posted in a conspicuous location on said property one (1) or more sign(s).
- (f) The public notice sign shall be erected not less than thirty (30) calendar days prior to the public hearing before the City Council pertaining to said application. Each public notice sign shall state the time, place, and purpose of the public hearing before the City Council, and the location of the property.
- (g) Each public notice sign pertaining to an amendment to the official zoning map shall state the section or sections of the zoning ordinance proposed to be varied.

Sec. 37.12. Public Hearing.

The City Council shall hold a public hearing on all variance applications in accordance with the public hearing procedures specified in Article 35 of this zoning ordinance.

Sec. 37.13. Decision.

- (g) Within a period of ninety (90) calendar days from the date of the public hearing held by the City Council on any variance application, the City Council shall render a decision on the application.
- (h) The City Council may approve or disapprove the variance as applied for, or it may approve modifications of the application as originally proposed, and it may place conditions of approval on the application.
- (i) In rendering a decision on any such application, the City Council shall consider all information supplied by the applicant and Zoning Administrator.

Sec. 37.14. Withdrawal of Application.

A variance application may be withdrawn at any time at the discretion of the person or agency initiating such a request, upon written notice to the Zoning Administrator.

Sec. 37.15. Refunds When Application is Withdrawn.

- (e) When a variance application is withdrawn within ten (10) calendar days from the date of approval for initiation by the Zoning Administrator, one half (1/2) of the entire application fee paid by the applicant shall be refunded to the applicant. The Administrator shall refund that portion of the application fee within thirty (30) calendar days of the date of withdrawal of the application.
- (f) No portion of a required application fee shall be refunded on any application withdrawn by an applicant later than ten (10) calendar days from the date of approval for initiation by the Zoning Administrator.

Sec. 37.16. Limitations on the Frequency of Filing Applications.

No variance application affecting the same or any portion of property which was denied by the City Council shall be accepted for filing by a property owner until twelve (12) months shall have elapsed from the date said application was denied by City Council.

Sec. 37.17. Notice of Action.

The Zoning Administrator shall notify the applicant of the action taken by the City Council on the application no later than five (5) working days from the date the City Council took action on said application.

ARTICLE 38. - ADMINISTRATIVE VARIANCES^{[101](#)}

Footnotes:

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Editor's note— [Ord. No. 348-18](#), § 1 (Exh. A), adopted Sept. 6, 2018, repealed former Art. 38, §§ 38.1—38.12, and enacted a new Art. 38 as set out herein. Former Art. 38 pertained to similar subject matter and derived from Ord. No. 348-14, § 1, 3-16-2017.

Sec. 38.1. - Authority.

The Director of Planning and Community Development shall have the power to authorize upon application in specific cases such administrative variances from the terms of this zoning ordinance as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this zoning ordinance will in an individual case result in practical difficulty or unnecessary hardship, so that the spirit of this zoning ordinance shall be observed, public safety and welfare secured, and substantial justice done.

The Director of Planning and Community Development may upon application consider the approval, conditional approval, or denial of administrative variances, subject to the requirements of this Article. In

granting an administrative variance, the Director of Planning and Community Development may impose such requirements and conditions with respect to the location, construction, maintenance and operation of any use or building, in addition to those expressly set forth in this zoning ordinance, as may be deemed necessary for the protection of adjacent properties and the public interest.

([Ord. No. 348-18, § 1 \(Exh. A\), 9-6-2018](#))

Sec. 38.2. - Provisions that May Be Administratively Varied.

The following provisions of this zoning ordinance may be administratively varied by the Director of Planning and Community Development, subject to the specific limitations of this Section:

- (a) Front building setback for a principal building, reduction not to exceed seven (7) feet.
- (b) Side building setback for a principal building, reduction not to exceed three (3) feet.
- (c) Rear building setback for a principal building, reduction not to exceed five (5) feet.
- (d) Setback for an accessory building, reduction not to exceed two (2) feet.
- (e) Maximum height of a building, not to exceed five (5) feet above the applicable maximum.
- (f) Landscape strip minimum widths, reduction not to exceed twenty percent (20%) of the minimum required width. For example, if the minimum landscape strip width is ten feet (10'), the Director of Planning and Community Development may authorize a reduction to no less than eight feet (8'). The Director of Planning and Community Development may also authorize an average width of landscape strip rather than a minimum.
- (g) Parking above the maximum or twenty percent (20%) below the minimum required as specified in Table 21.3, on a case-by-case basis based upon the scale and impacts of the request, for good cause shown, as provided in Section 21.18 of this zoning ordinance.
- (h) The maximum height of fences and walls, not to exceed a 2-foot increase.
- (i) Certain dimensional requirements of the TND zoning district, as specified in Table 7.2 of this zoning ordinance, may be administratively varied by the Director of Planning and Community Development, for one or more lots for detached, single-family dwellings only, as follows:
 - 1. The required minimum lot size of 6,700 square feet may be reduced to 6,000 square feet (and the corresponding maximum density may be increased from 6.5 to 7.26 dwelling units per acre);
 - 2. The required minimum lot width of forty-five (45) feet may be reduced to forty (40) feet;
 - 3. The minimum lot depth may be reduced from eighty (80) feet to seventy (70) feet.

([Ord. No. 348-18, § 1 \(Exh. A\), 9-6-2018](#))

Sec. 38.3. - Initiation of Administrative Variance Applications.

An application for variance may be initiated by any person, firm, corporation or agency, provided said individual, firm, corporation or agency is the owner or owner's agent of the property for which the administrative variance is sought.

([Ord. No. 348-18, § 1 \(Exh. A\), 9-6-2018](#))

Sec. 38.4. - Application Requirements.

Applications for administrative variance shall require submittal of an application requirements specified in this Section.

- (a) Application fee as specified by this ordinance or established by resolution of the City Council;
- (b) Application form furnished by the Director of Planning and Community Development, including signed and notarized signature of property owner;
- (c) Legal description of the property;
- (d) Survey plat of the property;
- (e) Letter of intent describing the proposed use of the property or other action requested;
- (f) Site plan of the property at an appropriate engineering scale showing the proposed use and relevant information regarding proposed improvements;
- (g) Statistics regarding the proposed development;
- (h) Written analysis of how the proposed action compares to decision criteria specified for deciding on the subject type of application;
- (i) Description of any special conditions voluntarily made a part of the request; and
- (j) Other information as may be required by the Director of Planning and Community Development.

([Ord. No. 348-18, § 1 \(Exh. A\), 9-6-2018](#))

Sec. 38.5. - Site Plan Requirements.

Applications for administrative variance shall include a site plan, which shall at minimum include on the site plan information specified in this Section. The Director of Planning and Community Development may waive one or more of the requirements of this Section in individual cases when he/she determines that one or more elements of the required information specified in this Section are not essential to the review process.

- (a) Existing and proposed buildings and structures;
- (b) Other information as may be required by the Director of Planning and Community Development to describe and/or graphically depict the requested administrative variance.

([Ord. No. 348-18, § 1 \(Exh. A\), 9-6-2018](#))

Sec. 38.6. - Application Compliance and Completeness.

- (a) No administrative variance application shall be processed by the Director of Planning and Community Development unless it complies with the procedural requirements of this Article and is found to be complete with regard to application materials, payment of fees, supportive materials, and any other application requirements specified by this Article.
- (b) If the variance application does not comply with all application submittal requirements of this Article, the Director of Planning and Community Development shall reject the application and refuse to process it.

([Ord. No. 348-18, § 1 \(Exh. A\), 9-6-2018](#))

Sec. 38.7. - Criteria for Granting Variances.

Any applicant requesting consideration of an administrative variance shall provide a written justification that one or more of the following condition(s) exist. The Director of Planning and Community

Development shall not approve an administrative variance application unless it shall have adopted findings that the one or more of the following conditions exist:

- (a) There are extraordinary and exceptional conditions or practical difficulties pertaining to the particular piece of property in question because of its size, shape or topography that are not applicable to other lands or structures in the same district;
- (b) A literal interpretation of the provisions of this ordinance would effectively deprive the applicant of rights commonly enjoyed by other properties of the district in which the property is located;
- (c) Granting the variance requested will not confer upon the property of the applicant any special privileges that are denied to other properties of the district in which the applicant's property is located;
- (d) The requested variance will be in harmony with the purpose and intent of this ordinance and will not be injurious to the neighborhood or to the general welfare;
- (e) The special circumstances are not the result of the actions of the applicant;
- (f) The variance requested is the minimum variance that will make possible the proposed use of the land, building, or structure in the use district proposed; and
- (g) The variance shall not permit a use of land, buildings or structures, which is not permitted by right in the zoning district or overlay district involved.

([Ord. No. 348-18, § 1 \(Exh. A\), 9-6-2018](#))

Sec. 38.8. - Procedures.

Administrative variance applications shall be considered and processed in accordance with the requirements of this Section.

- (a) Director of Planning and Community Development shall review all completed applications, as described under Sec. 38.6.
- (b) At least thirty (30) but not more than forty-five (45) days prior to the date the Director of Planning and Community Development considers an administrative variance for approval, the City shall cause to be published within a newspaper of general circulation within the city a notice stating the time, place, and purpose. Notice shall also be provided by first class mail to the owner of the property that is subject to the proposed administrative variance. This notification letter shall include the same information as the published notice and shall be mailed using the USPS Certificate of Mailing at least thirty (30) days prior to consideration by the Director.
- (c) The Director of Planning and Community Development shall render a final decision on any application for administrative variance on or before ten (10) days following the published date of consideration for approval.
- (d) The applicant shall be informed in writing of the Director's decision and the findings of fact supporting the decision, which shall be sent by regular mail within five (5) working days of the date of the decision. Failure to receive the written decision within five (5) working days shall not constitute a procedural error on the part of the City, nor affect the decision of the Director in any manner.

([Ord. No. 348-18, § 1 \(Exh. A\), 9-6-2018](#))

Sec. 38.9. - Withdrawal of Application.

An administrative variance application may be withdrawn at any time at the discretion of the person or agency initiating such a request, upon written notice to the Director of Planning and Community Development. No refunds of the application fee shall be provided in the case of a withdrawal.

([Ord. No. 348-18, § 1 \(Exh. A\), 9-6-2018](#))

Sec. 38.10. - Limitations on the Frequency of Filing Applications.

No variance application affecting the same or any portion of property which was denied by the City Council shall be accepted for filing by a property owner until twelve (12) months shall have elapsed from the date said application was denied by City Council.

([Ord. No. 348-18, § 1 \(Exh. A\), 9-6-2018](#))

Sec. 38.11. - Appeal.

- (a) *Denial.* The Director of Planning and Community Development's denial of an administrative variance shall not be appealed as an administrative determination by the subject property owner, but any applicant denied an administrative variance may file an application for variance with the City Council pursuant to Article 37 of this zoning ordinance.
- (b) *Approval.* The Director of Planning and Community Development's approval of an administrative variance may be appealed as an administrative decision, but only if there is alleged to be an error in the administration or enforcement of this zoning ordinance. If such appeal is filed it shall be processed and considered in accordance with Article 39 of this zoning ordinance. When the administrative variance application was approved by the Director of Planning and Community Development with conditions, and in the case of the subject property owner finds such conditions are not acceptable, the applicant shall not be authorized to file an appeal of the administrative decision but may file an application for variance with the City Council pursuant to Article 37 of this zoning ordinance.

([Ord. No. 348-18, § 1 \(Exh. A\), 9-6-2018](#))

Sec. 38.12. - Records.

The Director of Planning and Community Development shall keep public records of all administrative variances applied for and granted pursuant to this Article.

([Ord. No. 348-18, § 1 \(Exh. A\), 9-6-2018](#))



FLOWERY BRANCH CITY COUNCIL

EXECUTIVE SUMMARY



SUBJECT: Consider Folksong Apartments Estoppel Certificate

COUNCIL MEETING DATE: June 1, 2023

HISTORY:

Flowerly Branch Apartments Owner, LLC (“Woodfield”) entered into the attached sewer connection development agreement with the City dated March 22, 2022, as amended July 21, 2022, (“Sewer Agreement”) to provide for access to and maintenance of the sanitary sewer system as part of its development of an apartment complex located on a portion of 4496 Hog Mountain Road. Woodfield subsequently conveyed the development to Folksong Acquisition LLC (“Folksong”) and Folksong is now the Developer under the Sewer Agreement with the City. Folksong has completed the development.

FACTS AND ISSUES:

FACTS AND ISSUES: Folksong intends to sell its apartment complex development and is requesting the City agree that to date, Folksong is in compliance with the Sewer Agreement by approving and signing the attached Estoppel Certificate. An estoppel certificate such as this is common in real estate transactions. Its purpose is for a third party (City) to confirm to the buyer that the seller’s representations (Folksong) are true.

The Estoppel Certificate asks the City to agree to the following:

- a. The Developer is not in default under the Agreement.
- b. The obligations under Sections I, II, III, IV, V, VI, VII, VIII, X, XI, XII, XIII, XIV of the Agreement have been satisfied.
- c. The City did not exercise its right to require additional connections pursuant to Section XI of the Agreement;
- d. As of the date hereof, the Developer is in compliance with its obligations under Section IX of the Agreement;
- e. The City issued the certification of completeness of the Connection Project and connection of the Development on July 14, 2022, and the Connection Project is deemed complete in accordance with the Agreement;
- f. Construction of the Development has been completed and approved by the City and the City has issued a final certificate of occupancy for the Development.

The City Manager and/or City Water and Sewer Engineer, have confirmed the stated events have occurred. Given that Folksong is in compliance with the provisions of the Sewer Agreement, staff recommends the city council approve the Estoppel Certificate.

OPTIONS:

As all obligations as outlined in the Estoppel Certificate have been met, approve the Estoppel Certificate as presented.

IF FUNDING IS INVOLVED, ARE FUNDS APPROVED IN THE CURRENT BUDGET:

Yes

AMOUNT AND SOURCE OF FUNDS:

N/A

RECOMMENDATION:

Approve an estoppel certificate in connection with the sale of the Folksong apartment complex development.

SAMPLE MOTION:

I make a motion to approve the Estoppel Certificate regarding the Folksong apartment complex as presented.

COLLABORATING DEPARTMENT:

DEPARTMENT: Administration

Prepared by: Shelia Cooper

ATTACHMENTS

- [Executive Summary - Folksong Estoppel Agreement.pdf](#)
- [Woodfield Sewer Development Agreement.pdf](#)
- [Woodfield 1st Amend to Sewer Development Agreement.pdf](#)
- [Starlight \(Folksong\) City Sewer Agreement Estoppel 4868-7113-2767_3 - Final.pdf](#)

**FLOWERY BRANCH CITY COUNCIL
EXECUTIVE SUMMARY**

SUBJECT: FOLKSONG APARTMENTS ESTOPPEL CERTIFICATE

DATE: JUNE 1, 2023

(x) RECOMMENDATION

() POLICY DISCUSSION

BUDGET INFORMATION:

() STATUS REPORT

ANNUAL- \$0

() OTHER

CAPITAL- \$0

COUNCIL ACTION REQUESTED ON: JUNE 1, 2023

PURPOSE: Consider approving an estoppel certificate in connection with the sale of the Folksong apartment complex development.

HISTORY: Flowery Branch Apartments Owner, LLC (“Woodfield”) entered into the attached sewer connection development agreement with the City dated March 22, 2022, as amended July 21, 2022, (“Sewer Agreement”) to provide for access to and maintenance of the sanitary sewer system as part of its development of an apartment complex located on a portion of 4496 Hog Mountain Road. Woodfield subsequently conveyed the development to Folksong Acquisition LLC (“Folksong”) and Folksong is now the Developer under the Sewer Agreement with the City. Folksong has completed the development.

FACTS AND ISSUES: Folksong intends to sell its apartment complex development and is requesting the City agree that to date, Folksong is in compliance with the Sewer Agreement by approving and signing the attached Estoppel Certificate. An estoppel certificate such as this is common in real estate transactions. Its purpose is for a third party (City) to confirm to the buyer that the seller’s representations (Folksong) are true.

The Estoppel Certificate asks the City to agree to the following:

- a. The Developer is not in default under the Agreement.
 - b. The obligations under Sections I, II, III, IV, V, VI, VII, VIII, X, XI, XII, XIII, XIV of the Agreement have been satisfied.
 - c. The City did not exercise its right to require additional connections pursuant to Section XI of the Agreement;
 - d. As of the date hereof, the Developer is in compliance with its obligations under
-
-

Section IX of the Agreement;

- e. The City issued the certification of completeness of the Connection Project and connection of the Development on July 14, 2022, and the Connection Project is deemed complete in accordance with the Agreement;
- f. Construction of the Development has been completed and approved by the City and the City has issued a final certificate of occupancy for the Development.

The City Manager and/or City Water and Sewer Engineer, have confirmed the stated events have occurred. Given that Folksong is in compliance with the provisions of the Sewer Agreement, staff recommends the city council approve the Estoppel Certificate.

OPTION(S): As all obligations as outlined in the Estoppel Certificate have been met, approve the Estoppel Certificate as presented.

RECOMMENDED SAMPLE MOTION: I make a motion to approve the Estoppel Certificate regarding the Folksong apartment complex as presented.

ATTACHMENTS:

- (1) Sewer Connection Development Agreement
- (2) First Amendment to the Sewer Connection Development Agreement
- (3) Proposed Estoppel Certificate

DEPARTMENT: Legal

Prepared by: Karen G. Thomas

eFiled and eRecorded
DATE: 03/23/2022
TIME: 2:30 PM
DEED BOOK: 9087
PAGE: 613 - 656
FILING FEES: \$25.00
INTANGIBLE TAX: \$0.00
PARTICIPANT ID: 4591293252
RECORDED BY: JP
CLERK: Charles Baker, C.S.C
Hall County, GA

UPON RECORDING RETURN TO:
Troutman Pepper Hamilton Sanders LLP
600 Peachtree Street, N.E.
Suite 3000
Atlanta, Georgia 30308
Attn: David C. Kirk

STATE OF GEORGIA

COUNTY OF HALL

AGREEMENT BY AND BETWEEN FLOWERY BRANCH APARTMENTS OWNER, LLC AND THE CITY OF FLOWERY BRANCH, GEORGIA, FOR ACCESS TO AND MAINTENANCE OF THE SANITARY SEWER SYSTEM

This AGREEMENT is made and entered into this 22nd day of March, 2022, by and between FLOWERY BRANCH APARTMENTS OWNER, LLC, a Delaware limited liability company, located at 8210 Creedmoor Road, Suite 103, Raleigh, North Carolina 27613 ("DEVELOPER") and the City of Flowery Branch, Georgia, a Georgia municipal corporation, located at 5410 Pine Street, Flowery Branch, Georgia 30542 ("CITY") for the purpose of maintaining, repairing, and improving the CITY'S sanitary sewer system by acknowledging DEVELOPER'S rights to immediately utilize sanitary sewer lines and a lift station conveyed to CITY by the Hall County Board of Education on property at 4450 Hog Mountain Road by installing a new sewer connection to an existing manhole on such property ("CONNECTION PROJECT") and, further, for the purpose of providing for the CITY'S eventual enhancement of the sanitary sewer system through an

additional project to be determined by the CITY (the "ENHANCEMENT"). Together, the CONNECTION PROJECT and ENHANCEMENT are referred to herein as "THE PROJECTS."

WHEREAS, DEVELOPER is the developer of 32.49 acres of land commonly known as the Woodfield Flowery Branch Apartments located at 4496 Hog Mountain Road within the City of Flowery Branch, Georgia (Tax Parcel 08097 000001A), consisting of approximately 342 residential units as shown on Exhibit A, attached hereto and incorporated herein ("DEVELOPMENT") and desires certain commitments from the CITY in regard to THE PROJECTS; and

WHEREAS, DEVELOPER is the owner of a permanent sewer and temporary construction easement on property owned by the Hall County Board of Education on property at 4450 Hog Mountain Road adjacent to DEVELOPMENT that gives DEVELOPER the right to perform the CONNECTION PROJECT to connect to the CITY sewer system through a manhole located on the School Board property, recorded in Book 8771 at Pages 425 - 435 of the records of Hall County, Georgia, and as shown on Exhibit B attached hereto and incorporated herein; and

WHEREAS, CITY acknowledges such rights, has previously approved plans for the CONNECTION PROJECT, and desires the DEVELOPER carry out the CONNECTION PROJECT; and

WHEREAS, DEVELOPER owns certain design and engineering documents for a possible future gravity sewer line from the CITY-owned lift station to another portion of the CITY sewer system ("DESIGN DOCUMENTS") that it is willing to provide to the CITY for potential use in the ENHANCEMENT; and

WHEREAS, DEVELOPER is the owner of a certain perpetual easement on property adjacent to DEVELOPMENT, and recorded in Book 9078 at Pages 536 - 553 of the records of Hall County, Georgia, as shown on Exhibit C, attached hereto and incorporated herein, that it is willing to assign to CITY and is also willing to grant an easement across a portion of DEVELOPMENT for CITY'S potential use in the ENHANCEMENT ("EASEMENTS"); and

WHEREAS, CITY is the owner of a pump station, sanitary sewer lines, and perpetual easements for same on property owned by the Hall County Board of Education by virtue of a Sewer System Facilities Dedication dated October 9, 2000, and recorded in Book 3782 at Pages 547 & 548 of the records of Hall County, Georgia, ("DEDICATION") as shown on Exhibit D, attached hereto and incorporated herein; and

WHEREAS, the CITY and DEVELOPER desire to cooperate in the design and construction of THE PROJECTS to maintain, repair, and improve the CITY'S sanitary sewer service to serve said DEVELOPMENT and other existing and planned developments in the City of Flowery Branch.

NOW THEREFORE, DEVELOPER and CITY agree to the following:

- I. CITY acknowledges DEVELOPER has prepared the engineering design of the CONNECTION PROJECT which has been accomplished by professional engineers registered in the State of Georgia and that the design complies with all relevant CITY specifications and standards. City further acknowledges the design and plans for the CONNECTION PROJECT have been approved in writing by the CITY engineer.
- II. DEVELOPER shall be responsible for and shall provide all labor and materials necessary for the construction of the CONNECTION PROJECT.
- III. DEVELOPER shall notify CITY in writing of its right to inspect the CONNECTION PROJECT prior to completion of construction of the CONNECTION PROJECT. DEVELOPER shall not bear the cost of said CITY inspection.
- IV. DEVELOPER shall provide CITY a statement from the CONNECTION PROJECT engineer certifying that the materials and workmanship meet CITY specifications and standards. Upon request of CITY, DEVELOPER shall substantiate by material affidavits from suppliers and by applicable test results. DEVELOPER shall provide CITY two copies of "as-built" drawings of the CONNECTION PROJECT.

- V. DEVELOPER shall provide CITY with copies of all lien releases by material and equipment suppliers for the CONNECTION PROJECT.
- VI. The CONNECTION PROJECT shall be complete upon certification in writing by the City Engineer and City Manager and upon such certification CITY shall permit connection of the DEVELOPMENT to the CITY sewer system.
- VII. Within ten (10) business days of the certification of completeness of the CONNECTION PROJECT and connection of DEVELOPMENT to the CITY'S sewer system as described in Paragraph VI of this AGREEMENT, DEVELOPER shall provide the CITY with the DESIGN DOCUMENTS as well as funds equal to \$50,000.00 (Fifty Thousand Dollars) ("DEVELOPER'S CASH CONTRIBUTION"), such DEVELOPER'S CASH CONTRIBUTION to be used by the CITY for design and engineering, easement acquisition, and construction of the ENHANCEMENT PROJECT, the scope, location, and timing of which shall be at the CITY'S discretion.
- VIII. Within ten (10) business days of the certification of completeness of the CONNECTION PROJECT and connection of DEVELOPMENT to the CITY'S sewer system as described in Paragraph VI of this AGREEMENT, DEVELOPER also shall deposit into escrow funds equal to \$150,000.00 (One Hundred Fifty Thousand Dollars) ("DEVELOPER'S ESCROW CONTRIBUTION") for the CITY'S eventual use for the ENHANCEMENT. The DEVELOPER'S ESCROW CONTRIBUTION will be escrowed with the national title insurance company that has issued DEVELOPER'S title insurance policy or another company mutually agreed upon by the DEVELOPER and the CITY. Together, the DEVELOPER'S CASH CONTRIBUTION and DEVELOPER'S ESCROW CONTRIBUTION (totaling \$200,000.00) will be DEVELOPER'S maximum monetary contribution towards the ENHANCEMENT.

- IX. Except as otherwise provided herein, DEVELOPER or its successors in interest or assigns shall be responsible for maintaining the CONNECTION PROJECT for one year after the CITY certifies the CONNECTION PROJECT complete. DEVELOPER shall transfer all applicable warranties to the CITY within fourteen (14) days before the expiration of the one-year maintenance period.
- X. Except as otherwise provided herein, upon the completion of the one-year maintenance period described in Paragraph IX of this AGREEMENT, DEVELOPER or its successors in interest or assigns shall dedicate all rights, title, and interest that DEVELOPER or its successors in interest or assigns may have in the CONNECTION PROJECT and any real property, including but not limited to easements or rights-of-way, necessary for the purpose of owning, operating and/or maintaining the CONNECTION PROJECT by providing CITY a recordable plat(s) showing all utilities within public easements and/or rights of way to be owned and maintained by the CITY. CITY shall not accept said dedication until such time that all property offered by DEVELOPER or its successors in interest or assigns for acceptance by the CITY is free and clear of all encumbrances including but not limited to liens and security interests.
- XI. Within ninety (90) calendar days of the certification of completeness of the CONNECTION PROJECT and connection of DEVELOPMENT to the CITY'S sewer system as described in Paragraph VI of this AGREEMENT, the CITY shall have the right to direct DEVELOPER in writing to construct, at DEVELOPER'S expense, a direct connection to the CITY-owned pump station on property owned by the Hall County Board of Education using, in DEVELOPER'S sole discretion, either the existing CITY-owned easement as depicted in the DEDICATION attached hereto as Exhibit C, provided such easement is undisputed by the Hall County Board of Education, or another easement obtained by DEVELOPER or CITY

and to discontinue the use of the CONNECTION PROJECT. Upon receipt of such written direction from the CITY, DEVELOPER shall have an additional ninety (90) calendar days to construct the direct connection to the CITY-owned pump station and discontinue the use of the CONNECTION PROJECT, at which time DEVELOPER shall be relieved of any obligations contained in Paragraphs IX and X of this AGREEMENT. Should CITY not exercise its right under this Paragraph XI within ninety (90) calendar days of the certification of completeness of the CONNECTION PROJECT and connection of DEVELOPMENT to the CITY'S sewer system as described in Paragraph VI of this AGREEMENT, DEVELOPER shall have no obligation to connect to the CITY-owned pump station. Likewise, should the DEVELOPER'S use of the CITY-owned easement, as depicted in the DEDICATION, be disputed by the Hall County Board of Education or if CITY or DEVELOPER is unable to obtain an undisputed easement from the Hall County Board of Education to construct a direct connection to the CITY-owned pump station, DEVELOPER shall have no obligation to connect to the CITY-owned pump station.

