



---

**CITY COUNCIL AGENDA ITEM**

---

**TO:** Mayor & City Council

**DATE:** November 14, 2014

**FROM:** John McDonough, City Manager

**AGENDA ITEM:** Consider Approving a Program Manager Agreement between the City and Carter Selig Enterprises for the City Center Project

**MEETING DATE:** For Submission onto the November 18, 2014, City Council Regular Meeting Agenda

---

*BACKGROUND INFORMATION: (Attach additional pages if necessary)*

See attached:

Memorandum  
Program Manager Agreement

---

CITY MANAGER APPROVAL: \_\_\_\_\_

PLACED ON AGENDA FOR: **11/18/2014**

CITY ATTORNEY APPROVAL REQUIRED: (  ) YES (  ) NO

CITY ATTORNEY APPROVAL: \_\_\_\_\_



**To:** Mayor and City Council  
**From:** John McDonough, City Manager  
**Date:** November 14, 2014 for Submission on November 18, 2014 City Council Agenda  
**Subject:** Program Management Services Agreement with Master Developer – Carter & Associates LLC

**Background:**

At the June 17, 2014 City Council meeting, Carter & Associates LLC was selected as the Proposed Master Developer partner for Phase I of City Center development. Since that time, Carter has acted as the City's Program Manager, helping the City to define the overall scope of the project and propose timelines for future development.

As the confirmation period comes to a close, the City must now enter into a Master Agreement in order to provide for compensation to Carter for Program Management Services. Below outlines the fee schedule proposed:

- \$25,000/month for the months of July, August, and September 2014
- \$35,000/month for the month of October 2014
- \$45,000/month for the months of November and December 2014
- \$60,000/month for each of the remaining 39 months of the Project

Total lump sum fee for this proposal is \$2,540,000 and is projected to run 45 months, from July 1, 2014 through March 31, 2018. Should the duration of the project extend past this time frame, the amount may be adjusted accordingly. Reasonable out of pocket expenses will be billed along with the monthly agreed upon amount and may include out of town travel expenses where such travel is directed by the City.

This amount represents 1.34% of \$190,000,000, the total approximate overall budget for the Project. This is within industry norms for full program management services, which typically range from 1% to 2% of managed costs.

**Recommendation:**

City Manager and City Attorney request Council approval of the Agreement and authorize the City Manager and City Attorney to make any further revisions as deemed necessary or advisable in the best interests of the City.

The program management services will be funded through existing FY2015 capital project funding within the City Center budget. The remaining funding will be accounted for in future capital project funding budget years.

**Attachments:**

Resolution  
Carter & Associates LLC Project Management Services Proposal  
Master Agreement for Program Management Services

*Finance*

**STATE OF GEORGIA  
COUNTY OF FULTON**

**RESOLUTION APPROVING MASTER AGREEMENT FOR PROGRAM  
MANAGEMENT SERVICES FOR CITY CENTER PROJECT AND  
AUTHORIZING THE CITY MANAGER TO EXECUTE AGREEMENT  
SUBJECT TO APPROVAL OF THE CITY MANAGER AND CITY  
ATTORNEY**

**WHEREAS**, the City of Sandy Springs (“City”) is a municipal corporation duly organized and existing under the laws of the State of Georgia and is charged with providing public services to its residents; and

**WHEREAS**, City Council has authorized development of a City Center and infrastructure project (“Project”) and adopted a master plan for the Project (“Master Plan”), which calls for a phased approach; and

**WHEREAS**, the City Manager and City staff have moved forward to accomplish the goals set forth in the adopted Master Plan, including determining program management needs to ensure the City receives a high-quality Project on time and within budget; and

**WHEREAS**, in August 2013, City staff conducted a two step procurement process to select a Master Developer to partner with the City for development of the residential and retail elements of the Project, resulting in City Council approval on June 17, 2014 of a team consisting of Carter & Associates, L.L.C. and Selig Enterprises, Inc. as the proposed Master Developer and authorizing the City Manager to negotiate an agreement to begin the Project; and

**WHEREAS**, Carter & Associates, L.L.C. was also selected to provide program management services for the public components of the Project; and

**WHEREAS**, C&A Development, LLC, wholly owned by Carter, will enter into an agreement with the City to perform the services related to program management in connection with the public components of the Project (C&A Development, LLC and Carter & Associates, L.L.C. are referred to together herein as “Carter”); and

**WHEREAS**, Carter has been performing program management services until such time as a final program management agreement can be fully negotiated, including, but not limited to, terms relating scope of services and compensation; and

**WHEREAS**, the City Manager and City Attorney have been negotiating the terms of an agreement for program management services with Carter moving forward into Project phasing, and have agreed upon basic terms as set forth in the Master

Agreement for Program Services (“Agreement”) attached as an exhibit to this resolution; and

**WHEREAS**, some revisions are anticipated as the parties continue to work toward finalizing the Agreement; and

**WHEREAS**, the Agreement contains for the following substantive provisions:

1. Term of Agreement: The Agreement has an effective date of July 1, 2014 continuing until completion of the Project, with Carter remaining obligated until sign-off of punch list items.

2. Termination for Convenience: The City may terminate the Agreement for any reason upon thirty (30) days written notice.