- XII. CITY acknowledges that DEVELOPER'S CASH CONTRIBUTION and DEVELOPER'S ESCROW CONTRIBUTION may represent only a portion of funds required for final design and engineering, easement acquisition, and construction of the ENHANCEMENT and agrees to fund all remaining costs of the ENHANCEMENT using CITY funds and other funding sources.
- XIII. DEVELOPER agrees that, no later than the issuance of the final certificate of occupancy for the DEVELOPMENT, it will grant CITY a perpetual easement for the construction and maintenance of the portion of a possible gravity sewer line that crosses the portion of the DEVELOPMENT indicated in Exhibit D, such easement being in substantially the same location as indicated on Exhibit D. DEVELOPER further agrees that, concurrent with the

grant of the aforementioned easement, it will assign to CITY all rights DEVELOPER has under any and all EASEMENTS obtained by DEVELOPER for portions of such gravity sewer line.

- XIV. DEVELOPER further agrees that, within ten (10) business days of the issuance of the final certificate of occupancy for the DEVELOPMENT, it will direct the escrow agent to release DEVELOPER'S ESCROW CONTRIBUTION to the CITY.
- XV. CITY acknowledges DEVELOPER previously has paid all required fees for CITY sewer capacity and/or connection to the CITY sewer system. CITY further agrees that, upon the completion of the CONNECTION PROJECT by DEVELOPER, CITY shall not withhold any certificates of occupancy for any portion of the DEVELOPMENT for any reason related to the CONNECTION PROJECT, sewer capacity, or sewer system improvements desired by the CITY.
- XVI. The term of this AGREEMENT shall be from the date first written above up and through one (1) year after completion of the PROJECTS unless terminated prior to such date by mutual agreement of CITY and DEVELOPER.
- XVII. All notices under this AGREEMENT shall be in writing and shall be deemed to have been given by delivering in-person, certified mail, or statutory overnight delivery to the following:

For CITY: Ms. Tonya Parrish
City Manager
City of Flowery Branch
5410 Pine Street
Flowery Branch, Georgia 30542

With Copy To: E. Ronald Bennett, Jr., Esq.
Carothers & Mitchell, LLC
1809 Buford Highway
Buford, Georgia 30518

For DEVELOPER: Attn: Mr. Patrick Kassin

Flowery Branch Apartments Owner, LLC
8210 Creedmoor Road
Suite 103
Raleigh, North Carolina 27613

With Copy To: Stephanie E. Greer Fulcher, Esq.
Troutman Pepper Hamilton Sanders LLP
301 South College Street
34th Floor
Charlotte, North Carolina 28202

DEVELOPER or CITY may designate new or additional persons to receive such notices by providing written notice to the other party.

- XVIII. DEVELOPER shall indemnify and hold harmless CITY for any and all claims arising out of any act or omission related to the design and construction of the CONNECTION PROJECT made by DEVELOPER, or any person for whom DEVELOPER could be liable, prior to CITY acceptance of ownership of the CONNECTION PROJECT.
- XIX. The failure of any party to exercise any right given hereunder or to insist upon strict compliance with any term, condition, or covenant specified herein shall not constitute a waiver of such party's right to exercise such right or to demand strict compliance with any such term, condition, or covenant under this AGREEMENT.
- XX. This AGREEMENT contains the sole and entire agreement of the parties with respect to the PROJECTS contemplated hereunder and no representation, inducement, promise, or agreement, parole or written, between the parties and not incorporated herein shall be of any force or effect. Any amendment to this AGREEMENT shall be in writing and executed by the parties.
- XXI. The provisions of this AGREEMENT shall inure to the benefit or and be binding upon the parties hereto and the respective successors and assigns.
- XXII. Time is of the essence with respect to this AGREEMENT.

XXIII. This AGREEMENT and all amendments hereto shall be governed and construed under the laws of the State of Georgia.

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

XXV. This AGREEMENT may be executed in several counterparts, each of which shall constitute an original and all of which together shall constitute one and the same instrument.

IN WITNESS THEREOF, the parties have set their hand and seal.

FLOWERY BRANCH APARTMENTS OWNER, LLC
FLOWERY BRANCH VENTURE LLP,
By: a Delaware LLP and sole
Manager of FLOWERY BRANCH APARTMENTS
OWNER, LLC

CITY OF FLOWERY BRANCH, GEORGIA

Patrick J. Kassir
By: Patrick J. Kassir

Edward R. Asbridge
By: Edward R. Asbridge, Mayor

ATTEST:

ATTEST:

Shelia R. Cooper

Shelia R. Cooper
By: Shelia Cooper, City Clerk

By:

SHELIA R COOPER NOTARY PUBLIC Gwinnett County State of Georgia My Commission Expires Sept 18, 2023

123572386v7

EXHIBIT A

EXHIBIT B

Recording Requested by and
Please Return to:

Michael Wall
Troutman Pepper Hamilton Sanders LLP
600 Peachtree Street, N.E., Suite 3000
Atlanta, GA 30308

eFiled and eRecorded
DATE: 03/30/2021
TIME: 8:50 AM
DEED BOOK: 8771
PAGE: 425 - 435
FILING FEES: \$25.00
PARTICIPANT ID: 4591293252
RECORDED BY: CH
CLERK: Charles Baker, C.S.C
Hall County, GA

PERMANENT SEWER AND TEMPORARY
CONSTRUCTION EASEMENT

THIS PERMANENT SEWER AND TEMPORARY CONSTRUCTION EASEMENT is executed this 26 day of Oct. 2020 by the Hall County Board of Education (hereinafter, "*Grantor*") for the benefit of Flowery Branch Apartments Owner, LLC, a Delaware limited liability company and its successors and assigns (the "*Grantee*").

WHEREAS, Grantee owns that certain parcel of land within the city of Flowery Branch, Hall County, Georgia having a tax parcel identification number of 08097-000001A (the "*Grantee Property*"), and requires certain easements as hereinafter described and granted in connection with the construction, maintenance, operation, and repair of certain Sewer Improvements (hereinafter defined) located within Hall County, Georgia; and

WHEREAS, Grantor owns that certain parcel of land located adjacent to the Grantee Property having a tax parcel identification number of 08093-000008 (the "*Grantor Property*"); the Grantor Property and the Grantee Property are collectively referred to herein as the "*Tracts*") and desires to grant such easements to Grantee for the consideration and upon the terms, conditions, and agreements hereinafter set forth.

NOW, THEREFORE, for and in consideration of TEN AND NO/100 DOLLARS (\$10.00), and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by Grantor, said Grantor does hereby grant, bargain, sell, and release unto Grantee, its successors and assigns forever, the following easements subject to the terms, conditions, and agreements contained herein:

(1) A perpetual easement (the "*Sewer Easement*") for the construction, location, installation, operation, relocation, extension, inspection, maintenance, repair, alteration, modification, redesign, reconstruction, replacement, and removal of one or more sewer lines, together with all valves, appurtenances, apparatus, and equipment (collectively, the "*Sewer Improvements*") upon, over, along, across, through, and under the area identified as "20' Permanent Sewer Easement" on Exhibit A attached hereto (the "*Easement Area*"); and

(2) A temporary access and construction easement (the "*TCE*," and together with the Sewer Easement, the "*Easements*") upon, over, along, across, through, and under such portions of the Grantor Property as shall be reasonably necessary for the installation of the Sewer Improvements and the performance of related construction activities and the operation of construction equipment associated therewith.

TOGETHER with all the rights and privileges necessary or convenient for the full use and enjoyment of said Easements, including, without limitation, the rights of ingress, egress, and regress over, under, through, upon, and across the remainder of the Grantor Property and all rights of way and ingress and egress easements beneficial to Grantor and/or the above-described property.

TOGETHER also with the right from time to time to remove, cut, trim, or clear and keep clear trees, underbrush, structures, and obstructions upon said Easement Area, and the right of entry upon the Grantor Property, beneficial estates, and all rights of way for all of the purposes aforesaid; provided, however, that nothing herein shall create a duty of Grantee to remove said items or keep clear or maintain the Easement Area, beneficial estates, or rights of way.

These Easements shall run with title to the Tracts and shall be binding upon and inure to the benefit of the Grantor and the Grantee and their respective heirs, successors, assigns, administrators, and executors.

IT IS UNDERSTOOD AND AGREED that the Easements above described are granted and accepted upon the following terms and conditions:

The TCE granted herein shall automatically terminate, without the necessity of the execution of recording of any other document, upon the completion of the Sewer Improvements and the public dedication of same to the City of Flowery Branch, a municipal corporation of the state of Georgia (the "*City*").

Upon completion of the Sewer Improvements, Grantee may assign its rights hereunder to the City in connection with the public dedication of such Sewer Improvements, and Grantor hereby consents both to such assignment and to such dedication.

The Grantor will make no use of the Easement Area that is inconsistent with the uses and purposes for which the Easements have been granted and shall not interfere with Grantee's use of the Easement Area in any way, and without limiting the generality of this provision, the Grantor

agrees that no permanent structures such as buildings, sheds, and other structures shall be placed upon the Easement Area at any time.

TO HAVE AND TO HOLD, all and singular, the easement rights and privileges described unto Grantee, its successors and assigns forever.

And the Grantor does hereby bind itself and its heirs, successors, assigns, administrators and executors to warrant and forever defend all and singular the said premises unto Grantee, its successors and assigns against Grantor and Grantor's heirs, successors, assigns, administrators and executors and against every person whomsoever lawfully claiming or to claim the same or any part thereof. The terms of this instrument shall run with title to the Tracts, and shall bind and inure to the benefit of the parties hereto, their respective successors and assigns, and every other person now or hereafter acquiring an interest in or lien upon the Tracts, or any portion thereof.

If any covenant or other provision contained in this instrument is to any extent declared by a court of competent jurisdiction to be invalid or unenforceable, the remaining covenants, restrictions, and provisions contained herein (or the application of such covenants and provisions to persons or circumstances other than those in respect of which the determination of invalidity or unenforceability was made) will not be affected thereby and each covenant and provision contained in this instrument will be valid and enforceable to the fullest extent permitted by law.

This instrument may be executed in any number of counterparts, each of which shall be an original but all of which shall constitute one and the same instrument.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, said Grantor has hereunto set its hand and affixed seal, the day and year first above written.

Signed, sealed and delivered
in the presence of:

Ronelle C. Craven
Unofficial Witness

Rhonda Sizemore
Notary Public

My commission expires:

RHONDA SIZEMORE
NOTARY PUBLIC - Georgia
Hall County
My Commission Expires
April 24, 2021

GRANTOR:

HALL COUNTY BOARD OF EDUCATION

By: _____ (SEAL)
Name: Ray Taylor
Title: Chairman

TABLE A
PASSENGER AREA

(See Attached)

Easement Line Table

Line #	Length	Direction
L1	190.89'	N55° 30' 24"E
L2	123.92'	N19° 05' 40"E
L3	84.69'	N82° 41' 47"E
L4	116.06'	N7° 18' 13"W
L5	149.19'	N74° 06' 01"E
L6	20.00'	S15° 53' 59"E
L7	131.99'	S74° 06' 01"W
L8	118.86'	S7° 18' 13"E
L9	92.29'	S82° 41' 47"W
L10	118.10'	S19° 05' 40"W
L11	199.13'	S55° 30' 24"W
L12	20.07'	N29° 45' 45"W

**INTERSTATE 985
A/K/A GEORGIA
HIGHWAY 385
& LANIER PARKWAY**
(PUBLIC, VARIABLE R/W,
LIMITED ACCESS)

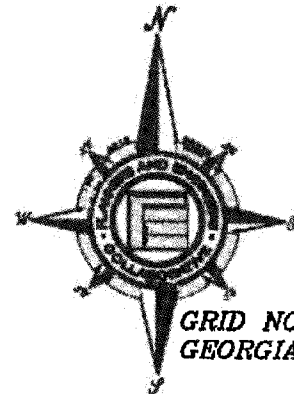
POC
N.1523697.86
E.2375542.53
20' PERMANENT
SEWER EASEMENT
0.304 ACRES
13,251 S.F.

IPF 1" ANGLE IRON
1.1' S.W. @
OF P/L

POB
20' PERMANENT
SEWER EASEMENT
N.1523309.24
E.2375764.76

S29°45'45"E /
0.65'
(TIE TO 1"CTP @
ANGLE IRON)

N/F
HALL COUNTY B.O.E.
TAX PARCEL ID: 08093-000008
PLAT SLIDE BOOK 660 PG 189A



SHEET 1 OF 2

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■ CIVIL ENGINEERING ■ LAND SURVEYING
330 RESEARCH COURT PEACHTREE CORNERS, GEORGIA 30092
(770) 451-2241 ■ WWW.PECATL.COM
C.O.A.-LSF000004

**20' PERMANENT SEWER
EASEMENT EXHIBIT FOR:**

WOODFIELD DEVELOPMENT

DRAWN BY: MN
CHECKED BY: JH
FILE NO.: 18161.01A
DATE: 7/09/20
SCALE: 1"=100'



20' PERMANENT SEWER EASEMENT LEGAL DESCRIPTION

ALL THAT TRACT OR PARCEL OF LAND lying and being in Land Lot 97 of the 8th District, City of Flowery Branch, Hall County, Georgia and being more particularly described as follows:

COMMENCING at a #4 rebar found (N.1523697.86, E. 2375542.53, NAD83, GA. West Zone) on the Southeasterly Right of Way Line of Interstate 985 A/K/A Georgia Highway 365 & Lanier Parkway (Public, Variable R/W, Limited Access; thence leaving said Southeasterly Right of Way Line of Interstate 985 South 29 degrees 45 minutes 45 seconds East a distance of 447.67 feet to a point (N.1523309.24, E. 2375764.76, NAD83, GA. West Zone), said point is the TRUE POINT OF BEGINNING.

THENCE North 55 degrees 30 minutes 24 seconds East a distance of 190.89 feet to a point; thence North 19 degrees 05 minutes 40 seconds East a distance of 123.92 feet to a point; thence North 82 degrees 41 minutes 47 seconds East a distance of 84.69 feet to a point; thence North 07 degrees 18 minutes 13 seconds West a distance of 116.06 feet to a point; thence North 74 degrees 06 minutes 01 seconds East a distance of 149.19 feet to a point; thence South 15 degrees 53 minutes 59 seconds East a distance of 20.00 feet to a point; thence South 74 degrees 06 minutes 01 seconds West a distance of 131.99 feet to a point; thence South 07 degrees 18 minutes 13 seconds East a distance of 118.86 feet to a point; thence South 82 degrees 41 minutes 47 seconds West a distance of 92.29 feet to a point; thence South 19 degrees 05 minutes 40 seconds West a distance of 118.10 feet to a point; thence South 55 degrees 30 minutes 24 seconds West a distance of 199.13 feet to a point; thence North 29 degrees 45 minutes 45 seconds West a distance of 20.07 feet to a point, said point is the TRUE POINT OF BEGINNING.

Said 20 foot Permanent Sewer Easement having an area of 13251 square feet, 0.304 acres more or less

SHEET 2 OF 2

PLANNERS AND ENGINEERS COLLABORATIVE

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(770) 451-2741 ■ WWW.PECATL.COM
C.O.A. LS-000004

20' PERMANENT SEWER EASEMENT LEGAL DESCRIPTION FOR: :

DRAWN BY: MN
CHECKED BY: JH
FILE NO.: 18161.01A
DATE: 7/09/20
SCALE: 1"=100'



20' PERMANENT SEWER EASEMENT LEGAL DESCRIPTION

ALL THAT TRACT OR PARCEL OF LAND lying and being in Land Lot 97 of the 8th District, City of Flowery Branch, Hall County, Georgia and being more particularly described as follows:

COMMENCING at a #4 rebar found (N.1523697.86, E. 2375542.53, NAD83, GA. West Zone) on the Southeasterly Right of Way Line of Interstate 985 A/K/A Georgia Highway 365 & Lanier Parkway (Public, Variable R/W, Limited Access; thence leaving said Southeasterly Right of Way Line of Interstate 985 South 29 degrees 45 minutes 45 seconds East a distance of 447.67 feet to a point (N.1523309.24, E. 2375764.76, NAD83, GA. West Zone), said point is the TRUE POINT OF BEGINNING.

THENCE North 55 degrees 30 minutes 24 seconds East a distance of 190.89 feet to a point; thence North 19 degrees 05 minutes 40 seconds East a distance of 123.92 feet to a point; thence North 82 degrees 41 minutes 47 seconds East a distance of 84.69 feet to a point; thence North 07 degrees 18 minutes 13 seconds West a distance of 116.06 feet to a point; thence North 74 degrees 06 minutes 01 seconds East a distance of 149.19 feet to a point; thence South 15 degrees 53 minutes 59 seconds East a distance of 20.00 feet to a point; thence South 74 degrees 06 minutes 01 seconds West a distance of 131.99 feet to a point; thence South 07 degrees 18 minutes 13 seconds East a distance of 118.86 feet to a point; thence South 82 degrees 41 minutes 47 seconds West a distance of 92.29 feet to a point; thence South 19 degrees 05 minutes 40 seconds West a distance of 118.10 feet to a point; thence South 55 degrees 30 minutes 24 seconds West a distance of 199.13 feet to a point; thence North 29 degrees 45 minutes 45 seconds West a distance of 20.07 feet to a point, said point is the TRUE POINT OF BEGINNING.

Said 20 foot Permanent Sewer Easement having an area of 13251 square feet, 0.304 acres more or less

SHEET 2 OF 2

PLANNERS AND ENGINEERS COLLABORATIVE

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(770) 451-2741 ■ WWW.PECATL.COM
C.O.A.-LSF000004

20' PERMANENT SEWER EASEMENT LEGAL DESCRIPTION FOR:

WOODFIELD DEVELOPMENT

DRAWN BY: MN
CHECKED BY: JH
FILE NO.: 18161.01A
DATE: 7/09/20
SCALE: 1"=100'



Easement #2 Line Table		
Line #	Length	Direction
L25	20.07'	S29° 45' 45"E
L26	97.10'	N55° 30' 24"E
L27	102.02'	N55° 30' 24"E
L28	118.10'	N19° 05' 40"E
L29	92.29'	N82° 41' 47"E
L30	20.00'	N7° 18' 13"W
L31	20.00'	N82° 41' 47"E

L32	40.00'	S7° 18' 13"E
L33	20.04'	S82° 41' 47"W
L34	5.05'	S7° 14' 28"E
L35	20.00'	S82° 45' 32"W
L36	5.03'	N7° 14' 28"W
L37	59.85'	S82° 41' 47"W
L38	112.27'	S19° 05' 40"W
L39	108.60'	S55° 30' 24"W
L40	20.00'	N34° 29' 36"W

Easement #1 Line Table		
Line #	Length	Direction
L13	190.89'	N55° 30' 24"E
L14	123.92'	N19° 05' 40"E
L15	84.69'	N82° 41' 47"E
L16	95.83'	N7° 18' 13"W
L17	20.23'	S74° 06' 01"W
L18	40.45'	N7° 18' 13"W
L19	186.40'	N74° 06' 01"E
L20	40.00'	S15° 53' 59"E
L21	20.00'	S74° 06' 01"W
L22	20.00'	N15° 53' 59"W
L23	149.19'	S74° 06' 01"W
L24	20.23'	S7° 18' 13"E

**INTERSTATE 985
A/K/A GEORGIA
HIGHWAY 365 &
LANIER PARKWAY**
(PUBLIC, VARIABLE R/W,
LIMITED ACCESS)

POC IPF #4RB
N.1523697.86
E.2375542.53

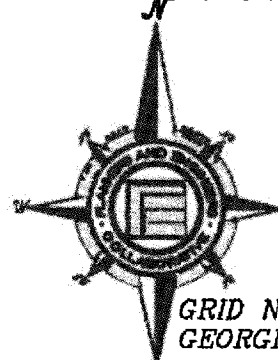
**40' TEMPORARY
CONSTRUCTION
EASEMENT #1**
0.105 ACRES
4563 S.F.

**40' TEMPORARY
CONSTRUCTION
EASEMENT #2**
0.161 ACRES
7033 S.F.

IPF 1" ANGLE IRON
1.1' S.W. @
OF P/L

S29°45'45"E/
0.65'
(TIE TO 1"CTP @
ANGLE IRON)

N/F
HALL COUNTY B.O.E.
TAX PARCEL ID: 08093-000008
PLAT SLIDE BOOK 660 PG 189A



GRID NORTH
GEORGIA WEST ZONE
SHEET 1 OF 3

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C.O.A.-LSF000004

40' TEMPORARY CONSTRUCTION EASEMENT EXHIBIT FOR:

WOODFIELD DEVELOPMENT

DRAWN BY: MN
CHECKED BY: JH
FILE NO.: 18161.01A
DATE: 7/09/20
SCALE: 1"=100'



40' TEMPORARY CONSTRUCTION EASEMENT #1

ALL THAT TRACT OR PARCEL OF LAND lying and being in Land Lot 97 of the 8th District, City of Flowery Branch, Hall County, Georgia and being more particularly described as follows:

COMMENCING at a #4 rebar found (N.1523697.86, E. 2375542.53, NAD83, GA. West Zone) on the Southeasterly Right of Way Line of Interstate 985 A/K/A Georgia Highway 365 & Lanier Parkway (Public, Variable R/W, Limited Access; thence leaving said Southeasterly Right of Way Line of Interstate 985 South 29 degrees 45 minutes 45 seconds East a distance of 447.67 feet to a point; thence North 55 degrees 30 minutes 24 seconds East a distance of 190.89 feet to a point; thence North 19 degrees 05 minutes 40 seconds East a distance of 123.92 feet to a point; thence North 82 degrees 41 minutes 47 seconds East a distance of 84.69 feet to a point; thence North 07 degrees 18 minutes 13 seconds West a distance of 95.83 feet to a point (N.1523640.27, E.2376034.45, NAD83, GA. West Zone), said point is the TRUE POINT OF BEGINNING.

THENCE South 74 degrees 06 minutes 01 seconds West a distance of 20.23 feet to a point; thence North 07 degrees 18 minutes 13 seconds West a distance of 40.45 feet to a point; thence North 74 degrees 06 minutes 01 seconds East a distance of 186.40 feet to a point; thence South 15 degrees 53 minutes 59 seconds East a distance of 40.00 feet to a point; thence South 74 degrees 06 minutes 01 seconds West a distance of 20.00 feet to a point; thence North 15 degrees 53 minutes 59 seconds West a distance of 20.00 feet to a point; thence South 74 degrees 06 minutes 01 seconds West a distance of 149.19 feet to a point; thence South 07 degrees 18 minutes 13 seconds East a distance of 20.23 feet to a point, said point is the TRUE POINT OF BEGINNING.

Said 40 foot Temporary Construction Easement #1 having an area of 4563 square feet, 0.105 acres more or less

SHEET 2 OF 3

PLANNERS AND ENGINEERS COLLABORATIVE

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(770) 451-2741 ■ WWW.PECATL.COM
C.O.A.-LSP000004

40' TEMPORARY CONSTRUCTION EASEMENT #1 LEGAL DESCRIPTION FOR:

WOODFIELD DEVELOPMENT

DRAWN BY: MN
CHECKED BY: JH
FILE NO.: 18151.01A
DATE: 7/09/20
SCALE: 1"=100'



40' TEMPORARY CONSTRUCTION EASEMENT #2

ALL THAT TRACT OR PARCEL OF LAND lying and being in Land Lot 97 of the 8th District, City of Flowery Branch, Hall County, Georgia and being more particularly described as follows:

COMMENCING at a #4 rebar found (N.1523697.86, E.2375542.53, NAD83, GA. West Zone) on the Southeasterly Right of Way Line of Interstate 985 A/K/A Georgia Highway 365 & Lanier Parkway (Public, Variable R/W, Limited Access; thence leaving said Southeasterly Right of Way Line of Interstate 985 South 29 degrees 45 minutes 45 seconds East a distance of 447.67 feet to a point; thence South 29 degrees 45 minutes 45 seconds East a distance of 20.07 feet to a point; thence North 55 degrees 30 minutes 24 seconds East a distance of 97.10 feet to a point (N.1523346.81, E.2375854.75, NAD83, GA. West Zone), said point is the TRUE POINT OF BEGINNING.

THENCE North 55 degrees 30 minutes 24 seconds East a distance of 102.02 feet to a point; thence North 19 degrees 05 minutes 40 seconds East a distance of 118.10 feet to a point; thence North 82 degrees 41 minutes 47 seconds East a distance of 92.29 feet to a point; thence North 07 degrees 18 minutes 13 seconds West a distance of 20.00 feet to a point; thence North 82 degrees 41 minutes 47 seconds East a distance of 20.00 feet to a point; thence South 07 degrees 18 minutes 13 seconds East a distance of 40.00 feet to a point; thence South 82 degrees 41 minutes 47 seconds West a distance of 20.04 feet to a point; thence South 07 degrees 14 minutes 28 seconds East a distance of 5.05 feet to a point; thence South 82 degrees 45 minutes 32 seconds West a distance of 20.00 feet to a point; thence North 07 degrees 14 minutes 28 seconds West a distance of 5.03 feet to a point; thence South 82 degrees 41 minutes 47 seconds West a distance of 59.85 feet to a point; thence South 19 degrees 05 minutes 40 seconds West a distance of 112.27 feet to a point; thence South 55 degrees 30 minutes 24 seconds West a distance of 108.60 feet to a point; thence North 34 degrees 29 minutes 36 seconds West a distance of 20.00 feet to a point, said point is the TRUE POINT OF BEGINNING.

Said 40 foot Temporary Construction Easement #2 having an area of 7033 square feet, 0.161 acres more or less

SHEET 3 OF 3

PLANNERS AND ENGINEERS COLLABORATIVE

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(770) 451-2741 ■ WWW.PECATL.COM
C.O.A.-LSF000004

40' TEMPORARY CONSTRUCTION EASEMENT #2 LEGAL DESCRIPTION FOR:

DRAWN BY: MN WOODFIELD DEVELOPMENT
CHECKED BY: JH
FILE NO.: 18161.01A
DATE: 7/09/20
SCALE: 1"=100'



EXHIBIT C

eFiled and eRecorded
DATE: 03/11/2022
TIME: 7:08 AM
DEED BOOK: 9078
PAGE: 536 - 553
FILING FEES: \$25.00
INTANGIBLE TAX: \$0.00
PARTICIPANT ID: 4591293252
RECORDED BY: JP
CLERK: Charles Baker, C.S.C
Hall County, GA

Recording Requested by and
Please Return to:

Michael Wall
Troutman Pepper Hamilton Sanders LLP
600 Peachtree Street, N.E., Suite 3000
Atlanta, GA 30308

PERMANENT SEWER AND TEMPORARY
CONSTRUCTION EASEMENT

THIS PERMANENT SEWER AND TEMPORARY CONSTRUCTION EASEMENT is executed this 31st day of March, 2020 (the "*Effective Date*") by the Estate of Mary Elizabeth R. Hickman, Louise Harley Hull, William Watt Neal, Jr. and Mary E. Roberts, f/k/a Mary Neal (collectively, "*Grantor*") for the benefit of Flowery Branch Apartments Owner, LLC, a Delaware limited liability company and its successors and assigns (the "*Grantee*").

WHEREAS, Grantee owns that certain parcel of land within the city of Flowery Branch, Hall County, Georgia having a tax parcel identification number of 08097-000001A (the "*Grantee Property*"), and requires certain easements as hereinafter described and granted in connection with the construction, maintenance, operation, and repair of certain Sewer Improvements (hereinafter defined) located within Hall County, Georgia; and

WHEREAS, Grantor owns that certain parcel of land located adjacent to the Grantee Property having a tax parcel identification number of 08097-000005 (the "*Grantor Property*"); the Grantor Property and the Grantee Property are collectively referred to herein as the "*Tracts*") and desires to grant such easements to Grantee for the consideration and upon the terms, conditions, and agreements hereinafter set forth.

NOW, THEREFORE, for and in consideration of TEN AND NO/100 DOLLARS (\$10.00), and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by Grantor, said Grantor does hereby grant, bargain, sell, and release unto Grantee,



its successors and assigns forever, the following easements subject to the terms, conditions, and agreements contained herein:

(1) A perpetual easement (the "**Sewer Easement**") for the construction, location, installation, operation, relocation, extension, inspection, maintenance, repair, alteration, modification, redesign, reconstruction, replacement, and removal of one or more sewer lines, together with all valves, appurtenances, apparatus, and equipment (collectively, the "**Sewer Improvements**") upon, over, along, across, through, and under the area identified as "20' Permanent Sewer Easement" on Exhibit A attached hereto (the "**Easement Area**"); and

(2) A temporary access and construction easement (the "**TCE**," and together with the Sewer Easement, the "**Easements**") upon, over, along, across, through, and under such portions of the Grantor Property as shall be reasonably necessary for the installation of the Sewer Improvements and the performance of related construction activities and the operation of construction equipment associated therewith.

TOGETHER with all the rights and privileges necessary or convenient for the full use and enjoyment of said Easements, including, without limitation, the rights of ingress, egress, and regress over, under, through, upon, and across the remainder of the Grantor Property and all rights of way and ingress and egress easements beneficial to Grantor and/or the above-described property.

TOGETHER also with the right from time to time to remove, cut, trim, or clear and keep clear trees, underbrush, structures, and obstructions upon said Easement Area, and the right of entry upon the Grantor Property, beneficial estates, and all rights of way for all of the purposes aforesaid; provided, however, that nothing herein shall create a duty of Grantee to remove said items or keep clear or maintain the Easement Area, beneficial estates, or rights of way.

These Easements shall run with title to the Tracts and shall be binding upon and inure to the benefit of the Grantor and the Grantee and their respective heirs, successors, assigns, administrators, and executors.

IT IS UNDERSTOOD AND AGREED that the Easements above described are granted and accepted upon the following terms and conditions:

The TCE granted herein shall automatically terminate, without the necessity of the execution of recording of any other document, upon the completion of the Sewer Improvements and the public dedication of same to the City of Flowery Branch, a municipal corporation of the state of Georgia (the "**City**").

Upon completion of the Sewer Improvements, Grantee may assign its rights hereunder to the City in connection with the public dedication of such Sewer Improvements, and Grantor hereby consents both to such assignment and to such dedication.

The Grantor will make no use of the Easement Area that is inconsistent with the uses and purposes for which the Easements have been granted and shall not interfere with Grantee's use of

the Easement Area in any way, and without limiting the generality of this provision, the Grantor agrees that no permanent structures such as buildings, sheds, and other structures shall be placed upon the Easement Area at any time.

Notwithstanding anything contained herein to the contrary, Grantee hereby indemnifies and shall save and hold Grantor harmless from any injury or loss incurred by the Grantor as a direct result of damage to the Grantor Property caused by the Grantee in the exercise of its rights hereunder; provided that in no case shall Grantee indemnify Grantor, its successors, or assigns for losses arising from Grantor's, its successors' or assigns' negligence or willful misconduct, or for losses arising or incurred due to any hazardous substances or other conditions existing on the Grantor Property prior to the Effective Date and not otherwise directly caused by Grantee.

TO HAVE AND TO HOLD, all and singular, the easement rights and privileges described unto Grantee, its successors and assigns forever.

And the Grantor does hereby bind itself and its heirs, successors, assigns, administrators and executors to warrant and forever defend all and singular the said premises unto Grantee, its successors and assigns against Grantor and Grantor's heirs, successors, assigns, administrators and executors and against every person whomsoever lawfully claiming or to claim the same or any part thereof. The terms of this instrument shall run with title to the Tracts, and shall bind and inure to the benefit of the parties hereto, their respective successors and assigns, and every other person now or hereafter acquiring an interest in or lien upon the Tracts, or any portion thereof.

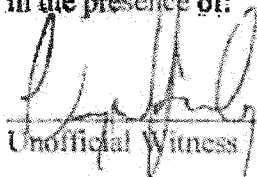
If any covenant or other provision contained in this instrument is to any extent declared by a court of competent jurisdiction to be invalid or unenforceable, the remaining covenants, restrictions, and provisions contained herein (or the application of such covenants and provisions to persons or circumstances other than those in respect of which the determination of invalidity or unenforceability was made) will not be affected thereby and each covenant and provision contained in this instrument will be valid and enforceable to the fullest extent permitted by law.

This instrument may be executed in any number of counterparts, each of which shall be an original but all of which shall constitute one and the same instrument.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, said Grantor has hereunto set its hand and affixed seal, the day and year first above written.

Signed, sealed and delivered
in the presence of:


Unofficial Witness


Notary Public

My commission expires: May 10, 2022

GRANTOR:

Estate of Mary Elizabeth R. Hickman

 (SEAL)
By: Earl L. Hickman
Title: Executor of the Estate of Mary Elizabeth
R. Hickman



[GRANTOR SIGNATURES CONTINUE ON FOLLOWING PAGE]

Signed, sealed and delivered
in the presence of:

GRANTOR:

Louise Harley Hull

Helen Hull
Unofficial Witness

Louise Harley Hull (SEAL)
LOUISE HARLEY HULL

Molly M. Hull
Notary Public

My commission expires: 10-19-24

[GRANTOR SIGNATURES CONTINUE ON FOLLOWING PAGE]



Signed, sealed and delivered
in the presence of:

GRANTOR:

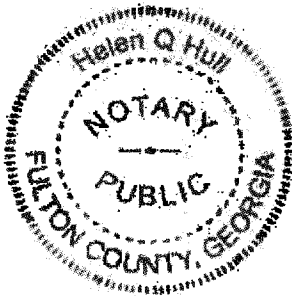
[Signature]
Unofficial Witness

[Signature]
WILLIAM WATT NEAL, JR.

[Signature]
Notary Public

My commission expires: 9.25.2023

[GRANTOR SIGNATURES CONTINUE ON FOLLOWING PAGE]

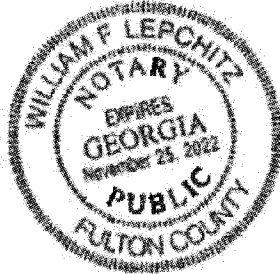


Signed, sealed and delivered
in the presence of:

[Signature]
Unofficial Witness

[Signature]
Notary Public

My commission expires: 11/25/2022



GRANTOR:

Mary E. Roberts, f/k/a Mary Neal

[Signature] (SEAL)
MARY E. ROBERTS, F/K/A MARY NEAL

Exhibit A
EASEMENT AREA

(SEE ATTACHED)

10/10/1945

**A/K/A INTERSTATE 985
LANIER PARKWAY
(PUBLIC, VARIABLE R/W,
LIMITED ACCESS)**



GRID NORTH
GEORGIA WEST ZONE

POC
N.1523126.68
E.2375119.06

N30°50'15"W
274.99'

IPF R/W
WOVEN WIRE FENCE

N/F
MARY ELIZABETH HICKMAN
TAX PARCEL ID: 08097-000005
DB 3543 PG. 397

MATCHLINE

POB
40' TEMPORARY
CONSTRUCTION
EASEMENT
N.1522595.83
E.2375115.19

40' TEMPORARY
CONSTRUCTION
EASEMENT
0.184 ACRES
8,023 S.F.

SHEET 1 OF 3

PLANNERS AND ENGINEERS COLLABORATIVE
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■ CIVIL ENGINEERING ■ LAND SURVEYING
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770/451-2711 ■ WWW.PECOLL.COM
C.O.A.-US000054

**40' TEMPORARY CONSTRUCTION
EASEMENT EXHIBIT FOR:**

WOODFIELD DEVELOPMENT

DRAWN BY: MN
CHECKED BY: JH
FILE NO.: 18161.01A
DATE: 7/09/20
SCALE: 1"=100'



IPF RWM

N/F
MARY ELIZABETH HICKMAN
TAX PARCEL ID: 08097-000005
DB 3543 PG 397

MATCHLINE

POB

40' TEMPORARY
CONSTRUCTION
EASEMENT

N.1522595.83

E.2375115.19

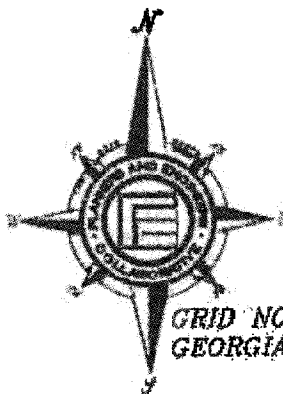
40' TEMPORARY
CONSTRUCTION
EASEMENT

0.184 ACRES

8,023 S.F.

40 foot Temporary Construction
Easement Line Table

Line #	Length	Direction
L1	39.05'	S29° 25' 29"E
L2	20.29'	S29° 25' 29"E
L3	133.75'	S70° 15' 13"W
L4	138.42'	S54° 51' 44"W
L25	134.95'	S28° 50' 35"E
L26	20.00'	N61° 09' 25"E
L27	39.31'	S28° 50' 35"E
L28	261.48'	S19° 38' 53"W
L29	118.78'	S70° 01' 57"W
L30	20.00'	N19° 58' 03"W
L31	109.37'	N70° 01' 57"E
L32	30.31'	S28° 50' 35"E



GRID NORTH
GEORGIA WEST ZONE

SHEET 2 OF 3

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(770) 451-2741 ■ WWW.PECAL.COM
C.O.A.-USPC00004

**40' TEMPORARY CONSTRUCTION
EASEMENT EXHIBIT FOR:**

WOODFIELD DEVELOPMENT

DRAWN BY: MN
CHECKED BY: JH
FILE NO.: 18161.01A
DATE: 7/09/20
SCALE: 1"=100'



40' TEMPORARY CONSTRUCTION EASEMENT

ALL THAT TRACT OR PARCEL OF LAND lying and being in Land Lot 97 of the 8th District, City of Flowery Branch, Hall County, Georgia and being more particularly described as follows:

COMMENCING at a #4 rebar found (N.1523126.68, E. 2375119.06, NAD83, GA. West Zone) on the Southeasterly Right of Way Line of Interstate 985 A/K/A Georgia Highway 365 & Lanier Parkway (Public, Variable R/W, Limited Access; thence leaving said Southeasterly Right of Way Line of Interstate 985 South 30 degrees 50 minutes 15 seconds East a distance of 274.99 feet to a #4 rebar found; thence South 29 degrees 25 minutes 29 seconds East a distance of 39.05 feet to a point; thence South 29 degrees 25 minutes 29 seconds East a distance of 20.29 feet to a point; thence South 70 degrees 15 minutes 13 seconds West a distance of 133.75 feet to a point; thence South 54 degrees 51 minutes 44 seconds West a distance of 138.42 feet to a point; thence South 28 degrees 50 minutes 35 seconds East a distance of 134.95 feet to a point (N.1522595.83, E. 2375115.19, NAD83, GA. West Zone), said point is the TRUE POINT OF BEGINNING.

THENCE North 61 degrees 09 minutes 25 seconds East a distance of 20.00 feet to a point; thence South 28 degrees 50 minutes 35 seconds East a distance of 39.31 feet to a point; thence South 19 degrees 38 minutes 53 seconds West a distance of 261.48 feet to a point; thence South 70 degrees 01 minutes 57 seconds West a distance of 118.78 feet to a point; thence North 19 degrees 58 minutes 03 seconds West a distance of 20.00 feet to a point; thence North 70 degrees 01 minutes 57 seconds East a distance of 109.37 feet to a point; thence North 19 degrees 38 minutes 53 seconds East a distance of 243.07 feet to a point; thence North 28 degrees 50 minutes 35 seconds West a distance of 30.31 feet to a point, said point is the TRUE POINT OF BEGINNING.

Said 40 foot Temporary Construction Easement having an area of 8,023 square feet, 0.184 acres more or less.

SHEET 9 OF 3

PLANNERS AND ENGINEERS COLLABORATIVE "WE PROVIDE SOLUTIONS"

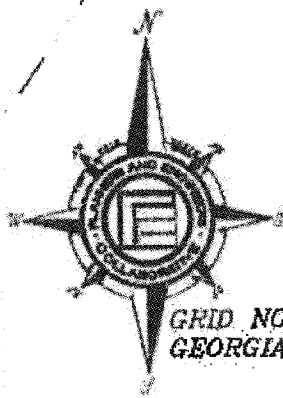


■ SITE PLANNING ■ LANDSCAPE ARCHITECTURE
■ CIVIL ENGINEERING ■ LAND SURVEYING
350 RESEARCH COURT PEACHTREE CORNERS, GEORGIA 30092
(770) 451-2741 ■ WWW.PECOLL.COM
C.O.A. - ESF000004

40' TEMPORARY CONSTRUCTION EASEMENT LEGAL DESCRIPTION FOR:

DRAWN BY: MN WOODFIELD DEVELOPMENT
CHECKED BY: JH
FILE NO.: 18161.01A
DATE: 7/09/20
SCALE: 1"=100'





INTERSTATE 985
A/K/A GEORGIA HIGHWAY 365 &
LANIER PARKWAY
(PUBLIC, VARIABLE R/W,
LIMITED ACCESS)

GRID NORTH
GEORGIA WEST ZONE

IPF R/W
WOODEN WIRE FENCE

20' PERMANENT
SEWER EASEMENT
0.703 ACRES
30,611 S.F.

N/F
MARY ELIZABETH HICKMAN
TAX PARCEL ID: 08097-000005
DB 3543 PG 397

MATCHLINE

SHEET 1 OF 3

POC
N.1523126.68
E.2375119.06

POB
20' PERMANENT
SEWER EASEMENT
N.1522856.56
E.2375279.21

S30°50'15"E
274.99'

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PLANNERS AND ENGINEERS COLLABORATIVE

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(770) 451-2741 ■ WWW.PECATLOOM
C.O.A.-13R00004

20' PERMANENT SEWER
EASEMENT EXHIBIT FOR:

WOODFIELD DEVELOPMENT

DRAWN BY: MN
CHECKED BY: JH
FILE NO.: 18181.01A
DATE: 7/29/20
SCALE: 1"=100'



**INTERSTATE 985
A/K/A GEORGIA
HIGHWAY 365 &
LANIER PARKWAY
(PUBLIC VARIABLE R/W,
LIMITED ACCESS)**

MATCHLINE

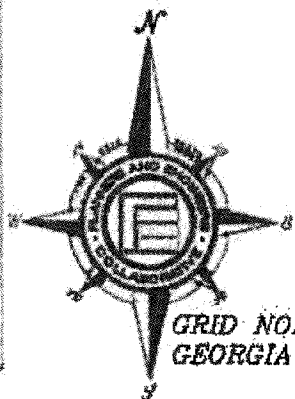
**20' PERMANENT
SEWER EASEMENT
0.703 ACRES
30,611 S.F.**

**N/F
MARY ELIZABETH HICKMAN
TAX PARCEL ID: 08097-000005
DB: 3543 PG 397**

20 foot Permanent Sanitary Sewer Easement Line Table		
Line #	Length	Direction
L1	39.05'	S29° 25' 29"E
L2	20.29'	S29° 25' 29"E
L3	133.75'	S70° 15' 13"W
L4	138.42'	S54° 51' 44"W
L5	165.25'	S28° 50' 35"E
L6	243.07'	S19° 38' 53"W
L7	295.53'	S70° 01' 57"W
L8	158.77'	S53° 07' 19"W
L9	220.09'	S47° 07' 41"W
L10	129.08'	S48° 34' 37"W
L11	4.61'	N85° 19' 11"E
L12	20.00'	S4° 40' 49"E
L13	18.77'	S85° 19' 11"W
L14	27.59'	N44° 18' 05"W
L15	153.52'	N48° 34' 37"E
L16	220.89'	N47° 07' 41"E
L17	182.79'	N53° 07' 19"E

L18	16.01'	N53° 07' 19"E
L19	4.87'	S36° 52' 40"E
L20	272.37'	N70° 01' 57"E
L21	224.65'	N19° 38' 53"E
L22	174.16'	N28° 50' 35"W
L23	159.04'	N54° 51' 44"E
L24	133.05'	N70° 15' 13"E

**N/F
BRE DDR BR
STONEBRIDGE GA LLC
TAX PARCEL ID: 08097-000009**



**GRID NORTH
GEORGIA WEST ZONE**

SHEET 2 OF 3

PLANNERS AND ENGINEERS COLLABORATIVE
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■ CIVIL ENGINEERING ■ LAND SURVEYING
300 RESEARCH COURT, PERCHIEVE CORNER, GEORGIA 30092
(770) 451-2741 ■ WWW.PECATL.COM
C.O.A. 137000004

**20' PERMANENT SEWER
EASEMENT EXHIBIT FOR:**

WOODFIELD DEVELOPMENT

**DRAWN BY: MN
CHECKED BY: JH
FILE NO.: 18151.01A
DATE: 7/09/20
SCALE: 1"=100'**



20' PERMANENT SEWER EASEMENT LEGAL DESCRIPTION

ALL THAT TRACT OR PARCEL OF LAND lying and being in Land Lot 97 of the 8th District, City of Flowery Branch, Hall County, Georgia and being more particularly described as follows:

COMMENCING at a #4 rebar found (N.1523126.68, E. 2375119.06, NAD83, GA. West Zone) on the Southeasterly Right of Way Line of Interstate 985 A/K/A Georgia Highway 365 & Lanier Parkway (Public, Variable R/W, Limited Access; thence leaving said Southeasterly Right of Way Line of Interstate 985 South 30 degrees 50 minutes 15 seconds East a distance of 274.99 feet to a #4 rebar found; thence South 29 degrees 25 minutes 29 seconds East a distance of 39.05 feet to a point (N.1522856.56, E. 2375279.21, NAD83, GA. West Zone), said point is the TRUE POINT OF BEGINNING.

THENCE South 29 degrees 25 minutes 29 seconds East a distance of 20.29 feet to a point;
thence South 70 degrees 15 minutes 13 seconds West a distance of 133.75 feet to a point;
thence South 54 degrees 51 minutes 44 seconds West a distance of 138.42 feet to a point;
thence South 28 degrees 50 minutes 35 seconds East a distance of 165.25 feet to a point;
thence South 19 degrees 38 minutes 53 seconds West a distance of 243.07 feet to a point;
thence South 70 degrees 01 minutes 57 seconds West a distance of 295.53 feet to a point;
thence South 53 degrees 07 minutes 19 seconds West a distance of 158.77 feet to a point;
thence South 47 degrees 07 minutes 41 seconds West a distance of 220.09 feet to a point;
thence South 48 degrees 34 minutes 37 seconds West a distance of 129.08 feet to a point;
thence North 85 degrees 19 minutes 11 seconds East a distance of 4.61 feet to a point;
thence South 04 degrees 40 minutes 49 seconds East a distance of 20.00 feet to a point;
thence South 85 degrees 19 minutes 11 seconds West a distance of 18.77 feet to a point;
thence North 44 degrees 18 minutes 05 seconds West a distance of 27.59 feet to a point;
thence North 48 degrees 34 minutes 37 seconds East a distance of 153.52 feet to a point;
thence North 47 degrees 07 minutes 41 seconds East a distance of 220.89 feet to a point;
thence North 53 degrees 07 minutes 19 seconds East a distance of 162.79 feet to a point;
thence North 53 degrees 07 minutes 19 seconds East a distance of 16.01 feet to a point;
thence South 36 degrees 52 minutes 41 seconds East a distance of 4.87 feet to a point;
thence North 70 degrees 01 minutes 57 seconds East a distance of 272.37 feet to a point;
thence North 19 degrees 38 minutes 53 seconds East a distance of 224.65 feet to a point;
thence North 28 degrees 50 minutes 35 seconds West a distance of 174.16 feet to a point;
thence North 54 degrees 51 minutes 44 seconds East a distance of 159.04 feet to a point;
thence North 70 degrees 15 minutes 13 seconds East a distance of 133.05 feet to a point,
said point is the TRUE POINT OF BEGINNING.

Said 20 foot Permanent Sewer Easement having an area of 30,611 square feet, 0.703 acres more or less

SHEET 3 OF 3

PLANNERS AND ENGINEERS COLLABORATIVE

"WE PROVIDE SOLUTIONS"



■ SITE PLANNING ■ LANDSCAPE ARCHITECTURE
■ CIVIL ENGINEERING ■ LAND SURVEYING
350 RESEARCH COURT PEACHTREE CORNERS, GEORGIA 30092
(770) 451-2741 ■ WWW.PECAL.COM
C.O.A. - LS0000004

20' PERMANENT SEWER EASEMENT LEGAL DESCRIPTION FOR:

WOODFIELD DEVELOPMENT
DRAWN BY: JMN
CHECKED BY: JH
FILE NO.: 18161.01A
DATE: 7/09/20
SCALE: 1"=100'



AFFIDAVIT OF MARY ELIZABETH ROBERTS

This Affidavit (this "Affidavit") is made as of the date set forth below by Mary Elizabeth Roberts, f/k/a Mary Neal, an individual resident of Hall County, Georgia (the "Undersigned"). The Undersigned hereby certifies for the benefit of Chicago Title Insurance Company as follows:

1. The Undersigned is not the party identified as "Mary E. Dine-Neal" in the Notice of Federal Tax Lien dated December 6, 2011, recorded December 14, 2011 in Lien Book 387, Page 314 in the records of the Clerk of Superior Court of Hall County, Georgia, attached as Exhibit A hereto.

2. The Undersigned owns and permanently resides at the residence located at 11 Bohler Manor Rd [street address] in Hall County [state], and has owned and permanently resided at such property since 2012 [year].

[SEE ATTACHED SIGNATURE PAGE]

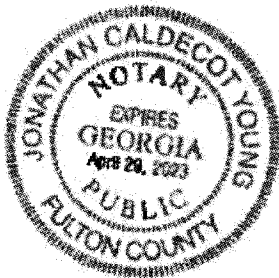
Dated: August 7, 2020.

By: Mary Elizabeth Roberts
MARY ELIZABETH ROBERTS

STATE OF Georgia
COUNTY OF Fulton

I, Jonathan Caldecot Young, a Notary Public for said County and State, do hereby certify that Mary Elizabeth Roberts either being personally known to me or proven by satisfactory evidence (said evidence being Durston), personally appeared before me this day, and acknowledged the voluntary due execution of the foregoing instrument by him for the purposes stated therein. Witness my hand and notarial seal, this 7 day of August, 2020.

[SEAL]



Notary Public

Printed Name: Jonathan Caldecot Young

My Commission Expires 4/20/23

00387
00314

3351 Department of the Treasury - Internal Revenue Service
Form 668 (Y)(c)
(Rev. February 2004)
Notice of Federal Tax Lien
BK 387
000314

Area: SMALL BUSINESS/SELF EMPLOYED AREA #5
Lien Unit Phone: (800) 829-3993
Serial Number: 834381311
For Optional Use by Recording Office

As provided by section 6321, 6322, and 6323 of the Internal Revenue Code, we are giving a notice that taxes (including interest and penalties) have been assessed against the following named taxpayer. We have made a demand for payment of this liability, but it remains unpaid. Therefore, there is a lien in favor of the United States on all property and rights to property belonging to this taxpayer for the amount of these taxes, and additional penalties, interest, and costs that may accrue.

Name of Taxpayer WILLIAM J NEALIS & MARY E DINE-NEAL

Residence 3039 DALE RD
GAINESVILLE, GA 30507-8102

IMPORTANT RELEASE INFORMATION: For each assessment listed below, unless notice of the lien is refiled by the date given in column (d), this notice shall, on the day following such date, operate as a certificate of release as defined in IRC 6325(a).

Kind of Tax (a)	Tax Period Ending (b)	Identifying Number (c)	Date of Assessment (d)	Last Day for Refiling (e)	Unpaid Balance of Assessment (f)
1040	12/31/2000	XXX-XX-9367	04/11/2011	05/11/2021	7413.64
1040	12/31/2001	XXX-XX-9367	05/23/2011	06/22/2021	9781.56
1040	12/31/2002	XXX-XX-9367	04/11/2011	05/11/2021	5331.02
1040	12/31/2003	XXX-XX-9367	08/21/2006	09/20/2016	161.31
1040	12/31/2004	XXX-XX-9367	04/18/2011	05/18/2021	9791.17
1040	12/31/2006	XXX-XX-9367	04/04/2011	05/04/2021	4207.25
1040	12/31/2007	XXX-XX-9367	04/18/2011	05/18/2021	7715.44
1040	12/31/2008	XXX-XX-9367	03/07/2011	04/06/2021	18440.50
1040	12/31/2009	XXX-XX-9367	03/07/2011	04/06/2021	2335.53

Place of Filing
Clerk of Superior Court
Hall County
Gainesville, GA 30503
Total \$ 65167.42

This notice was prepared and signed at NASHVILLE, TN on this,

the 06th day of December, 2011.

021993

Signature: [Signature]
for FRED BANKS
Title: ACS SBSE
(800) 829-3993
25-00-0000

(NOTE: Certification of officer authorized by law to take acknowledgment is not essential to the validity of Notice of Federal Tax Lien
Rev. RUL. 71-455, 1971-2 C.B. 409)

Part 1 - Kept By Recording Office

Form 668(Y)(c) (Rev. 2-2004)
CAT. NO 60029X

FILED
HALL CO, GA
11 DEC 14 PM 12:25
CHARLES BAKER, CLERK
SUPERIOR STATE COURT
BY: [Signature]

EXHIBIT D

033796

SEWER SYSTEM FACILITIES DEDICATION

000547

GEORGIA, HALL COUNTY

This conveyance executed this 9th day of October, 2000 for and in consideration of ten (\$10.00) dollars in hand paid, receipt of which is acknowledged, the undersigned does hereby grant, sell and convey unto the City of Flowery Branch, Georgia, forever all pump stations, sanitary sewers lines, perpetual easements for same, and appurtenances shown across and through the land indicated on the plat attached hereto as Exhibit A. Said land is indicated in Deed Book 3067, Pages 223-227; Deed Book 3183, Pages 258-262; and Deed Book 3420, Page 464, in the Superior Court of Hall County in Gainesville, Georgia. Said easements being on the lands of grantor and extending a distance of 10 feet on either and both sides of the centerline of sewer line and pump station or as otherwise shown on Exhibit A.

The Grantee shall have the right of ingress and egress on said lands for the purpose of maintaining said sewer system facilities and shall exercise reasonable diligence in doing necessary work in connection therewith so as to avoid damaging the property.

IN WITNESS WHEREOF, the undersigned Grantee hereto set his/her hand and seal the day and year above written.

Signed, Sealed and Delivered
In the Presence of:

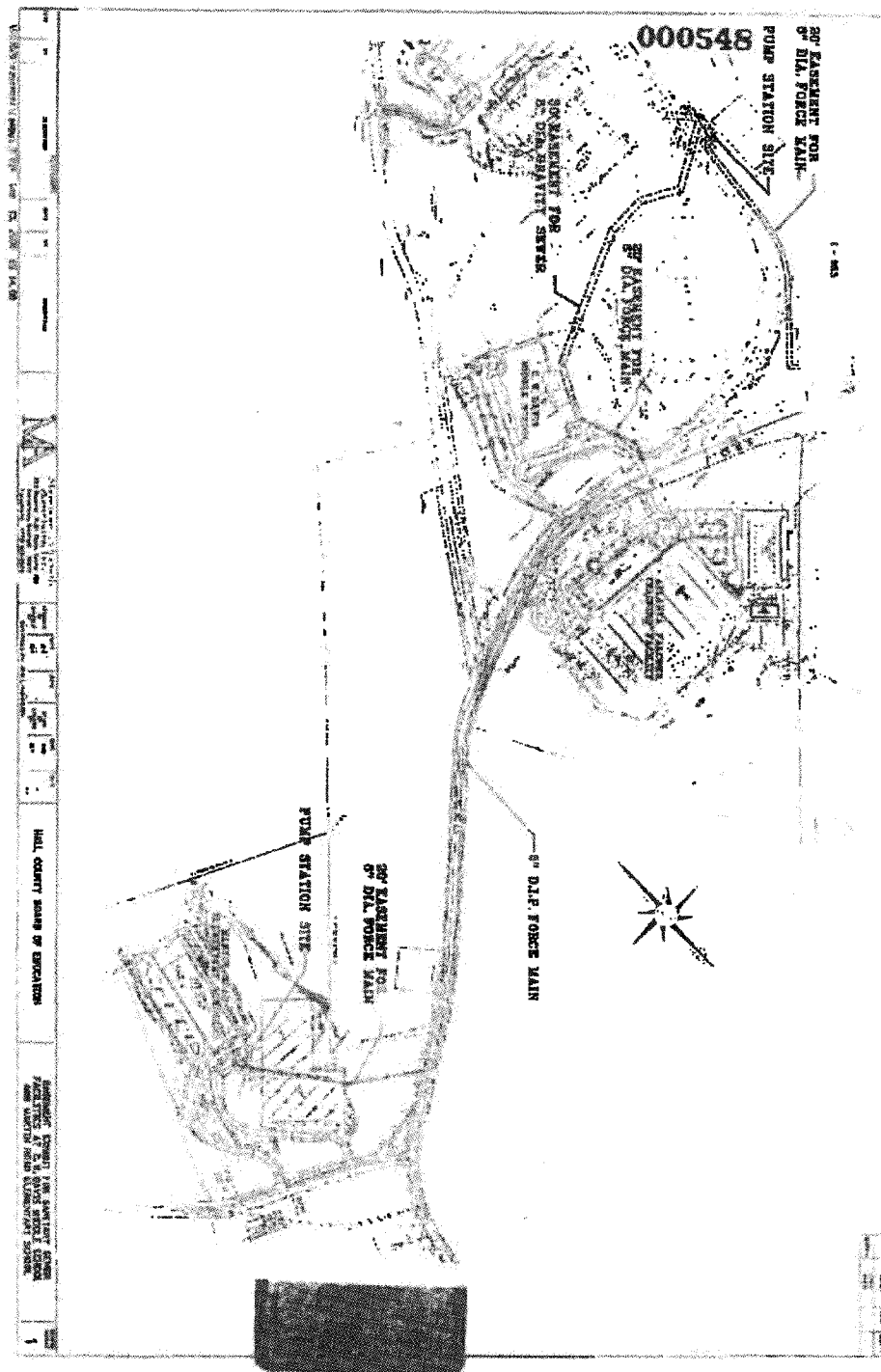
Chasem Young
Notary Public

HALL COUNTY SCHOOL DISTRICT

Bill L. Higgins
Chairman, Hall County Board of Education

Dwight S. Wood
Superintendent and Ex-Officio Secretary
Hall County Board of Education

Georgia, Hall County Clerk Superior Court
Filed in office, this 11 day of Dec.
20 00 at 11:15 a.m. Recorded in
Book 3183 Page(s) 547-548
this 12 day of Dec., 2000
DWIGHT S. WOOD, CLERK, by: 31443



Cross Reference: DB 9087 P 613 – 656

UPON RECORDING RETURN TO:
Troutman Pepper Hamilton Sanders, LLP
600 Peachtree Street, N.E.
Suite 3000
Atlanta, Georgia 30308
Attn: David C. Kirk

eFiled and eRecorded
DATE: 07/28/2022
TIME: 11:15 AM
DEED BOOK: 9170
PAGE: 217 - 222
FILING FEES: \$25.00
PARTICIPANT ID: 9562359654
PARTICIPANT ID: 7067927936
RECORDED BY: CH
CLERK: Charles Baker, C.S.C
Hall County, GA

STATE OF GEORGIA

COUNTY OF HALL

**FIRST AMENDMENT TO THE AGREEMENT
BY AND BETWEEN FLOWERY BRANCH APARTMENTS OWNER, LLC
AND THE CITY OF FLOWERY BRANCH, GEORGIA
FOR ACCESS TO AND MAINTENANCE OF THE SANITARY SEWER SYSTEM**

THIS FIRST AMENDMENT TO THE AGREEMENT (AMENDMENT), is made and entered into effective the 21 day of July, 2022, by and between Flowery Branch Apartments Owners, LLC, a Delaware limited liability company, located at 8210 Creedmoor Road, Suite 103, Raleigh, North Carolina 27613, ("DEVELOPER") and the City of Flowery Branch, Georgia, a Georgia municipal corporation, located at 5410 Pine Street, Flowery Branch, Georgia 30542 ("CITY").

WHEREAS, DEVELOPER and CITY entered into that certain agreement dated March 22, 2022, 2015 ("ORIGINAL AGREEMENT") for access to and maintenance of the sanitary sewer system; and

WHEREAS, DEVELOPER and CITY desire to amend the ORIGINAL AGREEMENT, on and subject to the terms and conditions set forth herein.

NOW, THEREFORE, DEVELOPER and CITY agree to amend the ORIGINAL AGREEMENT as follows:

1. Recitals. Each of the foregoing recitals and representations in this Amendment form a material part of this AMENDMENT and are incorporated herein by this reference, and such recitals and representations and the ORIGINAL AGREEMENT are hereby ratified.
2. Paragraph XI. Paragraph XI of the ORIGINAL AGREEMENT is deleted in its entirety and replaced by the following:

First American Title Insurance
National Commercial Services
NCS - 1123415 -CO

"XI. Within ninety (90) calendar days of the certification of completeness of the CONNECTION PROJECT and connection of DEVELOPMENT to the CITY's sewer system as described in Paragraph VI of this AGREEMENT, the CITY shall have the right to direct DEVELOPER in writing to install ten (10) foot extensions to raise the height, at DEVELOPER'S expense, of the two manholes shown within the red box on Exhibit E, which is attached hereto and incorporated by reference herein. Upon receipt of such written direction from the CITY, DEVELOPER shall have an additional ninety (90) days to construct/install the manhole extensions, at which time DEVELOPER shall be relieved of any obligations contained in Paragraphs XI and X of this AGREEMENT. Should CITY not exercise its right under this Paragraph XI within ninety (90) calendar days of the certification of completeness of the CONNECTION PROJECT and connection of DEVELOPMENT to the CITY's sewer system as described in Paragraph VI of this AGREEMENT, DEVELOPER shall have no obligation to raise said manholes."

EXCEPT AS HEREIN PROVIDED, all other terms and conditions of the ORIGINAL AGREEMENT shall remain the same and the parties hereto do hereby ratify the ORIGINAL AGREEMENT.

IN WITNESS WHEREOF, DEVELOPER and CITY have carefully read and reviewed this AMENDMENT and each term and provision contained herein, and by the execution of this AMENDMENT shows their informed and voluntary consent thereto.

THIS 21st DAY OF JULY, 2022.

Signed, sealed and delivered in the presence of:

[Signature]
Unofficial Witness
[Signature]
Notary Public

**FLOWERY BRANCH APARTMENTS
OWNER, LLC**, a Delaware limited liability
company

BY: **FLOWERY BRANCH VENTURE LLP**,
a Delaware limited liability partnership
Its Sole Member

My Commission Expires

Aug 9, 2025

(NOTARIAL SEAL)



BY: **WF FLOWERY BRANCH, LLC**,
a Delaware limited liability
company,
Its Administrative Partner

BY:

[Signature]
Patrick Kassm
its Vice President

Signatures Continued Next Page

CITY OF FLOWERY BRANCH, GEORGIA

Edward R. Asbridge
By: Edward R. Asbridge, Mayor

ATTEST:

Shelia Cooper
Shelia Cooper, City Clerk



EXHIBIT E

128003386v2

ESTOPPEL CERTIFICATE

Re: Agreement by and between Flowery Branch Apartments Owner, LLC, a Delaware limited liability company (the “**Prior Developer**”) and the City of Flowery Branch, Georgia, a Georgia municipal corporation (“**City**”) dated as of March 22, 2022 and recorded in Deed Book 9087, Page 613 in the land records of Hall County, Georgia (such records, the “**Public Records**,” and such agreement, the “**Original Agreement**”), as amended by that certain First Amendment to the Agreement by and between Prior Developer and City dated as of July 21, 2022 and recorded in Deed Book 9170, Page 217 in the Public Records (the “**First Amendment**,” and together with the Original Agreement, the “**Agreement**”).

With the understanding that Prior Developer has conveyed the Development to Folksong Acquisition LLC, a Delaware limited liability company, its successors and assigns (“**Purchaser**”) and Purchaser is now the Developer under the Agreement, the City hereby certifies to Prior Developer, Purchaser, and their respective successors and assigns as follows:

1. The Agreement is in full force and effect and has not been modified, extended, supplemented or amended except by those written instruments referred to herein. All capitalized terms used herein but not defined herein shall have the meanings assigned to them in the Agreement.

2. The Developer is not in default under the Agreement, and no event has occurred which, with the giving of notice or the passage of time, or both, would constitute a default by the Developer.

3. The obligations of the Developer under Sections I, II, III, IV, V, VI, VII, VIII, X, XI, XII, XIII, XIV of the Agreement have been satisfied, and neither Prior Developer, Developer, Purchaser, the owner of the Development, nor their respective successors or assigns shall have any further obligations to design, construct, or pay for the construction of the Projects.

4. The City did not exercise its rights to require additional extensions to raise the height of two manholes pursuant to Section XI of the Agreement and all such rights included therein have expired.

5. As of the date hereof, the Developer is in compliance with its obligations under Section IX of the Agreement.

6. The City issued a certification of completeness for the Connection Project and connection of the Development on July 14, 2022, and as such the Connection Project is deemed complete in accordance with the Agreement.

7. Construction of the Development has been completed and approved by the City and the City has issued a final certificate of occupancy for the Development.

8. The undersigned executing this Estoppel Certificate on behalf of the City has the power and authority to execute this Estoppel Certificate.

This Estoppel Certificate may be relied upon by Prior Developer, Purchaser, and their respective successors and assigns. This Estoppel Certificate may be executed by electronic means (including, without limitation, manually executed signatures transmitted by electronic format (including, without limitation, “pdf”, “tif” or “jpg”) and other electronic signatures (including, without limitation, DocuSign and AdobeSign). The use of certified electronic signatures and

electronic records (including, without limitation, any contract or other record created, generated, sent, communicated, received, or stored by electronic means) shall be of the same legal effect, validity and enforceability as a manually executed signature or use of a paper-based record-keeping system to the fullest extent permitted by applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, and any other applicable law, including, without limitation, any state law based on the Uniform Electronic Transactions Act or the Uniform Commercial Code. The undersigned hereby waive any defenses to the enforcement of the terms of this Estoppel Certificate based on the form of its signature, and hereby agrees that such electronically transmitted or signed signatures shall be conclusive proof, admissible in judicial proceedings, of such party's execution of this Estoppel Certificate.

[Signature Page Follows]

Executed as of this ____ day of _____, 2023.

City of Flowery Branch, Georgia

By: Edward R. Asbridge, Mayor

ATTEST:

Shelia R. Cooper, City Clerk



FLOWERY BRANCH CITY COUNCIL



EXECUTIVE SUMMARY

SUBJECT: Consider Awarding a Contract with Archer Western Construction for Construction Manager at Risk Services for the Construction of the Flowery Branch Wastewater Treatment Plant Expansion (WWTP).

COUNCIL MEETING DATE: June 1, 2023

HISTORY:

The City of Flowery Branch has seen a substantial increase in population over the last several years with an even more substantial increase in wastewater influent as the entire region has seen the same growth. With that growth, there is the need for the wastewater treatment facility to expand to manage the incoming flow. This CMAR WWTP expansion project will increase the facility capacity to 2.2 MGD (which matches the acquired Lake Lanier permit.)

FACTS AND ISSUES:

The construction manager at risk role was advertised via a request for proposal (RFP) process and included an interview phase for all proposers. A total of four reputable and experienced firms proposed for the CMAR role. Using the provided proposals, interviews, and contractor provided cost markup sheet the best value CMAR was identified to be Archer Western Construction (AW). AW will work with city staff and the engineering design firm, ESG Engineering, Inc., to help deliver the needed wastewater treatment plant expansion. During the ongoing design phase AW will provide constructability review of the design, detailed cost estimates at each phase of the design, and provide procurement guidance and support to mitigate the long lead equipment purchases. Once the preconstruction (design) period reaches the 60-80% design level AW will provide a guaranteed maximum price (GMP) to complete the construction work for the expansion. That proposal and contract amount will be brought back for approval to amend this overall CMAR contract with the GMP. The construction to expand the wastewater treatment plant will include new screening, grit removal, biological treatment basins, membranes, disinfection equipment, site work, electrical work, solids dewatering improvements, and other miscellaneous components to increase overall facility capacity.

OPTIONS:

Approve or Deny

IF FUNDING IS INVOLVED, ARE FUNDS APPROVED IN THE CURRENT BUDGET:

Yes

AMOUNT AND SOURCE OF FUNDS:

\$352,720 - GEFA Loan for Clean Water

RECOMMENDATION:

Award a contract with Archer Western Construction for construction manager at risk services for the construction of the Flowery Branch Wastewater Treatment Plant Expansion (WWTP).

SAMPLE MOTION:

I make a motion to approve the attached CMAR contract with Archer Western Construction for an initial amount for preconstruction services not to exceed \$352,720 with funding to be supported with the previously acquired GEFA loan.

COLLABORATING DEPARTMENT:

Water/Wastewater

DEPARTMENT: Administration

Prepared by: Shelia Cooper

ATTACHMENTS

- [Executive Summary - Archer Western WWTP Expansion CMAR Contract.pdf](#)
- [Flowery Branch WRF CMAR Contract - 5-30-23 Final.pdf](#)

FLOWERY BRANCH CITY COUNCIL
EXECUTIVE SUMMARY

SUBJECT: Construction Manager at Risk (CMAR) contract with Archer Western Construction.

DATE: May 30, 2023

(X) RECOMMENDATION

() POLICY DISCUSSION

BUDGET INFORMATION:

() STATUS REPORT

ANNUAL- \$352,720 (GEFA Loan)

() OTHER

CAPITAL- No change

COUNCIL ACTION REQUESTED ON: June 1, 2023

PURPOSE: Authorizing a contract with Archer Western Construction for construction manager at risk services for the construction of the Flowery Branch Wastewater Treatment Plant Expansion (WWTP).

HISTORY: The City of Flowery Branch has seen a substantial increase in population over the last several years with an even more substantial increase in wastewater influent as the entire region has seen the same growth. With that growth, there is the need for the wastewater treatment facility to expand to manage the incoming flow. This CMAR WWTP expansion project will increase the facility capacity to 2.2 MGD (which matches the acquired Lake Lanier permit.)

FACTS AND ISSUES: The construction manager at risk role was advertised via a request for proposal (RFP) process and included an interview phase for all proposers. A total of four reputable and experienced firms proposed for the CMAR role. Using the provided proposals, interviews, and contractor provided cost markup sheet the best value CMAR was identified to be Archer Western Construction (AW). AW will work with city staff and the engineering design firm, ESG Engineering, Inc., to help deliver the needed wastewater treatment plant expansion. During the ongoing design phase AW will provide constructability review of the design, detailed cost estimates at each phase of the design, and provide procurement guidance and support to mitigate the long lead equipment purchases. Once the preconstruction (design) period reaches the 60-80% design level AW will provide a guaranteed maximum price (GMP) to complete the construction work for the expansion. That proposal and contract amount will be brought back for approval to amend this overall CMAR contract with the GMP. The construction to expand the wastewater treatment plant will include new screening, grit removal, biological treatment basins, membranes, disinfection equipment, site work, electrical work, solids dewatering improvements, and other miscellaneous components to increase overall facility capacity.

OPTIONS: Approve or Deny

RECOMMENDED SAMPLE MOTION: I make a motion to approve the attached CMAR contract with Archer Western Construction for an initial amount for preconstruction services not to exceed \$352,720 with funding to be supported with the previously acquired GEFA loan.

DEPARTMENT: Administration

Prepared by: Tonya D. Parrish



ConsensusDocs®
BUILDING A BETTER WAY

ConsensusDocs 500
STANDARD AGREEMENT AND GENERAL CONDITIONS BETWEEN OWNER AND
CONSTRUCTION MANAGER (Where the CM is At-Risk)



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STANDARD AGREEMENT AND GENERAL CONDITIONS BETWEEN OWNER AND CONSTRUCTION MANAGER (Where the CM is At-Risk)

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ARTICLE 1 AGREEMENT

Job Number: 50270

This Agreement is made this [] day of [] in the year [], by and between the

OWNER, **City of Flowery Branch**

and the

CONSTRUCTION MANAGER, **Archer Western Construction, LLC**

Contractor License No. UC302167

for construction and services in connection with the following

PROJECT Flowery Branch Water Reclamation Facility Expansion

Design Professional is ESG Engineering, Inc..

ARTICLE 2 GENERAL PROVISIONS

2.1 PARTIES' RELATIONSHIP Each Party agrees to act on the basis of mutual trust, good faith, and fair dealing, and perform in an economical and timely manner. The Parties shall each endeavor to promote harmony and cooperation among all Project participants.

2.1.1 Construction Manager represents that it is an independent contractor and that it is familiar with the type of Work it is undertaking.



2.1.2 Neither Construction Manager nor any of its agents or employees shall act on behalf of or in the name of Owner except as provided in this Agreement unless authorized in writing by Owner's Representative.

2.2 ETHICS Each Party shall perform with integrity. Each shall: (a) avoid conflicts of interest, and (b) promptly disclose to the other Party any conflicts that may arise. Each Party warrants that it has not and shall not pay or receive any contingent fees or gratuities to or from the other Party, including its agents, officers, employees, Subcontractors, Subsubcontractors, Suppliers, or Others to secure preferential treatment.

2.3 DESIGN PROFESSIONAL Owner, through its Design Professional, shall provide all architectural and engineering design services necessary for the completion of the Work excluding, however, (a) design services delegated to Construction Manager in accordance with §3.17, and (b) services within the construction means, methods, techniques, sequences, and procedures employed by Construction Manager, its Subcontractors, and Subsubcontractors in connection with their construction operations.

2.4 Owner shall obtain from Design Professional either a license for Construction Manager and Subcontractors to use the design documents prepared by Design Professional or ownership of the copyrights for such design documents, and to the extent permitted by law shall indemnify and hold harmless Construction Manager against any suits or claims of infringement of any copyrights or licenses arising out of the use of the design documents for the Project.

2.5 DEFINITIONS

2.5.1 "Agreement" means this ConsensusDocs 500 Standard Agreement and General Conditions Between Owner and Construction Manager, as modified, and exhibits and attachments made part of this agreement upon its execution.

2.5.1.1 The following attached exhibits are a part of this Agreement:

Exhibit A: Scope of CMAR Services.

Exhibit B: Fee and Rate Proposal Form

Exhibit C: Allocation of Fees and Costs

Exhibit D: Georgia Environmental Finance Authority Supplemental General Conditions

Exhibit E: Forms and Affirmation of Compliance

2.5.2 "Business Day" means all Days, except weekends and official federal or state holidays where the Project is located.

2.5.3 A "Change Order" is a written order signed by the Parties after execution of this Agreement, indicating changes in the scope of the Work, the GMP and Date of Substantial Completion or Date of Final Completion, including substitutions proposed by Construction Manager and accepted by Owner.

2.5.4 The "Contract Documents" consist of (a) this Agreement; (b) documents listed in §15.1 as existing contract documents; (c) drawings, specifications, addenda issued and acknowledged before execution of this Agreement; (d) information furnished by Owner pursuant to §3.15.4, and (e) Change Orders, Interim Directives, and amendments issued in accordance with this Agreement.

2.5.5 "Contract Time" is the period between the Date of Commencement and the total time authorized to achieve Final Completion.

2.5.6 "Cost of the Work" means the costs and discounts specified in ARTICLE 8.

2.5.7 The "Construction Manager" or "CMAR" is the person or entity identified in ARTICLE 1 and includes Construction Manager's Representative.



2.5.8 "Date of Commencement" is as set forth in §6.1.

2.5.9 "Day" means a calendar day.

2.5.10 "Defective Work" is any portion of the Work that does not conform with the requirements of the Contract Documents.

2.5.11 "Design Professional" or "Design Engineer" means the licensed architect or engineer, and its consultants, retained by Owner to perform design services for the Project.

2.5.12 "Final Completion" occurs on the date when Construction Manager's obligations under this Agreement are complete and accepted by Owner and final payment becomes due and payable. This date shall be confirmed by a Certificate of Final Completion signed by the Parties.

2.5.13 "Hazardous Material" is any substance or material identified now or in the future as hazardous under the Law, or any other substance or material that may be considered hazardous or otherwise subject to statutory or regulatory requirement governing handling, disposal, or cleanup.

2.5.14 "Interim Directive" is a written order containing change to the Work directed by Owner pursuant to §9.2 and that is signed by Owner after execution of this Agreement and before Substantial Completion.

2.5.15 "Law" means federal, state, or local laws, ordinances, codes, rules, and regulations applicable to the Work with which Construction Manager must comply that are enacted as of the Agreement date.

2.5.16 "Others" means Owner's other: (a) contractors/constructors, (b) suppliers, (c) subcontractors, subsubcontractors, or suppliers of (a) and (b); and others employed directly or indirectly by (a), (b), or (c) or any by any of them or for whose acts any of them may be liable.

2.5.17 "Overhead" means (a) payroll costs, burden, and other compensation of Construction Manager's employees in Construction Manager's principal and branch offices; (b) general and administrative expenses of Construction Manager's principal and branch offices including charges against Construction Manager for delinquent payments, and costs related to the correction of defective work; and (c) Construction Manager's capital expenses, including interest on capital used for the Work.

2.5.18 "Owner" is the person or entity identified in ARTICLE 1.

2.5.19 The "Owner's Program" is an initial description of Owner's objectives, including budgetary and time criteria, space requirements and relationships, flexibility and expandability requirements, special equipment and systems, site requirements, and any requirements for phased occupancy.

2.5.20 The "Parties" are collectively Owner and Construction Manager.

2.5.21 The "Project," as identified in ARTICLE 1, is the building, facility, or other improvements for which Construction Manager is to perform Work under this Agreement. It may also include construction by Owner or Others.

2.5.22 The "Schedule of the Work" is the document prepared by Construction Manager that specifies the dates on which Construction Manager plans to begin and complete various parts of the Work, including dates on which information and approvals are required from Owner.

2.5.23 "Subcontractor" is a person or entity retained by Construction Manager as an independent contractor to provide the labor, materials, equipment, or services necessary to complete a specific portion of the Work. The term Subcontractor does not include Design Professional or Others.



2.5.24 “Substantial Completion” of the Work, or of a designated portion, occurs on the date when the Work is sufficiently complete in accordance with the Contract Documents so that Owner may occupy or utilize the Work, or a designated portion, for the use for which it is intended, without unapproved disruption. The issuance of a certificate of occupancy is not a prerequisite for Substantial Completion if the certificate of occupancy cannot be obtained due to factors beyond Construction Manager's control. This date shall be confirmed by a certificate of Substantial Completion signed by the Parties.

2.5.25 A “Subsubcontractor” is a person or entity who has an agreement with a Subcontractor or another subsubcontractor or Supplier to perform a portion of the Subcontractor's Work or supply material or equipment.

2.5.26 A “Supplier” is a person or entity retained by Construction Manager to provide material or equipment for the Work.

2.5.27 “Terrorism” means a violent act, or an act that is dangerous to human life, property, or infrastructure, that is committed by an individual or individuals and that appears to be part of an effort to coerce a civilian population or to influence the policy or affect the conduct of any government by coercion. Terrorism includes, but is not limited to, any act certified by the United States government as an act of terrorism pursuant to the Terrorism Risk Insurance Act, as amended.

2.5.28 “Work” means the construction and administrative and management services necessary or incidental to fulfill Construction Manager's obligations for the Project in accordance with and reasonably inferable from the Contract Documents. The Work may refer to the whole Project or only a part of the Project if work is also being performed by Owner or Others.

2.5.29 “Worksite” means the area of the Project location as identified in ARTICLE 1 where the Work is to be performed.

ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES

3.1 GENERAL RESPONSIBILITIES

3.1.1 Construction Manager shall provide all labor, materials, equipment, and services necessary to complete the Work, all of which shall be provided in full accord with the Contract Documents and reasonably inferable from the Contract Documents.

3.1.2 Construction Manager represents that it is an independent contractor and that it is familiar with the type of work required by this Agreement.

3.1.3 Unless the Contract Documents instruct otherwise, Construction Manager shall be responsible for the supervision and coordination of the Work, including the construction means, methods, techniques, sequences, and procedures utilized. When following construction means, methods, techniques, sequences, or procedures instructed by the Contract Documents, Construction Manager is not liable to Owner for damages resulting from compliance with such instructions, unless (a) Construction Manager recognized and (b) failed to timely report to Owner any error, inconsistency, omission, or unsafe practice that it discovered in such requirements.

3.1.4 Construction Manager shall perform Work only within locations allowed by the Contract Documents, Law, and applicable permits.

3.2 CONSTRUCTION PERSONNEL AND SUPERVISION

3.2.1 Construction Manager shall provide competent supervision for the performance of the Work. Before commencing the Work, Construction Manager shall notify Owner in writing of the name and qualifications of its proposed superintendent(s) and project manager, so Owner may review the



individual's qualifications. If, for reasonable cause, Owner refuses to approve the individual, or withdraws its approval after once giving it, Construction Manager shall name a different superintendent for Owner's review.

3.2.2 Construction Manager shall be responsible to Owner for acts or omissions of Parties or entities performing portions of the Work for or on behalf of Construction Manager or any of its Subcontractors.

3.2.3 Construction Manager shall permit only fit and skilled persons to perform the Work. Construction Manager shall enforce safety procedures, strict discipline and good order among persons performing the Work. If Owner determines that a particular person does not follow safety procedures, or is unfit or unskilled for the assigned work, Construction Manager shall immediately reassign the person on receipt of Owner's written notice to do so.

3.2.4 CONSTRUCTION MANAGER'S REPRESENTATIVE Construction Manager's authorized representative is Josh Vigneault. Construction Manager's Representative shall possess full authority to receive instructions from Owner and to act on those instructions. If Construction Manager changes its representative or their authority, Construction Manager shall immediately notify Owner in writing.

3.3 PRECONSTRUCTION SERVICES The Preconstruction Services under this section are included in Construction Manager's work.

3.3.1 Intentionally omitted

3.3.2 CONSULTATION Construction Manager shall attend regular meetings with Owner and Design Professional. Construction Manager shall consult with Owner and Design Professional regarding site use and improvements and the selection of materials, building systems, and equipment. Construction Manager shall provide recommendations on construction feasibility; actions designed to minimize adverse effects of labor or material shortages; time requirements for procurement, installation, and construction completion; and factors related to construction cost, including estimates of alternative designs or materials. Services under this article shall be provided in accordance with Exhibit A Item A.11.

3.3.3 SCHEDULE OF THE WORK When Project requirements have been sufficiently identified, Construction Manager shall prepare a preliminary Schedule of the Work for Design Professional's review and Owner's approval. Construction Manager shall coordinate and integrate the Schedule of the Work with the services and activities of Owner, Construction Manager, Design Professional, and the requirements of governmental entities. As design proceeds, Construction Manager shall update the Schedule of the Work to indicate proposed activity sequences, durations, or milestone dates for such activities as receipt and approval of pertinent information, issuance of the drawings and specifications, the preparation and processing of shop drawings and samples, delivery of materials or equipment requiring long-lead-time procurement, Owner's occupancy requirements and estimated date of Substantial Completion of the Project. If Schedule of the Work updates indicate that milestone dates contained in prior Schedules of the Work will not be met, Construction Manager shall notify and make recommendations to Owner. If the Project is to be completed in phases, Construction Manager shall make recommendations to Owner and Design Professional regarding the phased issuance of the drawings and specifications. Services under this article shall be provided in accordance with Exhibit A Item A.9 and A.10.

3.3.4 ESTIMATES

3.3.4.1 When Owner has sufficiently identified Owner's Program and other Project requirements and Design Professional has prepared other basic design criteria, Construction Manager shall prepare, for the review of Design Professional and approval of Owner, an initial estimate for the Project, utilizing area, volume, or similar conceptual estimating techniques.



3.3.4.2 When schematic or preliminary design documents have been completed by Design Professional and approved by Owner, Construction Manager shall prepare for the review of Design Professional and approval of Owner, a more detailed budget with supporting data. During the preparation of the design development documents or documents of comparable detail, Construction Manager shall update and refine this estimate at appropriate intervals agreed upon by The Parties.

3.3.4.3 When design development documents or documents of comparable detail have been completed by Design Professional and approved by Owner, Construction Manager shall prepare a further detailed estimate with supporting data for review by Design Professional and approval by Owner. During the preparation of the drawings and specifications, Construction Manager shall update and refine this estimate at appropriate intervals agreed upon by the Parties.

3.3.4.4 If any estimate submitted to Owner exceeds previously approved estimates, Construction Manager shall notify and make recommendations to Owner.

3.3.4.5 Services provided under Article 3.3.4 shall be in accordance with Exhibit A Items A.4 thru A.9.

3.3.5 CONSTRUCTION DOCUMENT REVIEW Construction Manager shall review the drawings and specifications in an effort to identify potential constructability problems that could impact Construction Manager's ability to perform the Work in an expeditious and economical manner. Construction Manager shall issue a report to Design Professional and Owner for their review and action as appropriate. In addition, Construction Manager shall promptly report to Owner and Design Professional any errors or omissions which it discovers in the drawings and specifications. Services provided under this Article shall be in accordance with Exhibit A Item A.3 and A.4 .

3.3.6 TEMPORARY FACILITIES Construction Manager shall make recommendations regarding temporary construction facilities, equipment, materials, and services for common use by Construction Manager, its Subcontractors, Subsubcontractors, and Suppliers.

3.3.7 LONG-LEAD-TIME ITEMS Construction Manager shall recommend to Owner and Design Professional a schedule for procurement of long-lead-time items which will constitute part of the Work as required to meet the Schedule of the Work. Construction Manager shall help expedite the delivery of long-lead-time items.

3.3.8 SOLICITATION OF SUBCONTRACTORS AND SUPPLIERS Construction Manager shall seek to develop Subcontractor interest in the Project and shall furnish to Owner and Design Professional a list of possible subcontractors from whom proposals may be requested for each principal portion of the Work. Owner shall promptly reply in writing to Construction Manager if Owner or Design Professional know of any objection to a subcontractor. Owner may designate specific persons or entities, in addition to entities already identified, from whom Construction Manager shall solicit bids. Services provided under this Article shall be in accordance with Exhibit A Item A.13 and in compliance with requirements of Exhibit D – GEFA Supplemental General Conditions.

3.3.9 EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION Construction Manager shall consult with Owner regarding equal employment opportunity and affirmative action programs. Construction Manager shall comply with the requirements of Exhibit D – GEFA Supplemental General Conditions.

3.3.10 CONSULTANTS Construction Manager shall assist Owner in selecting, retaining, and coordinating the professional services of a surveyor, testing laboratories, and special consultants as needed.



3.3.11 PERMITS Construction Manager shall assist Owner in obtaining building permits and special permits for permanent improvements, except for permits required to be obtained directly by Construction Manager.

3.3.12 OTHER PRECONSTRUCTION SERVICES Construction Manager shall provide such other preconstruction services as are agreed upon by the Parties and identified in an attached Exhibit A Item A – “Preconstruction-Phase Services” to this Agreement.

3.4 GUARANTEED MAXIMUM PRICE (GMP)

3.4.1 At such time as the Parties agree the drawings and specifications are sufficiently complete, Construction Manager shall prepare and submit to Owner in writing a GMP. The GMP proposal shall include the sum of the estimated cost of the Work, Construction Manager's Fee, General Conditions, the clarifications and assumptions upon which it is based, allowances, and reasonable contingencies, but shall not include compensation for Preconstruction Services. Construction Manager does not guarantee any specific line item provided as part of the GMP, but agrees that it will be responsible for paying all costs of completing the Work which exceed the GMP, as adjusted in accordance with this Agreement. GMP Scope shall be based on Exhibit A Item B – “Construction-Phase Services”.

3.4.2 BASIS OF GUARANTEED MAXIMUM PRICE Construction Manager shall include with the GMP proposal a written statement of its basis, which shall include:

3.4.2.1 a list of the drawings and specifications, including all addenda, which were used in preparation of the GMP Proposal;

3.4.2.2 a list of allowances and/ or contingencies, and a statement of their basis;

3.4.2.3 a list of the assumptions and clarifications made by Construction Manager in the preparation of the GMP Proposal to supplement the information contained in the drawings and specifications;

3.4.2.4 the Date of Substantial Completion or the Date of Final Completion upon which the proposed GMP is based, and the Schedule of Work upon which the Date of Substantial Completion or the Date of Final Completion is based;

3.4.2.5 a schedule of applicable alternate prices;

3.4.2.6 a schedule of applicable unit prices;

3.4.2.7 a statement of any work to be self-performed by Construction Manager.

3.4.3 Construction Manager shall meet with Owner and Design Professional to review the GMP. If Owner or Design Professional discovers any inconsistencies, inaccuracies, or omissions in the information presented, they shall promptly notify Construction Manager, who shall make appropriate adjustments to the GMP. Owner shall then give prompt written approval of the GMP.

3.4.4 Owner shall cause Design Professional to revise the drawings and specifications to the extent necessary to reflect the clarifications, assumptions, and allowances on which the GMP is based. Revised drawings and specifications shall be furnished to Construction Manager in accordance with the current Schedule of the Work, unless otherwise agreed by Owner, Construction Manager, and Design Professional. Construction Manager shall promptly notify Owner and Design Professional if the revised drawings and specifications are inconsistent with the GMP's clarifications, assumptions, and allowances.

3.4.5 If the Contract Documents are not complete at the time the GMP proposal is submitted to Owner, Construction Manager shall provide in the GMP for further development of the Contract



Documents. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes, or equipment, all of which, if required, shall be incorporated by Change Document.

3.4.6 If this Agreement is executed before establishment of the Guaranteed Maximum Price and its acceptance by Owner, then the GMP and its basis shall be set forth in Amendment 1.

3.4.7 Allowances shall include the costs of materials, supplies, and equipment delivered to the Worksite less applicable trade discounts and including requisite taxes, unloading and handling at the Worksite, and labor and installation, unless specifically stated otherwise. Construction Manager's overhead and profit for the allowances shall be included in the GMP, but not in the allowances. The GMP shall be adjusted by Change Order to reflect the actual costs when they are greater than or less than the allowances.

3.4.8 CMAR Contingency is for exclusive use of CMAR while executing the Work, to reimburse CMAR for costs due to unforeseen causes, unintentional errors, or events which cannot specifically be anticipated at the time of GMP approval. CMAR Contingency may be used by CMAR for costs sustained by either CMAR itself, or a Subcontractor CMAR Contingency funds may not be used for costs which are reimbursable or recoverable under other provisions of the Agreement.

CMAR shall have the right to withdraw from CMAR Contingency on monthly progress estimates and the Owner shall not unreasonably deny, compensation for such amounts from any remaining balance in the CMAR Contingency.

CMAR shall keep and provide the Owner with an ongoing record of the original amount of the CMAR Contingency, all uses thereof, and the remaining balance of the CMAR Contingency at any time,

CMAR shall provide Owner with notice of all anticipated charges against the CMAR Contingency with each monthly request for payment, and in case of any use of the Contingency for items not specifically listed, such use shall be subject to Owner's review and approval, which will not be unreasonably denied. Owner shall have ten (10 business days to respond upon receipt of notice or pay request indicating use of Contractor Contingency, if Owner intends to withhold or deny such request for use. Failure to respond shall result in approval of Contingency use request.

3.4.8.1 Without excluding other possible uses of the CMAR Contingency, the following uses are expressly acknowledged as eligible uses of CMAR Contingency funds:

1. Losses and damages, and related expenses, caused by damage to the Work, not compensated by insurance or otherwise, sustained by CMAR or a Subcontractor in connection with the performance of the Work
2. Corrective work, regardless of fault if non-conformance is unintended
3. Subcontractor defaults;
4. Overruns in Construction Support Costs: Extended overheads, heavy equipment, and time-critical general conditions during construction due to project delays including but not limited to schedule overruns, weather delays, subcontractor default or delays, procurement delays, start-up delays, and additional effort attributable to further support in development of design after GMP.
5. Builder's Risk deductibles;
6. Verified excusable errors in estimates; or
7. Non-compensable overtime and other acceleration costs

3.4.8.2 CMAR shall replenish the CMAR Contingency by restoring money withdrawn with money recovered (1) from bonds and insurance coverage payments for such expenditures, and (2) from defaulting Subcontractors or Suppliers.



3.4.8.3 The CMAR Contingency will not be used to fund Owner-directed changes in the Work. Such changes will be administered through the contractual procedures established for changes in the scope of the Work, including expenditures from the Owner's Contingency, if any, Work Authorizations as modified by Change Order, and Contract Amendments or other modifications that impact the Guaranteed Maximum Price.

3.4.8.4 The CMAR Contingency will not be used to recover the cost of items that are compensable as a Cost of the Work

3.4.8.5 The designated CMAR Contingency, as duly replenished, is the maximum amount available to CMAR to recover eligible costs under this Article; Owner will not increase the CMAR Contingency or otherwise reimburse CMAR for eligible costs incurred in excess of the CMAR Contingency.

3.4.8.6 The CMAR Fee applies to expenditures from the CMAR Contingency. CMAR will not be entitled to any additional overhead, profit, or other markup on any CMAR Contingency expenditure.

3.4.8.7 CMAR will submit applications for reimbursement from the CMAR Contingency to Owner, in a format acceptable to Owner, together with appropriate documentation. Payments from the CMAR Contingency will be recorded in the Application for Payment.

3.4.8.8 Remaining CMAR contingency funds at the end of the Project will be shared 50%/50% between the Owner and CMAR.

3.4.9 FAILURE TO ACCEPT THE GMP PROPOSAL Unless Owner accepts the GMP Proposal in writing on or before the date specified in the GMP Proposal for such acceptance and so notifies Construction Manager, the GMP Proposal shall not be effective. If Owner fails to accept the GMP Proposal, or rejects the GMP Proposal, Owner shall have the right to:

3.4.9.1 suggest modifications to the GMP Proposal. If such modifications are accepted in writing by Construction Manager, the GMP Proposal shall be deemed accepted in accordance with §3.4.6;

3.4.9.2 Intentionally omitted

3.4.9.3 terminate the Agreement for convenience in accordance with §12.4. In the absence of a GMP the Parties may establish a Date of Substantial Completion or a Date of Final Completion.

3.4.10 PRE-GMP WORK Before Owner's acceptance of the GMP Proposal, Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work, except as provided in this Agreement or as Owner may specifically authorize in writing.

3.4.11 LUMP SUM CONVERSION If Owner and CMAR mutually agree, GMP may be converted to a lump sum (stipulated amount). If GMP is converted to a lump sum amount, this lump sum amount will include costs for General Conditions, Cost of the Work, the CMAR Fee, and all other costs associated with the Contract, all as if bid as a lump sum amount. CMAR will no longer have access to CMAR Contingency funds and bears all risk associated with delivering the Work for the lump sum amount.

3.5 WORKMANSHIP

3.5.1 The Work shall be executed in accordance with the Contract Documents in a workmanlike manner. All materials used in the Work shall be furnished in sufficient quantities to facilitate the



proper and expeditious execution of the Work and shall be new except as otherwise provided in the Contract Documents.

3.6 COOPERATION WITH WORK OF OWNER AND OTHERS

3.6.1 Owner may perform work at the Worksite directly or by Others. Any agreements with Others to perform construction or operations related to the Project shall include provisions pertaining to insurance, indemnification, waiver of subrogation, consequential damages, coordination, interference, cleanup, and safety that are substantively the same as the corresponding provisions of this Agreement.

3.6.2 If Owner elects to perform work at the Worksite directly or by Others, the Parties shall coordinate the activities of all forces at the Worksite and agree upon fair and reasonable schedules and operational procedures for Worksite activities. Owner shall require each separate contractor to cooperate with Construction Manager and assist with the coordination of activities and the review of construction schedules and operations. The GMP or the Date of Substantial Completion or the Date of Final Completion may be equitably adjusted in accordance with this Agreement, for changes resulting from the coordination of construction activities, and the Schedule of the Work shall be revised accordingly.

3.6.3 With regard to the work of Owner and Others, Construction Manager shall (a) proceed with the Work in a manner that does not hinder, delay, or interfere with the work of Owner or Others or cause the work of Owner or Others to become defective; (b) afford Owner or Others reasonable access for introduction and storage of their materials and equipment and performance of their activities; and (c) coordinate Construction Manager's Work with theirs.

3.6.4 Before proceeding with any portion of the Work affected by the construction or operations of Owner or Others, Construction Manager shall give Owner prompt, written notification of any defects Construction Manager discovers in their work which will prevent the proper execution of the Work. Construction Manager's obligations in this subsection do not create a responsibility for the work of Owner or Others, but are for the purpose of facilitating the Work. If Construction Manager does not notify Owner of defects interfering with the performance of the Work, Construction Manager acknowledges that the work of Owner or Others is not defective and is acceptable for the proper execution of the Work. Following receipt of written notice from Construction Manager of defects, Owner shall promptly issue an Interim Directive informing Construction Manager what action, if any, Construction Manager shall take with regard to the defects.

3.7 CONTRACT DOCUMENT REVIEW AND ADMINISTRATION

3.7.1 Before commencing the Work, Construction Manager shall examine and compare the drawings and specifications with information furnished by Owner that are considered Contract Documents, relevant field measurements made by Construction Manager, and any visible conditions at the Worksite affecting the Work.

3.7.2 Should Construction Manager discover any errors, omissions, or inconsistencies in the Contract Documents, Construction Manager shall promptly report them to Owner. It is recognized, however, that Construction Manager is not acting in the capacity of a licensed design professional, and that Construction Manager's examination is to facilitate construction and does not create an affirmative responsibility to detect defects or to ascertain compliance with a Law. Following receipt of written notice from Construction Manager of defects, Owner shall promptly inform Construction Manager what action, if any, Construction Manager shall take with regard to the defect.

3.7.3 Construction Manager shall have no liability for errors, omissions, or inconsistencies discovered under this section, unless Construction Manager knowingly fails to report a recognized problem to Owner.



3.7.4 Construction Manager may be entitled to additional costs or time because of clarifications or instructions growing out of Construction Manager's reports described in this §3.7.

3.7.5 Nothing in §3.7 shall relieve Construction Manager of responsibility for its own errors, inconsistencies, or omissions.

3.7.6 COST REPORTING Construction Manager shall maintain complete, accurate, and current records that comply with generally accepted accounting principles and calculate the proper financial management under this Agreement. Construction Manager shall maintain a complete set of all books and records prepared or used by Construction Manager with respect to the Project. Owner shall be afforded access to all of Construction Manager's records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda, and similar data relating to this Agreement. Construction Manager shall preserve all such records for a period of three years after the final payment or longer where required by Law.

3.7.6.1 Construction Manager agrees to use reasonable skill and judgment in the preparation of cost estimates and Schedule of the Work, but does not warrant or guarantee their accuracy.

3.8 MATERIALS FURNISHED BY OWNER OR OTHERS

3.8.1 If the Work includes installation of materials or equipment furnished by Owner or Others, it shall be the responsibility of Construction Manager to examine the items so provided and thereupon handle, store, and install the items, unless otherwise provided in the Contract Documents, with such skill and care as to provide a satisfactory and proper installation. Loss or damage due to acts or omissions of Construction Manager shall be the responsibility of Construction Manager and may be deducted from any amounts due or to become due Construction Manager. Any defects discovered in such materials or equipment shall be reported at once to Owner. Following receipt of written notice from Construction Manager of defects, Owner shall promptly inform Construction Manager what action, if any, Construction Manager shall take with regard to the defects.

3.9 TESTS AND INSPECTIONS

3.9.1 Construction Manager shall schedule all required tests, approvals, and inspections of the Work or portions thereof at appropriate times so as not to delay the progress of the Work or other work related to the Project. Construction Manager shall give proper notice to all required Parties of such tests, approvals, and inspections. If feasible, Owner and Others may timely observe the tests at the normal place of testing. Except as provided in §3.9.3, Owner shall bear all expenses associated with tests, inspections, and approvals required by the Contract Documents which, unless otherwise agreed to, shall be conducted by an independent testing laboratory or entity retained by Owner. Unless otherwise required by the Contract Documents, required certificates of testing, approval, or inspection shall be secured by Construction Manager and promptly delivered to Owner.

3.9.2 If Owner or appropriate authorities determine that tests, inspections, or approvals in addition to those required by the Contract Documents will be necessary, Construction Manager shall arrange for the procedures and give timely notice to Owner and Others who may observe the procedures. Costs of the additional tests, inspections, or approvals are at Owner's expense except as provided in the subsection below.

3.9.3 If the procedures described in the two subsections immediately above indicate that portions of the Work fail to comply with the Contract Documents due to the negligence of Construction Manager, Construction Manager shall be responsible for costs of correction and retesting.

3.10 WARRANTY

3.10.1 Construction Manager warrants that all materials and equipment furnished under the Construction Phase of this Agreement will be new unless otherwise specified, of good quality, in



conformance with the Contract Documents, and free from defective workmanship and materials. At Owner's request, Construction Manager shall furnish satisfactory evidence of the quality and type of materials and equipment furnished. Construction Manager further warrants that the Work shall be free from material defects not intrinsic in the design or materials required in the Contract Documents. Construction Manager's warranty does not include remedies for defects or damages caused by normal wear and tear during normal usage, use for a purpose for which the Project was not intended, improper or insufficient maintenance, modifications performed by Owner or others, or abuse. Construction Manager's warranty shall commence on the Date of Substantial Completion of the Work, or of a designated portion.

3.10.2 With respect to any portion of Work first performed after Substantial Completion, Construction Manager's warranty obligation for such portion of the Work only shall be extended by the period of time between Substantial Completion and the actual performance of the later Work.

3.10.3 To the extent products, equipment, systems, or materials incorporated in the Work are specified and purchased by Owner, they shall be covered exclusively by the warranty of the manufacturer. There are no warranties which extend beyond the description on the face of any such warranty. For such incorporated items, ALL OTHER WARRANTIES EXPRESSED OR IMPLIED INCLUDING THE WARRANTY OF MERCHANTABILITY AND THE WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE ARE EXPRESSLY DISCLAIMED

3.10.4 Construction Manager shall obtain from its Subcontractors and Suppliers any special or extended warranties required by the Contract Documents. Construction Manager's liability for such warranties shall be limited to the one-year correction period referred to in the section immediately below. After that period Construction Manager shall provide reasonable assistance to Owner in enforcing the obligations of Subcontractors or Suppliers for such extended warranties.

3.11 CORRECTION OF WORK WITHIN ONE YEAR

3.11.1 If before Substantial Completion or within one year after the date of Substantial Completion of the Work any Defective Work is found, Owner shall promptly notify Construction Manager in writing. Unless Owner provides written acceptance of the condition, Construction Manager shall promptly correct the Defective Work at its own cost and time and bear the expense of additional services required for correction of any Defective Work for which it is responsible. If within the one-year correction period Owner discovers and does not promptly notify Construction Manager or give Construction Manager an opportunity to test or correct Defective Work as reasonably requested by Construction Manager, Owner waives Construction Manager's obligation to correct that Defective Work as well as Owner's right to claim a breach of the warranty with respect to that Defective Work.

3.11.2 With respect to any portion of Work first performed after Substantial Completion, the one-year correction period shall commence when that portion of the Work is substantially complete. Correction periods shall not be extended by corrective work performed by Construction Manager.

3.11.3 If Construction Manager fails to correct Defective Work within a reasonable time after receipt of written notice from Owner before final payment, Owner may correct it in accordance with Owner's right to carry out the Work. In such case, an appropriate Change Order shall be issued deducting the cost of correcting the Defective Work from payments then or thereafter due Construction Manager. If payments then or thereafter due Construction Manager are not sufficient to cover such amounts, Construction Manager shall pay the difference to Owner.

3.11.4 Construction Manager's obligations and liability, if any, with respect to any Defective Work discovered after the one-year correction period shall be determined by the Law. If, after the one-year correction period but before the applicable limitation period has expired, Owner discovers any Work which Owner considers Defective Work, Owner shall, unless the Defective Work requires emergency correction, promptly notify Construction Manager and allow Construction Manager an opportunity to correct the Work if Construction Manager elects to do so. If Construction Manager elects to correct



the Work it shall provide written notice of such intent within fourteen (14) Days of its receipt of notice from Owner and shall complete the correction of Work within a mutually agreed timeframe. If Construction Manager does not elect to correct the Work, Owner may have the Work corrected by itself or Others, and, if Owner intends to seek recovery of those costs from Construction Manager, Owner shall promptly provide Construction Manager with an accounting of the actual correction costs.

3.11.5 If Construction Manager's correction or removal of Defective Work causes damage to or destroys other completed or partially completed work or existing building, Construction Manager shall be responsible for the cost of correcting the destroyed or damaged property.

3.11.6 The one-year period for correction of Defective Work does not constitute a limitation period with respect to the enforcement of Construction Manager's other obligations under the Contract Documents.

3.11.7 Before final payment, at Owner's option and with Construction Manager's agreement, Owner may elect to accept Defective Work rather than require its removal and correction. In such cases the GMP shall be equitably adjusted for any diminution in the value of the Project caused by such Defective Work.

3.12 CORRECTION OF COVERED WORK

3.12.1 Upon issuance of an Interim Directive, Work that has been covered without a requirement that it be inspected before being covered may be uncovered for Owner's inspection. Owner shall pay for the costs of uncovering and replacement if the Work proves to be in conformance with the Contract Documents, or if the defective condition was caused by Owner or Others. If the uncovered Work proves to be defective, Construction Manager shall pay the costs of uncovering and replacement.

3.12.2 If any Work is covered contrary to requirements in the Contract Documents, Owner may issue an Interim Directive to uncover the Work for Owner's observation and recover the Work all at Construction Manager's expense. In this circumstance the Work shall be replaced at Construction Manager's expense and with no adjustment to the Dates of Substantial or Final Completion.

3.13 SAFETY OF PERSONS AND PROPERTY

3.13.1 SAFETY PROGRAMS Construction Manager holds overall responsibility for safety programs. However, such obligation does not relieve Subcontractors of their safety responsibilities and to comply with the Law. Construction Manager shall prevent against injury, loss, or damage to persons or property by taking reasonable steps to protect: (a) its employees and other persons at the Worksite; (b) materials and equipment stored at onsite or offsite locations for use in performing the Work; and (c) property located at the Worksite and adjacent to work areas, whether or not the property is part of the Worksite.

3.13.2 CONSTRUCTION MANAGER'S SAFETY REPRESENTATIVE Construction Manager shall designate an individual at the Worksite in its employ as its safety representative. Unless otherwise identified by Construction Manager in writing to Owner, Construction Manager's project superintendent shall serve as its safety representative. Construction Manager shall report promptly in writing all recordable accidents and injuries occurring at the Worksite. When Construction Manager is required to file an accident report with a public authority, Construction Manager shall furnish a copy of the report to Owner.

3.13.3 Construction Manager shall provide Owner with copies of all notices required of Construction Manager by the Law. Construction Manager's safety program shall comply with the requirements of governmental and quasi-governmental authorities having jurisdiction.

Damage or loss not insured under property insurance that may arise from the Work, to the extent caused by negligent or intentionally wrongful acts or omissions of Construction Manager, or anyone



for whose acts Construction Manager may be liable, shall be promptly remedied by Construction Manager.

3.13.4 If Owner deems any part of the Work or Worksite unsafe, Owner, without assuming responsibility for Construction Manager's safety program, may require by Interim Directive Construction Manager to stop performance of the Work, take corrective measures satisfactory to Owner, or both. If Construction Manager does not adopt corrective measures, Owner may perform them and deduct their cost from the GMP. Construction Manager agrees to make no claim for damages, or an increase in the GMP, or for a change in the Dates of Substantial or Final Completion based on Construction Manager's compliance with Owner's reasonable request.

3.14 EMERGENCIES In an emergency affecting the safety of persons or property, Construction Manager shall act in a reasonable manner to prevent threatened damage, injury, or loss. If appropriate, an equitable adjustment in GMP or Date of Substantial Completion or Date of Final Completion shall be determined as provided for in ARTICLE 9.

3.15 HAZARDOUS MATERIALS

3.15.1 Construction Manager shall not be obligated to commence or continue Work until any Hazardous Material discovered at the Worksite has been removed, rendered or determined to be harmless by Owner as certified by an independent testing laboratory, and approved by the appropriate governmental agency.

3.15.2 If after commencing the Work, Hazardous Material is discovered at the Worksite, Construction Manager shall be entitled to immediately stop Work in the affected area. Construction Manager shall promptly report the condition to Owner, Design Professional, and, if required, the governmental agency with jurisdiction.

3.15.3 Construction Manager shall not resume nor be required to continue any Work affected by any Hazardous Material without written mutual agreement between the Parties after the Hazardous Material has been removed or rendered harmless and only after approval, if necessary, of the governmental agency with jurisdiction.

3.15.4 Owner shall be responsible for retaining an independent testing laboratory to determine the nature of the material encountered and whether the material requires corrective measures or remedial action. Such measures shall be the sole responsibility of Owner, and shall be performed in a manner minimizing any adverse effect upon the Work.

3.15.5 If Construction Manager incurs additional costs or is delayed due to the presence or remediation of Hazardous Material, Construction Manager may be entitled to an equitable adjustment in the GMP or the Dates of Substantial or Final Completion in accordance with this Agreement.

3.15.6 To the extent permitted by §6.7 and to the extent not caused by the negligent or intentionally wrongful acts or omissions of Construction Manager, its Subcontractors and Subsubcontractors, and the agents, officers, directors, and employees of each of them, Owner shall, to the extent permitted by law, defend, indemnify, and hold harmless Construction Manager, its Subcontractors and Subsubcontractors, and the agents, officers, directors, and employees of each of them, from and against all claims, damages, losses, costs, and expenses, including but not limited to reasonable attorneys' fees, costs, and expenses incurred in connection with any dispute resolution procedure arising out of or relating to the performance of the Work in any area affected by Hazardous Material.

3.15.7 MATERIALS BROUGHT TO THE WORKSITE

3.15.7.1 Safety Data Sheets (SDS) as required by law and pertaining to materials or substances used or consumed in the performance of the Work, whether obtained by Construction Manager,



Subcontractors, Owner or Others, shall be maintained at the Worksite by Construction Manager and made available to Owner, Subcontractors, and Others.

3.15.7.2 Construction Manager shall be responsible for the proper delivery, handling, application, storage, removal, and disposal of all materials and substances brought to the Worksite by Construction Manager in accordance with the Contract Documents and used or consumed in the performance of the Work. Upon the issuance of the Certificate of Substantial Completion, Owner shall be responsible for materials and substances brought to the Worksite by Construction Manager if such materials or substances are required by the Contract Documents.

3.15.7.3 To the extent permitted under §6.7 and to the extent caused by the negligent or intentionally wrongful acts or omissions of Construction Manager, its agents, officers, directors, and employees, Construction Manager shall defend, indemnify, and hold harmless Owner, its agents, officers, directors, and employees, from and against claims, damages, losses, costs, and expenses, including but not limited to reasonable attorneys' fees, costs and expenses incurred in connection with any dispute resolution procedure, arising out of or relating to delivery, handling, application, storage, removal, and disposal of all materials and substances brought to the Worksite by Construction Manager

3.15.7.4 §3.15 shall survive the completion of the Work or Agreement termination.

3.16 SUBMITTALS

3.16.1 Construction Manager shall submit to Owner and Design Professional all shop drawings, samples, product data, and similar submittals required by the Contract Documents for review and approval. Submittals shall be submitted in electronic form if required in accordance with §4.6.1. Construction Manager shall be responsible for the accuracy and conformity of its submittals to the Contract Documents. At no additional cost, Construction Manager shall prepare and deliver its submittals in such time and sequence so as not to delay the performance of the Work or the work of Owner and Others. Construction Manager's submittals shall identify in writing for each submittal all changes, deviations, or substitutions from the requirements of the Contract Documents. The approval of any Construction Manager submittal shall not be deemed to authorize changes, deviations, or substitutions from the requirements of the Contract Documents unless a Change Order or Interim Directive specifically authorizes such deviation, substitution, or change. To the extent a change, deviation, or substitution causes an impact to the Contract Price or Contract Time, such approval shall be memorialized in a Change Order no later than seven (7) Days following approval by Owner. Neither Design Professional nor Owner shall make any change, deviation, or substitution through the submittal process without specifically identifying and authorizing such deviation to Construction Manager. If the Contract Documents do not contain submittal requirements pertaining to the Work, Construction Manager agrees upon request to submit in a timely fashion to Design Professional and Owner for review any shop drawings, samples, product data, manufacturers' literature, or similar submittals as may reasonably be required by Owner.

3.16.2 Owner shall be responsible for review and approval of submittals with reasonable promptness to avoid causing delay.

3.16.3 Construction Manager shall perform all Work strictly in accordance with approved submittals. Approval of shop drawings is not an authorization to perform changed work, unless the procedures of ARTICLE 9 are followed. Approval does not relieve Construction Manager from responsibility for Defective Work resulting from errors or omissions on the approved shop drawings.

3.16.4 Record copies of the following, incorporating field changes and selections made during construction, shall be maintained at the Worksite and available to Owner upon request: drawings, specifications, addenda and other modifications, and required submittals including product data, samples, and shop drawings.



3.16.5 Construction Manager shall prepare and submit to Owner

- X Final marked-up as-built drawings;
- X Updated electronic data, in accordance with §4.6.1;
- X Other documentation required by the Contract Documents that specifies how various elements of the Work were actually constructed or installed.

3.17 DESIGN DELEGATION If the Contract Documents require Construction Manager to specify that Construction Manager is responsible for the design of a particular system or component to be incorporated into the Project, then Owner shall specify all required performance and design criteria. Construction Manager shall not be responsible for the adequacy of such performance and design criteria. As required by the Law, Construction Manager shall procure design services and certifications necessary to satisfactorily complete the Work from a licensed design professional. The signature and seal of Construction Manager's design professional shall appear on all drawings, calculations, specifications, certifications, shop drawings, and other submittals related to the Work designed or certified by Construction Manager's design professional.

3.18 WORKSITE CONDITIONS

3.18.1 WORKSITE VISIT Construction Manager acknowledges that it has visited, or has had the opportunity to visit, the Worksite to visually inspect the general and local conditions which could affect the Work.

3.18.2 CONCEALED OR UNKNOWN SITE CONDITIONS If a condition encountered at the Worksite is (a) a subsurface or other physical condition materially different from those indicated in the Contract Documents, or (b) an unusual and unknown physical condition materially different from conditions ordinarily encountered and generally recognized as inherent in Work provided for in the Contract Documents, Construction Manager shall stop affected Work after the condition is first observed and give prompt written notice of the condition to Owner and Design Professional. Owner shall investigate and then issue an Interim Directive specifying the extent to which Owner agrees that a concealed or unknown condition exists and directing how Construction Manager is to proceed. Construction Manager shall not be required to perform any Work relating to the condition without the written mutual agreement of the Parties. Any change in the GMP, estimated Cost of the Work, Construction Manager's Fee, Date of Substantial Completion or Date of Final Completion, and, if appropriate, the Compensation for Preconstruction Services as a result of the condition, including any dispute about its existence or nature shall be determined as provided in ARTICLE 9.

3.19 PERMITS AND TAXES

3.19.1 Construction Manager shall give public authorities all notices required by law and, except for permits and fees that are the responsibility of Owner pursuant to §4.4, shall obtain and pay for all necessary permits, licenses, and renewals pertaining to the Work. Construction Manager shall provide to Owner copies of all notices, permits, licenses, and renewals required under this Agreement.

3.19.2 Construction Manager shall pay applicable taxes for the Work provided by Construction Manager.

3.19.3 If, in accordance with Owner's direction, Construction Manager claims an exemption for taxes, Owner, to the extent permitted by law, shall indemnify and hold Construction Manager harmless from any liability, penalty, interest, fine, tax assessment, attorneys' fees, or other expense or cost incurred by Construction Manager as a result of any such claim.

3.20 CUTTING, FITTING, AND PATCHING



3.20.1 Construction Manager shall perform cutting, fitting, and patching necessary to coordinate the various parts of the Work and to prepare its Work for the work of Owner or Others.

3.20.2 Cutting, patching, or altering the work of Owner or Others shall be done with the prior written approval of Owner. Such approval shall not be unreasonably withheld.

3.21 CLEAN UP

3.21.1 Construction Manager shall regularly remove debris and waste materials at the Worksite resulting from the Work. Before discontinuing Work in an area, Construction Manager shall clean the area and remove all rubbish and its construction equipment, tools, machinery, waste, and surplus materials. Construction Manager shall minimize and confine dust and debris resulting from construction activities. At the completion of the Work, Construction Manager shall remove from the Worksite all construction equipment, tools, surplus materials, waste materials, and debris.

3.21.2 If Construction Manager fails to commence compliance with cleanup duties within two (2) Business Days after written notification from Owner of non-compliance, Owner may implement appropriate cleanup measures without further notice and the cost shall be deducted from any amounts due or to become due to Construction Manager in the next payment period.

3.22 ACCESS TO WORK Construction Manager shall facilitate the access of Owner, its Design Professional, and Others to Work in progress.

3.23 COMPLIANCE WITH LAWS Construction Manager shall comply with all the Law at its own cost. Construction Manager shall be liable to Owner for all loss, cost, or expense attributable to any acts or omissions by Construction Manager, its employees, subcontractors, suppliers, and agents for failure to comply with Laws, including fines, penalties, or corrective measures. However, liability under this subsection shall not apply if prior approval by appropriate authorities and Owner is received.

3.23.1 CHANGES IN THE LAW The GMP, estimated Cost of the Work, Construction Manager's Fee, Date of Substantial Completion or Date of Final Completion, and, if appropriate, the Compensation for Preconstruction Services shall be equitably adjusted in accordance with ARTICLE 9 for additional costs or time needed resulting from Laws enacted after the date of this Agreement, including taxes.

3.24 CONFIDENTIALITY Construction Manager shall treat as confidential and not disclose to third persons, nor use for its own benefit ("Treat as Confidential"), any of Owner's confidential information, know-how, discoveries, production methods, and the like disclosed to Construction Manager or which Construction Manager may acquire in performing the Work. To the extent necessary to perform the Work, Construction Manager's confidentiality obligations do not apply to disclosures to Subcontractors, Subsubcontractors, and Suppliers. Owner shall Treat as Confidential information all of Construction Manager's estimating systems and historical and parameter cost data disclosed to Owner in performing the Work. Each Party shall specify and mark confidential items as "Confidential." Confidentiality obligations do not supersede compulsion by Law, a governmental agency or authority, an order of a court of competent jurisdiction, or a validly issued subpoena. In such event, a Party shall promptly notify the other Party to permit that Party's legal objection.

ARTICLE 4 OWNER'S RESPONSIBILITIES

4.1 INFORMATION AND SERVICES Owner's responsibilities under this Article shall be fulfilled with reasonable detail and in a timely manner.

4.2 FINANCIAL INFORMATION Before commencement of the Work and thereafter at the written request of Construction Manager, Owner shall provide Construction Manager with evidence of Project financing. Evidence of such financing shall be a condition precedent to Construction Manager's commencing or continuing the Work. Construction Manager shall be notified before any material change in Project financing.



4.3 WORKSITE INFORMATION To the extent Owner has obtained, or is required to obtain the following Worksite information, then Owner shall provide Construction Manager the following:

4.3.1 information describing the physical characteristics of the Worksite, including surveys, Worksite evaluations, legal descriptions, data, or drawings depicting existing conditions, subsurface conditions, and environmental studies, reports, and investigations;

4.3.2 tests, inspections, and other reports dealing with environmental matters, Hazardous Material, and other existing conditions, including structural, mechanical, and chemical tests, required by the Contract Documents or Law;

4.3.3 the limits of Pollution Liability Insurance covering the Worksite held by Owner; and

4.3.4 any other information or services requested in writing by Construction Manager which are required for Construction Manager's performance of the Work and under Owner's control.

4.4 BUILDING PERMIT, FEES, AND APPROVALS Except for those permits and fees related to the Work which are the responsibility of Construction Manager pursuant to §3.19.1, Owner shall secure and pay for all other permits, approvals, easements, assessments, and fees required for the development, construction, use, or occupancy of permanent structures or for permanent changes in existing facilities, including the building permit.

4.5 MECHANICS AND CONSTRUCTION LIEN INFORMATION Within seven (7) Days after receiving Construction Manager's written request, Owner shall provide Construction Manager with the information necessary to give notice of or enforce mechanics lien rights and, where applicable, stop notices. This information shall include Owner's real property interests in the Worksite and the record legal title.

4.6 CONTRACT DOCUMENTS Unless otherwise specified, Owner shall provide a reasonable number of hard copies of the Contract Documents to Construction Manager without cost.

4.6.1 **ELECTRONIC DOCUMENTS** If Owner requires that Owner, Design Professional, and Construction Manager exchange documents and data in electronic or digital form, before any such exchange, Owner, Design Professional, and Construction Manager shall agree on and follow a written protocol governing all exchanges in, which, at a minimum, shall specify: (a) the definition of documents and data to be accepted in electronic or digital form or to be transmitted electronically or digitally; (b) management and coordination responsibilities; (c) necessary equipment, software, and services; (d) acceptable formats, transmission methods, and verification procedures; (e) methods for maintaining version control; (f) privacy and security requirements; and (g) storage and retrieval requirements. Except as otherwise agreed upon by the Parties in writing, each Party shall each bear its own costs as identified in the protocol. In the absence of a written protocol, use of documents and data in electronic or digital form shall be at the sole risk of the recipient.

4.7 OWNER'S REPRESENTATIVE Owner's Representative is Chris Carr of ESG Engineering, Inc.. Owner's Representative shall be fully acquainted with the Project, and shall have authority to bind Owner in all matters requiring Owner's approval, authorization, or written notice. If Owner changes its Representative or the Representative's authority, Owner shall immediately notify Construction Manager in writing.

4.8 OWNER'S CUTTING AND PATCHING Cutting, patching, or altering the Work by Owner or Others shall be done with the prior written approval of Construction Manager, which approval shall not be unreasonably withheld.

4.9 OWNER'S RIGHT TO CLEAN UP In case of a dispute between Construction Manager and Others with regard to respective responsibilities for cleanup at the Worksite, Owner may implement appropriate



cleanup measures after two (2) Business Days' notice and allocate the cost among those responsible during the following pay period.

4.10 COST OF CORRECTING DAMAGED OR DESTROYED WORK With regard to damage or loss attributable to the acts or omissions of Owner or Others and not to Construction Manager, Owner may either (a) promptly remedy the damage or loss and assume affected warranty responsibilities, (b) accept the damage or loss, or (c) issue an Interim Directive or Change Order to remedy the damage or loss. If Construction Manager incurs costs or is delayed due to such loss or damage, Construction Manager may seek an equitable adjustment in the GMP, estimated Cost of the Work, Construction Manager's Fee, Date of Substantial Completion or Date of Final Completion, and, if appropriate, the Compensation for Preconstruction Services under this Agreement.

ARTICLE 5 SUBCONTRACTS

5.1 SUBCONTRACTORS Subcontracts shall be issued on a lump sum or unit price basis unless Owner has given prior written approval of a different method of payment to the Subcontractor.

5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

5.2.1 Prior to execution of the Amendment for Construction Services, Construction Manager shall provide Owner, and, if directed, Design Professional with a written list of the proposed subcontractors and significant Suppliers. If Owner has a reasonable objection to any proposed subcontractor or material supplier, Owner shall notify Construction Manager in writing. Failure to promptly object shall constitute acceptance.

5.2.2 If Owner has reasonably and promptly objected, Construction Manager shall not contract with the proposed Subcontractor or Supplier, and Construction Manager shall propose another acceptable Subcontractor or Supplier to Owner. An appropriate GMP adjustment and/ or Schedule adjustment shall reflect any increase or decrease in the GMP or Dates of Substantial or Final Completion because of the substitution.

5.3 BINDING OF SUBCONTRACTORS AND SUPPLIERS Construction Manager agrees to bind every Subcontractor and Supplier (and require every Subcontractor to so bind its subcontractors and significant suppliers) to the Contract Documents as they apply to the Subcontractor's or Supplier's applicable provisions to that portion of the Work.

5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

5.4.1 If this Agreement is terminated, each subcontract and supply agreement shall be assigned by Construction Manager to Owner, subject to the prior rights of any surety, provided that: (a) this Agreement is terminated by Owner pursuant to §12.4 or §12.5; (b) Owner accepts such assignment after termination by notifying the Construction Manager and Subcontractor or Construction Manager and Supplier in writing; and (c) Owner assumes all rights and obligations of Construction Manager pursuant to each subcontract or supply agreement.

5.4.2 If Owner accepts such an assignment, and the Work has been suspended for more than thirty (30) consecutive Days, following termination, the Subcontractor's or Supplier's compensation shall be equitably adjusted as a result of the suspension.

ARTICLE 6 TIME

6.1 DATE OF COMMENCEMENT The Date of Commencement is the Agreement date in ARTICLE 1

6.1.1 SUBSTANTIAL/FINAL COMPLETION Unless the Parties agree otherwise, the Date of Substantial Completion or the Date of Final Completion shall be established in Amendment 1 to this Agreement subject to adjustments as provided for in the Contract Documents. Owner and



Construction Manager may agree not to establish such dates, or in the alternative, to establish one but not the other of the two dates. If such dates are not established upon the execution of this Agreement, at such time as GMP is accepted a Date of Substantial Completion or Date of Final Completion of the Work shall be established in Amendment 1. If a GMP is not established and the Parties desire to establish a Date of Substantial Completion or Date of Final Completion, it shall be set forth in Amendment 1. The dates for Substantial and Final Completion are subject to adjustments as provided for in the Contract Documents.

6.1.2 Time is of the essence with regard to the obligations of the Contract Documents.

6.1.3 Unless instructed by Owner in writing, Construction Manager shall not knowingly commence the Work before the effective date of Construction Manager's required insurance.

6.2 SCHEDULE OF THE WORK

6.2.1 Before submitting its first application for payment, Construction Manager shall submit to Owner and, if directed, Design Professional a Schedule of the Work showing the dates on which Construction Manager plans to begin and complete various parts of the Work, including dates on which information and approvals are required from Owner. Except as otherwise directed by Owner, Construction Manager shall comply with the approved Schedule of the Work or Construction Manager. Unless otherwise agreed, the Schedule of the Work shall be formatted in a detailed precedence-style critical path method that (a) provides a graphic representation of all activities and events, including float values that will affect the critical path of the Work, and (b) identifies dates that are critical to ensure timely and orderly completion of the Work. Construction Manager shall update the Schedule of the Work on a monthly basis or as mutually agreed by the Parties.

6.2.2 Owner may determine the sequence in which the Work shall be performed, provided it does not unreasonably interfere with the approved project schedule. Owner may require Construction Manager to make reasonable changes in the sequence at any time during the performance of the Work in order to facilitate the performance of work by Owner or Others. If Construction Manager consequently incurs costs or is delayed, the GMP or the Dates of Substantial or Final Completion, or both, Construction Manager may seek equitable adjustment under ARTICLE 9.

6.3 DELAYS AND EXTENSIONS OF TIME

6.3.1 If Construction Manager is delayed at any time in the commencement or progress of the Work by any cause beyond the control of Construction Manager, Construction Manager shall be entitled to an equitable extension of the Date of Substantial Completion or Date of Final Completion. Examples of causes beyond the control of Construction Manager include, but are not limited to, the following: (a) acts or omissions of Owner, Design Professional, or Others; (b) changes in the Work or the sequencing of the Work ordered by Owner, or arising from decisions of Owner that impact the time of performance of the Work; (c) encountering Hazardous Materials, or concealed or unknown conditions; (d) delay authorized by Owner pending dispute resolution or suspension by Owner under §12.1; (e) transportation delays not reasonably foreseeable; (f) labor disputes not involving Construction Manager; (g) general labor disputes impacting the Project but not specifically related to the Worksite; (h) fire; (i) Terrorism; (j) epidemics; (k) adverse governmental actions; (l) unavoidable accidents or circumstances; (m) adverse weather conditions not reasonably anticipated. Construction Manager shall submit any requests for equitable extensions of Contract Time in accordance with the provisions of ARTICLE 9.

6.3.2 In addition, if Construction Manager incurs additional costs as a result of a delay that is caused by items (a) through (d) immediately above, Construction Manager shall be entitled to an equitable adjustment in the GMP subject to §6.7.

6.3.3 NOTICE OF DELAYS If delays to the Work are encountered for any reason, Construction Manager shall provide prompt written notice to Owner of the cause of such delays after Construction



Manager first recognizes the delay. The Parties each agree to take reasonable steps to mitigate the effect of such delays.

6.4 NOTICE OF DELAY CLAIMS If Construction Manager requests an equitable extension of the Contract Time or an equitable adjustment in the Contract Price as a result of a delay described in §6.3, Construction Manager shall give Owner written notice of the claim in accordance with §9.4. If Construction Manager causes delay in the completion of the Work, Owner shall be entitled to recover its additional costs subject to §6.7. Owner shall process any such claim against Construction Manager in accordance with ARTICLE 9.

6.5 MONITORING PROGRESS AND COSTS Following acceptance by Owner of the GMP, Construction Manager shall establish a process for monitoring actual costs against the GMP and actual progress against the Schedule of Work. Construction Manager will provide written reports to Owner at intervals as agreed to by the Parties on the status of the Work, showing variances between actual costs and the GMP and actual progress as compared to the Schedule of Work, including estimates of future costs and recovery programs if actual progress indicates that the Dates of Substantial Completion or Final Completion may not be met.

6.6 LIQUIDATED DAMAGES

6.6.1 SUBSTANTIAL COMPLETION Liquidated damages based on the Substantial Completion date shall apply.

6.6.1.1 Owner will suffer damages which are difficult to determine and accurately specify if the Substantial Completion date, which may be amended by Change Order, is not attained. Construction Manager shall pay Owner an amount to be mutually agreed upon by the parties in Amendment 1 as liquidated damages and not as a penalty for each Day that Substantial Completion extends beyond the Substantial Completion date. These liquidated damages are in lieu of all liability for all extra costs, losses, expenses, claims, penalties, and any other damages of any nature incurred by Owner resulting from not attaining the Substantial Completion date.

6.6.2 FINAL COMPLETION Liquidated damages based on the Final Completion date shall apply.

6.6.2.1 Owner will suffer damages which are difficult to determine and accurately specify if the Final Completion date, as may be amended by subsequent Change Order, is not attained. Construction Manager shall pay Owner an amount to be mutually agreed upon by the parties in Amendment 1 as liquidated damages and not as a penalty for each Day that Final Completion extends beyond the Final Completion date. These liquidated damages are in lieu of all liability for any extra costs, losses, expenses, claims, penalties, and any other damages of any nature incurred by Owner resulting from not attaining Final Completion date.

6.6.3 Owner and Construction Manager agree that the maximum aggregate liability Construction Manager has for any liquidated damages that may be assessed under this Agreement for failure to achieve the Substantial and/or Final Completion dates shall be mutually agreed upon by the parties in Amendment 1..

6.7 LIMITED MUTUAL WAIVER OF CONSEQUENTIAL DAMAGES Except for damages mutually agreed upon by the Parties as liquidated damages in §6.6 and excluding losses covered by insurance required by the Contract Documents, the Parties agree to waive all claims against each other for any consequential damages that may arise out of or relate to this Agreement. Owner agrees to waive damages including but not limited to Owner's loss of use of the Project, any rental expenses incurred, loss of income, profit, or financing related to the Project, as well as the loss of business, loss of financing, loss of profits not related to this Project, loss of reputation, or insolvency. Construction Manager agrees to waive damages including but not limited to loss of business, loss of financing, loss of profits not related to this Project, loss of bonding capacity, loss of reputation, or insolvency. The provisions of this section shall also apply to the termination of this Agreement and shall survive such termination.



6.7.1 The Parties shall each require similar waivers in contracts with Subcontractors and Others retained for the Project.

ARTICLE 7 COMPENSATION AND GUARANTEED MAXIMUM PRICE

7.1 Owner shall compensate Construction Manager for Work performed on the following basis:

7.1.1 the Cost of the Work as allowed in ARTICLE 8; and

7.1.2 Construction Manager's Fee paid in proportion to the Work performed subject to adjustment as provided in §7.4.

7.1.3 General Conditions Fee as established in Exhibit B.

7.2 The compensation to be paid shall be limited to the GMP established in Amendment 1, as the GMP may be adjusted under ARTICLE 9. In the event the GMP is converted to a lump sum contract price in accordance with Article 3.4.11, the compensation to be paid shall be limited to that lump sum contract price as such lump sum contract price may be adjusted under ARTICLE 9.

7.2.1 Payment for Work performed shall be as set forth in ARTICLE 10.

7.3 CONSTRUCTION MANAGER'S FEE Construction Manager's Fee shall be as follows, subject to adjustment as provided in §7.4: 8%.

7.4 FEE ADJUSTMENTS:

7.4.1 Changes in the Work as provided in ARTICLE 9, shall adjust Construction Manager's Fee as follows: 8%.

7.4.2 except as provided for in §6.3, delays in the Work not caused by Construction Manager shall adjust Construction Manager's Fee to compensate for increased expenses as provided for in ARTICLE 9; and

7.4.3 managing the replacement of an insured or uninsured loss shall increase Construction Manager's fee in the same proportion that Construction Manager's Fee bears to the estimated Cost of the Work for the replacement.

7.5 PRECONSTRUCTION SERVICES COMPENSATION Construction Manager shall be compensated for Preconstruction Services as follows: \$ 352,720.

ARTICLE 8 COST OF THE WORK

8.1 Owner agrees to pay Construction Manager for the Cost of the Work as defined in this article. This payment shall be in addition to Construction Manager's Fee stipulated in §7.3 and General Conditions Fee established in Exhibit B.

8.2 COST ITEMS

8.2.1 Labor wages directly employed by Construction Manager in performing of the Work.

8.2.2 Salaries of Construction Manager's employees when stationed at the field office, in whatever capacity employed, employees engaged on the road expediting the production or transportation of material and equipment, and employees from the principal or branch office as mutually agreed by the Parties in writing.



8.2.3 Cost of all employee benefits and taxes, including but not limited to, workers' compensation, unemployment compensation, social security, health, welfare, retirement, and other fringe benefits as required by law, labor agreements, or paid under Construction Manager's standard personnel policy, insofar as such costs are paid to employees of Construction Manager who are included in the Cost of the Work pursuant to §8.2.1 and §8.2.2.

8.2.4 Reasonable transportation, travel, hotel, and moving expenses of Construction Manager's personnel incurred in connection with the Work.

8.2.5 Cost of all materials, supplies, and equipment incorporated in the Work, including costs of inspection and testing if not provided by Owner, transportation, storage, and handling.

8.2.6 Payments made by Construction Manager to Subcontractors for work performed under this Agreement.

8.2.7 Cost, including transportation and maintenance of all materials, supplies, equipment, temporary facilities, and hand tools not owned by the workers that are used or consumed in the performance of the Work, less salvage value or residual value; and cost less salvage value on such items used, but not consumed that remain the property of Construction Manager.

8.2.8 Rental charges of all necessary machinery and equipment, exclusive of hand tools owned by workers, used at the Worksite, whether rented from Construction Manager or others, including installation, repair, and replacement, dismantling, removal, maintenance, transportation, and delivery costs. Rental from unrelated third parties shall be reimbursed at actual cost. Rentals from Construction Manager or its affiliates, subsidiaries, or related parties cannot exceed the rates shown for equipment in the EquipmentWatch Cost Recovery Rental Rate Blue Book, (<https://equipmentwatch.com/blue-book-cost-recovery>) An hourly rate will be computed by dividing the monthly rates by 176. These rates will include all operating costs.

8.2.9 Cost of the premiums for all insurance and surety bonds which Construction Manager is required to procure or deems necessary, and approved by Owner including any additional premium incurred as a result of any increase in the GMP.

8.2.10 Sales, use, gross receipts, or other taxes, tariffs, or duties related to the Work for which Construction Manager is liable.

8.2.11 Permits, fees, licenses, tests, royalties.

8.2.12 Losses, expenses, or damages to the extent not compensated by insurance or otherwise, and the cost of corrective work during the Construction Phase and for a one-year period following the Date of Substantial Completion, provided that such losses, expenses, damages, or corrective work did not arise from Construction Manager's negligence.

8.2.13 Costs associated with establishing, equipping, operating, maintaining, and demobilizing the field office.

8.2.14 Water, power, and fuel costs necessary for the Work.

8.2.15 Cost of removal of all nonhazardous substances, debris, and waste materials.

8.2.16 Costs incurred due to an emergency affecting the safety of persons or property.

8.2.17 Legal, mediation, and arbitration fees and costs, other than those arising from disputes between Owner and Construction Manager, reasonably and properly resulting from Construction Manager's performance of the Work.



8.2.18 Costs directly incurred in the performance of the Work or in connection with the Project, and not included in Construction Manager's Fee as set forth in ARTICLE 7, which are reasonably inferable from the Contract Documents.

8.2.19 Allocation of Cost Items Identified in Article 8.2 shall be in accordance with Exhibit C – Allocation of Fees and Costs.

8.3 DISCOUNTS All discounts for prompt payment shall accrue to Owner to the extent such payments are made directly by Owner. To the extent payments are made with funds of Construction Manager, all cash discounts shall accrue to Construction Manager. All trade discounts, rebates, and refunds, and all returns from sale of surplus materials and equipment, shall be credited to the Cost of the Work.

ARTICLE 9 CHANGES

Changes in the Work that are within the general scope of this Agreement shall be accomplished, without invalidating this Agreement, by Change Order and Interim Directive.

9.1 CHANGE ORDER

9.1.1 Construction Manager may request or Owner may order changes in the Work or the timing or sequencing of the Work that impacts the GMP or the estimated Cost of the Work, Construction Manager's Fee, Date of Substantial Completion or Date of Final Completion and, if appropriate, the Compensation for Preconstruction Services. All such changes in the Work shall be formalized in a Change Order. Any such requests for changes in the Work shall be processed in accordance with this article.

9.1.2 For changes in the Work, the Parties shall negotiate an equitable adjustment to the GMP or the Date of Substantial Completion or Date of Final Completion in good faith and conclude negotiations as expeditiously as possible. Acceptance of the Change Order and any equitable adjustment in the GMP or Date of Substantial Completion or Date of Final Completion shall not be unreasonably withheld.

9.1.3 NO OBLIGATION TO PERFORM Construction Manager shall not be obligated to perform changes in the Work that impact the GMP or the estimated Cost of the Work, Construction Manager's Fee, Date of Substantial Completion or Date of Final Completion without a Change Order or Interim Directive.

9.2 INTERIM DIRECTIVES

9.2.1 Owner may issue an Interim Directive directing a change in the Work before reaching agreement with Construction Manager on the adjustment, if any, in the GMP, Construction Manager's Fee, Date of Substantial Completion or Date of Final Completion, or directing Construction Manager to perform Work that Owner believes is not a change. If the Parties disagree that the Interim Directed work is within the scope of the Work, Construction Manager shall perform the disputed Work and furnish Owner with an estimate of the costs to perform the disputed work in accordance with Owner's interpretations.

9.2.2 The Parties shall negotiate expeditiously and in good faith for appropriate adjustments, as applicable, to the GMP or the Date of Substantial Completion or Date of Final Completion arising out of an Interim Directive. As the directed Work is performed, Construction Manager shall submit its costs for such Work with its application for payment beginning with the next application for payment within thirty (30) Days of the issuance of the Interim Directive. If there is a dispute as to the cost to Owner, Owner shall pay Construction Manager fifty percent (50%) of its actual (incurred or committed) cost to perform the Work. In such event, the Parties reserve their rights as to the disputed amount, subject to the requirements of ARTICLE 13. Owner's payment does not prejudice its right to be reimbursed should it be determined that the disputed work was within the scope of the Work.



Construction Manager's receipt of payment for the disputed work does not prejudice its right to receive full payment for the disputed work should it be determined that the disputed work is not within the scope of the Work. Undisputed amounts may be included in applications for payment and shall be paid by Owner in accordance with this Agreement.

9.2.3 When the Parties agree upon the adjustments in the GMP or the Date of Substantial Completion or Date of Final Completion, for a change in the Work directed by an Interim Directive, such agreement shall be the subject of an appropriate Change Order. The Change Order shall include all outstanding Interim Directives on which the Parties have reached agreement on GMP or the Date of Substantial Completion or Date of Final Completion issued since the last Change Order.

9.3 DETERMINATION OF COST

9.3.1 An increase or decrease in the GMP or the Date of Substantial Completion or Date of Final Completion resulting from a change in the Work shall be determined by one or more of the following methods:

9.3.1.1 unit prices set forth in this Agreement or as subsequently agreed;

9.3.1.2 a mutually accepted, itemized lump sum;

9.3.1.3 Cost of the Work as defined by ARTICLE 8 and determined as a net savings from the change in the work; plus 8% for Overhead, Administration and profit(Fee). Construction Manager's Overhead, Administration and profit (Fee) shall be added to any net increase in GMP. No Overhead and profit shall be applied to any net decrease in the GMP that is less than ten percent (10%) of GMP. Overhead and profit shall be applied to any net decrease of the GMP that is ten percent (10%) or more of GMP.

9.3.1.4 If there is a net increase in the GMP, Construction Manager's Fee shall be adjusted accordingly. In case of a net decrease in the GMP, Construction Manager's Fee shall not be adjusted unless ten percent (10%) or more of the Project is deleted. Construction Manager shall maintain a documented, itemized accounting evidencing the expenses and savings.

9.3.2 If unit prices are set forth in the Contract Documents or are subsequently agreed to by the Parties, but the character or quantity of such unit items as originally contemplated is so different in a proposed Change Order that the original unit prices will cause substantial inequity to either Party, such unit prices shall be equitably adjusted.

9.3.3 If the Parties disagree as to whether work required by Owner is within the scope of the Work, Construction Manager shall furnish Owner with an estimate of the costs to perform the disputed work in accordance with Owner's interpretations.

9.4 CHANGES NOTICE Except as provided in §6.3.2 and §6.4 for any claim for an increase in the GMP or the Date of Substantial Completion or Date of Final Completion, Construction Manager shall give Owner written notice of the claim within fourteen (14) Days after the occurrence giving rise to the claim or within fourteen (14) Days after Construction Manager first recognizes the condition giving rise to the claim, whichever is later. Owner's failure to so respond shall be deemed a denial of Construction Manager's claim. Except in an emergency, notice shall be given before proceeding with the Work. Thereafter, Construction Manager shall submit written documentation of its claim, including appropriate supporting documentation, within twenty-one (21) Days after giving notice, unless the Parties mutually agree upon a longer period of time. No later than fourteen (14) Days after receipt, Owner shall respond in writing denying or approving the claim. Owner's failure to so respond shall be deemed a denial of the claim. Any change in the GMP or the Date of Substantial Completion or Date of Final Completion resulting from such claim shall be authorized by Change Order.



9.5 INCIDENTAL CHANGES Owner may direct Construction Manager to perform incidental changes in the Work, upon concurrence with Construction Manager that such changes do not involve adjustments in the Contract Price or the Contract Time. Incidental changes shall be consistent with the scope and intent of the Contract Documents. Owner shall initiate an incidental change in the Work by issuing a written order to Construction Manager. Such written notice shall be carried out promptly and is binding on the Parties.

ARTICLE 10 PAYMENT

10.1 SCHEDULE OF VALUES Within twenty-one (21) Days from the date of execution of Amendment for Construction-Phase Services, Construction Manager shall prepare and submit to Owner and Design Professional a schedule of values apportioned to the various divisions or phases of the Work. Each line item contained in the schedule of values shall be assigned a value such that the total of all items shall equal the GMP.

10.2 PROGRESS PAYMENTS

10.2.1 APPLICATIONS Construction Manager shall submit to Owner and, if directed, Design Professional a monthly application for payment no later than the 5th Day of the calendar month for the preceding calendar month. Construction Manager's applications for payment shall be itemized and supported by Construction Manager's schedule of values based on a percentage of completion and shall include any other substantiating data as required by this Agreement. Applications for payment shall include payment requests on account of properly authorized Change Orders or Interim Directives. Owner shall pay the amount otherwise due on any payment application, as certified by Design Professional, no later than fifteen (15) Days after accepting such application. Owner may deduct from any progress payment amounts that may be retained pursuant to §10.2.4.

10.2.2 STORED MATERIALS AND EQUIPMENT Unless otherwise provided in the contract documents, applications for payment may include materials and equipment not yet incorporated into the Work but delivered to and suitably stored onsite or offsite including applicable insurance, storage, and costs incurred transporting the materials to an offsite storage facility. Approval of payment applications for stored materials and equipment stored offsite shall be conditioned on a submission by Construction Manager of bills of sale and proof of required insurance, or such other documentation satisfactory to Owner to establish the proper valuation of the stored materials and equipment, Owner's title to such materials and equipment, and to otherwise protect Owner's interests therein, including transportation to the Worksite.

10.2.3 LIEN WAIVERS AND LIENS

10.2.3.1 PARTIAL LIEN WAIVERS AND AFFIDAVITS If required by Owner, as a prerequisite for payment, Construction Manager shall provide a partial lien and claim waiver in the amount of the application for payment and affidavits from its Subcontractors and Suppliers for the completed Work. Such waivers shall be conditional upon payment. In no event shall Construction Manager be required to sign an unconditional waiver of lien or claim, before receiving payment or in an amount in excess of what it has been paid.

10.2.3.2 RESPONSIBILITY FOR LIENS If Owner has made payments in the time required by this article, Construction Manager shall, within thirty (30) Days after filing, remove any liens filed against the premises or public improvement fund by any party or parties performing labor or services or supplying materials in connection with the Work. If Construction Manager fails to take such action on a lien, Owner may cause the lien to be removed at Construction Manager's expense, including bond costs and reasonable attorneys' fees. This subsection shall not apply if there is a dispute pursuant to ARTICLE 13 relating to the subject matter of the lien.

10.2.4 RETAINAGE From each progress payment made before Substantial Completion, Owner may retain five percent (5%), of the amount otherwise due after deduction of any amounts as provided in



§10.3, provided such percentage doesn't exceed the Law. If Owner chooses to use this retainage provision:

10.2.4.1 Intentionally omitted

10.2.4.2 Owner may, in its sole discretion, reduce the amount to be retained at any time;

10.2.4.3 Owner may release retainage on that portion of the Work a Subcontractor has completed in whole or in part, and which Owner has accepted. In lieu of retainage, Construction Manager may furnish a retention bond or other security interest acceptable to Owner, to be held by Owner.

10.2.4.4 There shall be no retainage withheld on Preconstruction-Phase Services.

10.3 ADJUSTMENT OF CONSTRUCTION MANAGER'S PAYMENT APPLICATION Owner may adjust or reject a payment application or nullify a previously approved payment application, in whole or in part, as may reasonably be necessary to protect Owner from loss or damage based upon the following, to the extent that Construction Manager is responsible under this Agreement:

10.3.1 Construction Manager's repeated failure to perform the Work as required by the Contract Documents;

10.3.2 except as accepted by the insurer providing builder's risk or other property insurance covering the Project, loss or damage arising out of or relating to this Agreement and caused by Construction Manager to Owner or others to whom Owner may be liable;

10.3.3 Construction Manager's failure to properly pay Subcontractors and Suppliers following receipt of such payment from Owner for that portion of the Work or for supplies, provided that Owner is making payments to Construction Manager in accordance with this Agreement;

10.3.4 rejected or Defective Work not corrected in a timely fashion;

10.3.5 reasonable evidence of delay in performance of the Work such that the Work will not be completed by the Dates of Substantial or Final Completion;

10.3.6 reasonable evidence demonstrating that the unpaid balance of the GMP is insufficient to fund the cost to complete the Work; and

10.3.7 uninsured third-party claims involving Construction Manager or reasonable evidence demonstrating that third-party claims are likely to be filed unless and until Construction Manager furnishes Owner with adequate security in the form of a surety bond, letter of credit, or other collateral or commitment sufficient to discharge such claims if established.

No later than seven (7) Days after receipt of an application for payment, Owner shall give written notice to Construction Manager, at the time of disapproving or nullifying all or part of an application for payment, stating its specific reasons for such disapproval or nullification, and the remedial actions to be taken by Construction Manager in order to receive payment. When the above reasons for disapproving or nullifying an application for payment are removed, payment will be promptly made for the amount previously withheld.

10.4 ACCEPTANCE OF WORK Neither Owner's payment of progress payments nor its partial or full use or occupancy of the Project constitutes acceptance of Work not complying with the Contract Documents.

10.5 PAYMENT DELAY If for any reason not the fault of Construction Manager Construction Manager does not receive a progress payment from Owner within seven (7) Days after the time such payment is due, then Construction Manager, upon giving seven (7) Days' written notice to Owner, and without



prejudice to and in addition to any other legal remedies, may stop Work until payment of the full amount owing to Construction Manager has been received, including interest for late payment. If Construction Manager incurs costs or is delayed resulting from shutdown, delay, and start-up, Construction Manager may seek an equitable adjustment in the GMP and Dates of Substantial or Final Completion may be equitably adjusted by a Change Order in accordance with ARTICLE 9.

10.6 SUBSTANTIAL COMPLETION

10.6.1 Construction Manager shall notify Owner and, if directed, Design Professional when it considers Substantial Completion of the Work or a designated portion to have been achieved. Owner, with the assistance of its Design Professional, shall promptly conduct an inspection to determine whether the Work or designated portion can be occupied or used for its intended use by Owner without excessive interference in completing any remaining unfinished Work. If Owner determines that the Work or designated portion has not reached Substantial Completion, Owner, with the assistance of its Design Professional, shall promptly compile a list of items to be completed or corrected so Owner may occupy or use the Work or designated portion for its intended use. Construction Manager shall promptly complete all items on the list.

10.6.2 When Substantial Completion of the Work or a designated portion is achieved, Construction Manager shall prepare a Certificate of Substantial Completion establishing the date of Substantial Completion and the respective responsibilities of each Party for interim items such as security, maintenance, utilities, insurance, and damage to the Work, and fixing the time for completion of all items on the list accompanying the Certificate. The Certificate of Substantial Completion shall be submitted by Construction Manager to Owner and, if directed, to Design Professional for written acceptance of responsibilities assigned in the Certificate of Substantial Completion.

10.6.3 Unless otherwise provided in the Certificate of Substantial Completion, warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or a designated portion.

10.6.4 Upon Owner's written acceptance of the Certificate of Substantial Completion, Owner shall pay to Construction Manager the remaining retainage held by Owner for the Work described in the Certificate of Substantial Completion less a sum equal to one hundred and fifty percent (150%) of the estimated cost of completing or correcting remaining items on that part of the Work, as agreed to by the Parties as necessary to achieve Final Completion. Uncompleted items shall be completed by Construction Manager in a mutually agreed upon timeframe. Owner shall pay Construction Manager monthly the amount retained for unfinished items as each item is completed.

10.7 PARTIAL OCCUPANCY OR USE

10.7.1 Owner may occupy or use completed or partially completed portions of the Work when (a) the portion of the Work is designated in a Certificate of Substantial Completion, (b) appropriate insurer(s) consent to the occupancy or use, and (c) public authorities authorize the occupancy or use. Construction Manager shall not unreasonably withhold consent to partial occupancy or use. Owner shall not unreasonably refuse to accept partial occupancy.

10.8 FINAL COMPLETION AND FINAL PAYMENT

10.8.1 Upon notification from Construction Manager that the Work is complete and ready for final inspection and acceptance, Owner, with the assistance of its Design Professional shall promptly conduct an inspection to determine if the Work has been completed and is acceptable under the Contract Documents.

10.8.2 When the Work is complete, Construction Manager shall prepare for Owner's written acceptance a final application for payment stating that to the best of Construction Manager's



knowledge, and based on Owner's inspections, the Work has reached Final Completion in accordance with the Contract Documents.

10.8.3 Final payment of the balance of the GMP shall be made to Construction Manager within twenty (20) Days after Construction Manager has submitted an application for final payment, including submissions required under §10.8.4, and a Certificate of Final Completion has been executed by the Parties.

10.8.4 Final payment shall be due on Construction Manager's submission of the following to Owner:

10.8.4.1 an affidavit declaring any indebtedness connected with the Work, to have been paid, satisfied, or to be paid with the proceeds of final payment, so as not to encumber Owner's property;

10.8.4.2 as-built drawings, manuals, copies of warranties, and all other close-out documents required by the Contract Documents;

10.8.4.3 release of any liens, conditioned on final payment being received;

10.8.4.4 consent of any surety; and

10.8.4.5 any outstanding known and unreported accidents or injuries experienced by Construction Manager or its Subcontractors at the Worksite.

10.8.5 If, after Substantial Completion of the Work, the Final Completion of a portion of the Work is materially delayed through no fault of Construction Manager, Owner shall pay the balance due for any portion of the Work fully completed and accepted. If the remaining contract balance for Work not fully completed and accepted is less than the retained amount before payment, Construction Manager shall submit to Owner and, if directed, Design Professional the written consent of any surety to payment of the balance due for portions of the Work that are fully completed and accepted. Such payment shall not constitute a waiver of claims, but otherwise shall be governed by this §10.8.

10.8.6 OWNER RESERVATION OF CLAIMS Owner's claims not reserved in writing with final payment are waived, except for claims relating to liens or similar encumbrances, warranties, Defective Work, and latent defects.

10.8.7 ACCEPTANCE OF FINAL PAYMENT Unless Construction Manager provides written identification of unsettled claims with an application for final payment, its acceptance of final payment constitutes a waiver of such claims.

10.9 LATE PAYMENT Payments due but unpaid shall bear interest from the date payment is due at the statutory rate at the place of the Project.

ARTICLE 11 INDEMNITY, INSURANCE, AND BONDS

11.1 INDEMNITY

11.1.1 To the fullest extent permitted by law, Construction Manager shall indemnify and hold harmless Owner, Owner's officers, directors, members, consultants, agents, and employees, Design Professional, and Others (the "Indemnitees") from all claims for bodily injury and property damage, other than to the Work itself and other property insured, including reasonable attorneys' fees, costs, and expenses, that may arise from the performance of the Work, but only to the extent caused by the negligent or intentionally wrongful acts or omissions of Construction Manager, Subcontractors, Suppliers, Subsubcontractors, or anyone employed directly or indirectly by any of them or by anyone for whose acts any of them may be liable. Construction Manager shall be entitled to reimbursement of



any defense costs paid above Construction Manager's percentage of liability for the underlying claim to the extent provided for by §11.1.2.

11.1.2 To the fullest extent permitted by law, Owner shall indemnify and hold harmless Construction Manager, its officers, directors, members, consultants, agents, and employees, Subcontractors, Suppliers, or anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable from all claims for bodily injury and property damage, other than property insured, including reasonable attorneys' fees, costs, and expenses, that may arise from the performance of work by Owner, Design Professional, or Others, but only to the extent caused by the negligent or intentionally wrongful acts or omissions by Owner, Design Professional, or Others. Owner shall be entitled to reimbursement of any defense costs paid above Owner's percentage of liability for the underlying claim to the extent provided for by §11.1.1.

11.1.3 NO LIMITATION ON LIABILITY In any and all claims against the Indemnitees by any employee of Construction Manager, anyone directly or indirectly employed by Construction Manager, or anyone for whose acts Construction Manager may be liable, the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Construction Manager under workers' compensation acts, disability benefit acts, or other employment benefit acts.

11.2 INSURANCE

11.2.1 Before starting the Work and as a condition precedent to payment, Construction Manager shall procure and maintain in force Workers' Compensation Insurance, Employers' Liability Insurance, Business Automobile Liability Insurance, and Commercial General Liability Insurance ("CGL"). The CGL policy shall include coverage for liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, contractual liability, and broad form property damage. Construction Manager shall maintain completed operations liability insurance for one year after Substantial Completion, or as required by the Contract Documents, whichever is longer. Construction Manager's Employers' Liability, Business Automobile Liability and CGL policies shall be written with at least the following limits of liability:

11.2.1.1 Employers' Liability Insurance

- (a) \$500,000 bodily injury by accident per accident.
- (b) \$500,000 bodily injury by disease per employee.

11.2.1.2 Business Automobile Liability Insurance \$500,000 per accident.

11.2.1.3 Commercial General Liability Insurance

- (a) \$4,000,000 per occurrence.
- (b) \$10,000,000 general aggregate.

11.2.1.4 Umbrella Liability Insurance – Minimum \$10,000,000 limit of liability

11.2.2 Employers' Liability, Business Automobile Liability, and CGL coverages required under §11.2.1 may be provided by a single policy for the full limits required or by a combination of underlying policies with the balance provided by excess or umbrella liability policies.

11.2.3 Construction Manager shall maintain in effect all insurance coverage required under §11.2.1 with insurance companies lawfully authorized to do business in the jurisdiction in which the Project is located. If Construction Manager fails to obtain or maintain any insurance coverage required under this Agreement, Owner may purchase such coverage and charge the expense to Construction Manager, or terminate this Agreement.



11.2.4 To the extent commercially available to Construction Manager from its current insurance company, insurance policies required under §11.2.1 shall contain a provision that the insurance company or its designee must give Owner written notice transmitted in paper or electronic format: (a) thirty (30) Days before coverage is nonrenewed by the insurance company and (b) within ten (10) Business Days after cancelation of coverage by the insurance company. Before commencing the Work and upon renewal or replacement of the insurance policies, Construction Manager shall furnish Owner with certificates of insurance until one year after Substantial Completion or longer if required by the Contract Documents. In addition, if any insurance policy required under §11.2.1 is not to be immediately replaced without lapse in coverage when it expires, exhausts its limits, or is to be cancelled, Construction Manager shall give Owner prompt written notice upon actual or constructive knowledge of such condition.

11.2.5 Construction Manager shall cause each Subcontractor employed by Construction Manager to purchase and maintain appropriate and reasonable insurance coverage and minimum insurance limits to cover each of the Subcontractor's liabilities given the scope of work and the services being provided.

11.3 PROPERTY INSURANCE

11.3.1 Unless otherwise directed in writing by Owner, before starting the Work, Construction Manager shall obtain and maintain a Builder's Risk Policy for the construction phase of the Project upon the entire Project for the full cost of replacement at the time of loss. This insurance shall also (a) name Construction Manager, and Design Professional as named insureds; (b) be written in such form to cover all risks of physical loss except those specifically excluded by the policy.

11.3.2 The Party that is the primary cause of a Builder's Risk Policy claim shall be responsible for any deductible amounts or coinsurance payments. If no Party is the primary cause of a claim, then the Party obtaining and maintaining the Builder's Risk Policy pursuant to §11.3.1 shall be responsible for the deductible amounts or coinsurance payments. This policy shall provide for a waiver of subrogation. This insurance shall remain in effect until final payment has been made or until no person or entity other than Owner has an insurable interest in the property to be covered by this insurance, whichever is sooner. Partial occupancy or use of the Work shall not commence until Owner has secured the consent of the insurance company or companies providing the coverage required in this subsection. Before commencing the Work, Owner shall provide a copy of the property policy or policies obtained in compliance with this §11.3.

11.3.3 Intentionally omitted.

11.3.4 The Parties each waive all rights against each other and their respective employees, agents, contractors, subcontractors, suppliers, subsubcontractors, and design professionals for damages caused by risks covered by the property insurance provided under §11.3.1, except such rights as they may have to the proceeds of the insurance. To the extent of the limits of Construction Manager's Commercial General Liability Insurance specified in §11.2.1, Construction Manager shall indemnify and hold harmless Owner against any and all liability, claims, demands, damages, losses, and expenses, including attorneys' fees, in connection with or arising out of any damage or alleged damage to any of Owner's existing adjacent property that may arise from the performance of the Work, to the extent caused by the negligent or intentionally wrongful acts or omissions of Construction Manager, Subcontractor, Supplier, Subsubcontractor, or anyone employed directly or indirectly by any of them or by anyone for whose acts any of them may be liable.



11.3.5 RISK OF LOSS Except to the extent a loss is covered by applicable insurance, risk of loss from damage to the Work shall be upon the Party obtaining and maintaining the Builder's Risk Policy pursuant to §11.3.1 until the Date of Final Completion.

11.3.6 POLLUTION LIABILITY INSURANCE Construction Manager is required to maintain pollution liability insurance. Unless indicated affirmatively, the obligation to procure such insurance is not triggered.

11.3.6.1 If applicable: in the following amounts: \$1,000,000 per occurrence, \$1,000,000 general aggregate, and shall apply for 1 year(s) after Final Completion. The policy shall cover Construction Manager's liability during construction, removal, storage, encapsulation, transport and disposal of hazardous waste and contaminated soil, and asbestos abatement. The policy shall include coverage for on-site and off-site bodily injury and loss of damage to, or loss of use of property, directly or indirectly arising out of the discharge, dispersal, release, or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gas, waste materials, or other irritants, contaminants or pollutants into or upon the land, the atmosphere or any water body, whether it be gradual or sudden and accidental. The policy shall not have exclusions for mold or asbestos.

11.4 ADDITIONAL GENERAL LIABILITY COVERAGE Owner shall require Construction Manager to purchase and maintain additional liability coverage. If required, Construction Manager shall provide:

11.4.1 Intentionally Omitted.

11.4.2 ☒ OCP. Construction Manager shall provide an Owners' and Contractors' Protective Liability Insurance ("OCP") policy with limits equal to the limits on CGL specified, or limits as otherwise required by Owner.

Any documented additional cost in the form of a surcharge associated with procuring the additional liability coverage in accordance with this subsection shall be paid by Owner directly or the costs may be reimbursed by Owner to Construction Manager by increasing the Contract Price to correspond to the actual cost required to purchase and maintain the coverage. Before commencing the Work, Construction Manager shall provide a copy of the OCP policy.

11.4.3 ROYALTIES, PATENTS, AND COPYRIGHTS Construction Manager shall pay all royalties and license fees which may be due on the inclusion of any patented or copyrighted materials, methods, or systems selected by Construction Manager and incorporated in the Work. Construction Manager shall defend, indemnify, and hold Owner harmless from all suits or claims for infringement of any patent rights or copyrights arising out of such selection. Owner, to the extent permitted by law, agrees to defend, indemnify, and hold Construction Manager harmless from any suits or claims of infringement of any patent rights or copyrights arising out of any patented or copyrighted materials, methods, or systems specified by Owner or Design Professional.

11.5 BONDS Performance and Payment Bonds are required of Construction Manager for the construction phase of the Project. Such bonds shall be issued by a surety admitted in the state in which the Project is located and must be acceptable to Owner. Owner's acceptance shall not be withheld without a reasonable cause. The penal sum of the bonds shall each be one hundred percent (100%) of the GMP (which shall not include amounts for Preconstruction Services). Construction Manager shall endeavor to keep its surety advised of changes potentially impacting the GMP and Contract Time, though Construction Manager shall require that its surety waives any requirement to be notified of any alteration or extension of time.

11.6 PROFESSIONAL LIABILITY INSURANCE To the extent Construction Manager is required to procure design services in accordance with §3.17, Construction Manager shall require its design professionals to obtain professional liability insurance for claims arising from the negligent performance of



professional services under this Agreement, with a company reasonably satisfactory to Owner, including coverage for all professional liability caused by any consultants to Construction Manager's design professional, written for not less than Two Million dollars (\$2,000,000) per claim and in the aggregate with the deductible not to exceed fifty thousand dollars (\$50,000). Construction Manager's design professional shall pay the deductible. The Professional Liability Insurance shall contain a retroactive date providing prior acts coverage sufficient to cover all Services performed by the Construction Manager's design professional for this Project. Construction Manager's design professional shall pay the self-insured retention and deductible.

11.7 ABILITY TO NEGOTIATE INSURANCE PROVISIONS: Owner and CMAR agree that these insurance provisions may be modified prior to the GMP submission upon request by CMAR in order to maximize the use of CMAR's corporate policies which shall be mutually agreed upon by the parties in Amendment 1.

ARTICLE 12 SUSPENSION, NOTICE TO CURE, AND TERMINATION

12.1 SUSPENSION BY OWNER FOR CONVENIENCE

12.1.1 OWNER SUSPENSION Should Owner order Construction Manager in writing to suspend, delay, or interrupt the performance of the Work for the convenience of Owner and not due to any act or omission of Construction Manager or any person or entity for whose acts or omissions Construction Manager may be liable, then Construction Manager shall immediately suspend, delay, or interrupt that portion of the Work for the time period ordered by Owner.

12.1.2 Any action taken by Owner that is permitted by any other provision of the Contract Documents and that results in a suspension of part or all of the Work does not constitute a suspension of Work under this section.

12.2 NOTICE TO CURE A DEFAULT If Construction Manager persistently fails to supply enough properly qualified workers, proper materials, or equipment to maintain the approved Schedule of the Work or fails to make prompt payment to its workers, Subcontractors, or Suppliers, disregards a Law or orders of any public authority having jurisdiction, or is otherwise guilty of a material breach of a provision of this Agreement, Construction Manager may be deemed in default.

12.2.1 After receiving Owner's written notice, if Construction Manager fails within seven (7) Days after receipt of written notice to commence and continue satisfactory correction of such default with diligence and promptness, then Owner shall give Construction Manager a second notice to correct the default within three (3) Business Days after receipt. The second notice to Construction Manager, and if applicable, the surety, may include, that Owner intends to terminate this Agreement for default absent appropriate corrective action.

12.2.2 If Construction Manager fails to promptly commence and continue satisfactory correction of the default following receipt of such second notice, Owner without prejudice to any other rights or remedies may: (a) take possession of the Worksite; (b) complete the Work utilizing reasonable means; (c) withhold payment due to Construction Manager; and (d) as Owner deems necessary, supply workers and materials, equipment, and other facilities for the satisfactory correction of the default, and charge Construction Manager, the costs and expenses, including reasonable Overhead, profit, and attorneys' fees.

12.2.3 In the event of an emergency affecting the safety of persons or property, Owner may immediately commence and continue satisfactory correction of such default without first giving written notice to Construction Manager, but shall give Construction Manager prompt written notice.

12.3 OWNER'S RIGHT TO TERMINATE FOR DEFAULT



12.3.1 Upon expiration of the second notice to cure pursuant to §12.2, and absent appropriate corrective action, Owner may terminate this Agreement by written notice. Termination for default is in addition to any other remedies available to Owner under §12.2. If Owner's costs arising out of Construction Manager's failure to cure, including the costs of completing the Work and reasonable attorneys' fees, exceed the unpaid GMP, Construction Manager shall be liable to Owner for such excess costs. If Owner's costs are less than the unpaid GMP, Owner shall pay the difference to Construction Manager. If Owner exercises its rights under this section, upon the request of Construction Manager, Owner shall furnish to Construction Manager a detailed accounting of the costs incurred by Owner.

12.3.2 If Owner or Others perform work under this section, Owner shall have the right to take and use any materials and supplies for which Owner has paid and located at the Worksite for the purpose of completing any remaining Work. Owner or Others performing work under §12.3 shall also have the right to use construction tools and equipment belonging to the Construction Manager or its subcontractors and located on the Worksite for the purpose of completing the remaining Work but only after Construction Manager's written consent which shall not be unreasonably withheld. If Owner uses Construction Manager's construction tools and equipment in accordance with this subsection, then Owner, to the extent permitted by law, shall indemnify and hold harmless Construction Manager and applicable Subcontractors and the agents, officers, directors, and employees of each of them, from and against all claims, damages, losses, costs, and expenses, including but not limited to reasonable attorneys' fees, costs, and expenses incurred in connection with Owner's use of Construction Manager's or applicable subcontractor's construction tools and equipment. Immediately upon completion of the Work, any remaining materials, supplies, or equipment not consumed or incorporated in the Work shall be returned to Construction Manager in substantially the same condition as when they were taken, reasonable wear and tear excepted.

12.3.3 If Construction Manager files a petition under the Bankruptcy Code, this Agreement shall terminate if: (a) Construction Manager or Construction Manager's trustee rejects the Agreement; (b) a default occurred and Construction Manager is unable to give adequate assurance of required performance; or (c) Construction Manager is otherwise unable to comply with the requirements for assuming this Agreement under the applicable provisions of the Bankruptcy Code.

12.3.4 Owner shall make reasonable efforts to mitigate damages arising from Construction Manager's default, and shall promptly invoice Construction Manager for all amounts due pursuant to §12.2 and §12.3.

12.4 TERMINATION BY OWNER FOR CONVENIENCE

12.4.1 Upon Construction Manager's receipt of written notice from Owner, Owner may, without cause, terminate this Agreement. Construction Manager shall immediately stop the Work, follow Owner's instructions regarding shutdown and termination procedures, and strive to minimize any further costs.

12.4.2 If Owner terminates this Agreement for convenience, Construction Manager shall be paid (a) for the Work performed to date including Overhead and profit; (b) for all demobilization costs and costs incurred resulting from termination, but not including Overhead or profit on Work not performed; and (c) reasonable attorneys' fees and costs related to termination; and (d) a premium as follows: \$250,000.

12.4.3 If Owner terminates this Agreement, Construction Manager shall:

12.4.3.1 execute and deliver to Owner all papers and take all action required to assign, transfer, and vest in Owner the rights of Construction Manager to all materials, supplies, and equipment for which payment has been or will be made in accordance with the Contract Documents and all subcontracts, orders, and commitments which have been made in accordance with the Contract Documents;



12.4.3.2 exert reasonable effort to reduce to a minimum Owner's liability for subcontracts, orders, and commitments that have not been fulfilled at the time of the termination;

12.4.3.3 cancel any subcontracts, orders, and commitments as Owner directs; and

12.4.3.4 sell at prices approved by Owner any materials, supplies, and equipment as Owner directs, with all proceeds paid or credited to Owner.

12.5 CONSTRUCTION MANAGER'S RIGHT TO TERMINATE

12.5.1 Seven (7) Days after Owner's receipt of written notice from Construction Manager, Construction Manager may terminate this Agreement if the Work has been stopped for a thirty (30) Day period through no fault of Construction Manager for any of the following reasons:

12.5.1.1 under court order or order of other governmental authorities having jurisdiction;

12.5.1.2 as a result of the declaration of a national emergency or other governmental act during which, through no act or fault of Construction Manager, project execution under the terms of this agreement is no longer possible ; or

12.5.1.3 suspension by Owner for convenience pursuant to §12.1.

12.5.2 In addition, upon seven (7) Days' written notice to Owner and an opportunity to cure within three (3) Days, Construction Manager may terminate this Agreement if Owner:

12.5.2.1 fails to furnish reasonable evidence pursuant to §4.2 that sufficient funds are available and committed for Project financing, or

12.5.2.2 assigns this Agreement over Construction Manager's reasonable objection, or

12.5.2.3 fails to pay Construction Manager in accordance with this Agreement and Construction Manager has stopped Work in compliance with §10.5, or

12.5.2.4 otherwise materially breaches this Agreement.

12.5.3 Upon termination by Construction Manager in accordance with this section, Construction Manager shall be entitled to recover from Owner payment for all Work executed and for any proven loss, cost, or expense in connection with the Work, including all demobilization costs plus a premium as follows: \$250,000.

12.6 OBLIGATIONS ARISING BEFORE TERMINATION Even after termination, the provisions of this Agreement still apply to any Work performed, payments made, events occurring, costs charged or incurred, or obligations arising before the termination date.

ARTICLE 13 DISPUTE MITIGATION AND RESOLUTION

13.1 WORK CONTINUANCE AND PAYMENT Unless otherwise agreed in writing, Construction Manager shall continue the Work and maintain the Schedule of the Work during any dispute mitigation or resolution proceedings. If Construction Manager continues to perform, Owner shall continue to make payments in accordance with this Agreement.

13.2 DIRECT DISCUSSIONS If the Parties cannot reach resolution on a matter relating to or arising out of this Agreement, the Parties shall endeavor to reach resolution through good faith direct discussions between the Parties' representatives, who shall possess the necessary authority to resolve such matter and who shall record the date of first discussions. If the Parties' representatives are not able to resolve such matter within five (5) Business Days from the date of first discussion, the Parties' representatives



shall immediately inform senior executives of the Parties in writing that a resolution could not be reached. Upon receipt of such notice, the senior executives of the Parties shall meet within five (5) Business Days to endeavor to reach resolution. If the dispute remains unresolved after fifteen (15) Days from the date of first discussion, the Parties shall submit such matter to the dispute mitigation and dispute resolution procedures selected below.

13.3 INTENTIONALLY OMITTED.

13.4 MEDIATION If direct discussions pursuant to §13.2 do not result in resolution of the matter, the Parties shall endeavor to resolve the matter by mediation through the current Construction Industry Mediation Rules of the American Arbitration Association, or the Parties may mutually agree to select another set of mediation rules. The administration of the mediation shall be as mutually agreed by the Parties. The mediation shall be convened within thirty (30) Days of the matter first being discussed and shall conclude within forty-five (45) Business Days of the matter first being discussed. Either Party may terminate the mediation at any time after the first session by written notice to the non-terminating Party and mediator. The costs of the mediation shall be shared equally by the Parties.

13.5 BINDING DISPUTE RESOLUTION If the matter is unresolved after submission of the matter to a mitigation procedure or to mediation, the Parties shall submit the matter to the binding dispute resolution procedure selected below:

☒ Arbitration using:

☒ the current Construction Industry Arbitration Rules of the AAA and administered by the AAA.

13.6 COSTS The costs of any binding dispute resolution procedures and reasonable attorneys' fees shall be borne by the non-prevailing Party, as determined by the adjudicator of the dispute.

13.7 VENUE To the extent permitted by Law, the venue of any binding dispute resolution procedure shall be the location of the Project.

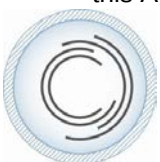
13.8 MULTIPARTY PROCEEDING All parties necessary to resolve a matter agree to be parties to the same dispute resolution proceeding, if possible. Appropriate provisions shall be included in all other contracts relating to the Work to provide for the joinder or consolidation of such dispute resolution procedures.

13.9 LIEN RIGHTS Nothing in this article shall limit any rights or remedies not expressly waived by Construction Manager which Construction Manager may have under lien laws.

ARTICLE 14 MISCELLANEOUS

14.1 EXTENT OF AGREEMENT Except as expressly provided, this Agreement is for the exclusive benefit of the Parties, and not the benefit of any third party. This Agreement represents the entire and integrated agreement between the Parties, and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement and each and every provision is for the exclusive benefit of the Parties and not for the benefit of any third party.

14.2 ASSIGNMENT Except as to the assignment of proceeds, neither Party shall assign their interest in this Agreement without the written consent of the other Party. The terms and conditions of this Agreement



shall be binding upon both Parties, their partners, successors, assigns, and legal representatives. Neither Party shall assign the Agreement as a whole without written consent of the other except that Owner may assign the Agreement to a wholly owned subsidiary of Owner when Owner has fully indemnified Construction Manager or to an institutional lender providing construction financing for the Project as long as the assignment is no less favorable to Construction Manager than this Agreement. If such assignment occurs, Construction Manager shall execute any consent reasonably required. In such event, the wholly owned subsidiary or lender shall assume Owner's rights and obligations under the Contract Documents. If either Party attempts to make such an assignment, that Party shall nevertheless remain legally responsible for all obligations under this Agreement, unless otherwise agreed by the other Party.

14.3 GOVERNING LAW The law in effect at the location of the Project shall govern this Agreement.

14.4 SEVERABILITY The partial or complete invalidity of any one or more provisions of this Agreement shall not affect the validity or continuing force and effect of any other provision.

14.5 NOTICE Unless changed in writing, a Party's address indicated in Article 1 shall be used when delivering notice to a physical address. Except for Agreement termination and as otherwise specified in the Contract Documents, notice is effective upon transmission by any effective means, including U.S. postal service and overnight delivery service.

14.6 NO WAIVER OF PERFORMANCE Either Party's failure to insist upon any of its rights, in any one or more instances, on the performance of any of the terms, covenants, or conditions of this Agreement, or to exercise any of its rights, shall not be construed as a waiver or relinquishment of such term, covenant, condition, or right with respect to further performance or any other term, covenant, condition, or right.

14.7 TITLES The titles given to the articles are for ease of reference only and shall not be relied upon or cited for any other purpose.

14.8 JOINT DRAFTING The Parties expressly agree that this Agreement was jointly drafted, and that both had opportunity to negotiate its terms and to obtain the assistance of counsel in reviewing its terms before execution. Therefore, this Agreement shall be construed neither against nor in favor of either Party, but shall be construed in a neutral manner.

ARTICLE 15 CONTRACT DOCUMENTS

15.1 EXISTING CONTRACT DOCUMENTS The Contract Documents in existence at the time of execution of this Agreement are as follows:

- (a) Flowery Branch WRF Expansion Construction Manager at Risk RFP No. 23-001
- (b) Addendum Number One, dated March 1, 2023
- (c) Addendum Number Two, dated March 8, 2023
- (d) Addendum Number Three, dated March 10, 2023

15.2 INTERPRETATION OF CONTRACT DOCUMENTS

15.2.1 The drawings and specifications are complementary. If Work is shown only on one but not on the other, Construction Manager shall perform the Work as though fully described on both.

15.2.2 In case of conflicts between the drawings and specifications, the specifications shall govern. In any case of omissions or errors in figures, drawings, or specifications, Construction Manager shall immediately submit the matter to Owner for clarification. Subject to an equitable adjustment in the GMP, Dates of Substantial or Final Completion pursuant to ARTICLE 9 or a dispute mitigation and resolution, Owner's clarifications are final and binding.

15.2.3 Where figures are given, they shall be preferred to scaled dimensions.



15.2.4 Unless otherwise specifically defined in this Agreement, any terms that have well-known technical or trade meanings shall be interpreted in accordance with their well-known meanings.

15.2.5 ORDER OF PRECEDENCE In case of any inconsistency, conflict, or ambiguity among the Contract Documents, the documents shall govern in the following order: (a) Change Orders and written amendments to this Agreement; (b) the Agreement; (c) subject to §15.2.2 the drawings, specifications, and addenda issued before the execution of this Agreement; (d) approved submittals; (e) information furnished by Owner pursuant to §3.15.4 or designated as a Contract Document in §15.1; (f) other Contract Documents listed in this Agreement.

OWNER: **City of Flowery Branch**

BY: _____ NAME: _____ TITLE: _____

WITNESS: _____ NAME: _____ TITLE: _____

CONSTRUCTION MANAGER: **Archer Western Construction, LLC**

BY: _____ NAME: _____ TITLE: _____

WITNESS: _____ NAME: _____ TITLE: _____

END OF DOCUMENT.