3. Compensation: As compensation for its services, Carter will be paid a program management fee not to exceed \$2,540,000. Payment will be made as follows:

- a) \$25,000 per month for the months of July, August, and September, 2014; and
- b) \$35,000 per month for the month of October, 2014; and
- c) \$45,000 per month for the months of November and December, 2014; and
- d) \$60,000 per month for each of the remaining 39 months of the Project;

**WHEREAS**, the City Manager and City Attorney request Council to approve the form of Agreement, authorizing the City Manager and City Attorney to make any further revisions as deemed necessary or advisable in the best interest of the City, enabling the Project to move forward in an expeditious manner consistent with the Master Plan;

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Sandy Springs, Georgia, while in regular session on November 18, 2014, at 6:00 p.m. as follows:

1. The attached Master Agreement for Program Management Services is hereby approved, subject to such revisions as deemed by the City Manager and the City Attorney to be in the best interest of the City; and

2. The City Manager is hereby authorized to execute the attached Master Agreement for Program Management Services between the City and C&A Development, LLC, as may be revised by the City Manager and the City Attorney to be in the best interest of the City; and

3. The City Manager and City Attorney are hereby authorized to take any other steps which may be necessary to effectuate the intent of this resolution; and

4. To the extent any portion of this resolution is declared to be invalid, unenforceable, or nonbinding, that shall not affect the remaining portions of this resolution.

5. This resolution shall take effect immediately.

**RESOLVED** this the 18th day of November, 2014.

Approved:

\_\_\_\_\_  
Russell K. Paul, Mayor

Attest:

\_\_\_\_\_  
Michael Casey, City Clerk

(SEAL)



**CARTER**

October 2, 2014

Mr. John McDonough  
City Manager  
City of Sandy Springs  
7840 Roswell Road, Building 500  
Sandy Springs, GA 30350

RE: Revised Proposal for Program Management Services  
Sandy Springs City Center

Dear John:

It is a sincere pleasure to submit this revised proposal for program manager / owner representative services related to the City Center Project in Sandy Springs. Having acted in the role of program manager for the past 3 ½ months we have learned much more about the overall scope of the project, duration, and required resources than we knew when we competed for the project. The following outlines; our latest understanding of the project, anticipated scope requirements, and revised proposed fees based on that understanding.

#### Project Understanding

The following chart outlines both Carter's original anticipated scope as compared to where the project exists today.

	<b>Originally Anticipated / Proposed</b>	<b>Revised Scope / Proposal</b>
Scope:		
City Office	Standalone Building w/ Retail @ Ground Floor	Multi-use Building over subterranean pkg, incl Fam Theatre / Black Box, Retail, Meeting space, and possible additional leasable floors
PAC	Simple 1 flr (flex mtg / performance)	800-1000 seat Full Performing Arts Center / Theatre
Parking	1000 spaces (all East)	1100 spaces below and at grade (incl subterranean below private development)
Park	Simple Green Space	Complex Park / Green including multiple program elements, significant water features, internal walks, roads, plazas, "Market Square", and Triangle Park east of Roswell Road
Site Infrastructure	All On-site East of Bluestone, Pad-ready West of Bluestone	Entire Site (incl Galambos Way East and West of Bluestone), Pad-ready West

171 17th Street NW  
Suite 1200  
Atlanta, GA 30363-1032  
p 404-888-3000

[carterusa.com](http://carterusa.com)

Marsh Creek	Included	Excluded
Roads	New Bluestone Extension	New Bluestone Extension, Improvements at; Mt Vernon, Sandy Springs Cir, Johnson Ferry Road
Utilities	Inside Curb and Bluestone only	Within City Center Site and outside curb at roadwork mentioned above. In addition, coordination of \$22MM GPC above ground to underground relocation
Accounting Services	Included (Owner Issuance of Funds)	Included (Owner Issuance of Funds)
Months of Service Anticipated	30	45
On Site Rep	No (Proj Manager reg visits)	Full Time on site coordination and observation (not inspections) per City Request
3rd Party Consulting	None	Scheduler per City Request? (not currently included)
Value of Capital Improvements	\$100MM	\$196MM

It is our understanding that full project funding is available and the project is ready to proceed. The overall schedule is understood to target substantial project completion in late 2017 / early 2018 with final completion and closeout activities to occur thereafter. Recognizing that program management services began in mid-June of this year, the duration of the overall program management engagement is anticipated to occur over a total of 45 months.

The overall project cost, as indicated above, is not anticipated to exceed approximately \$196 million.

#### Project Scope / Services

The proposed program management services for the project have been previously reviewed with the City and are attached as Exhibit A. A final scope of services will be attached to the Program Management Agreement.

#### Resources

Services for this project will be provided by experienced personnel assigned by Carter to the project.

Initially it was anticipated that staffing requirements would include:

- 30 month project duration
- Sr Vice President
- Project Director
- Project Manager including periodic site visits during construction

Based on increased project complexity / program scope, staffing requirements now anticipate:

- 45 month project duration
- Sr Vice President
- 2<sup>nd</sup> Sr Vice President (early stages)
- Project Manager beginning in October / November through duration of project

- On Site Representative throughout construction (per City request)

### Compensation

As compensation for the services to be rendered, Carter is typically paid a lump sum fee for the overall project based on resource requirements and the overall duration of the project.

Based on the revised engagement of 45 months, overall scope of work increases, and request for full time on site representative, Carter proposes a revised lump sum fee of \$2,540,000. Typically our fees are broken into equal monthly installments over the duration of the project beginning upon completion of the first month of service. In this case, we are proposing a ramped up fee schedule as follows:

- \$25,000 / month for the months of July, August, and September of 2014
- \$35,000 / month for the month of October 2014
- \$45,000 / month for the months of November and December 2014
- \$60,000 / month for each of the remaining 39 months of the project

Should the duration of the project be significantly altered based on the desires of the City, we would request that the lump sum fee be adjusted accordingly.

Carter also will bill for all reasonable out-of-pocket costs and expenses paid or incurred in connection with the services to be provided. Expenses will be billed on a monthly basis along with the proposed fee. Reimbursable expenses shall include travel, presentation materials, reproduction of drawings, courier expenses, cost of special consultants, and similar project related expenses approved by the City.

Thank you very much for this opportunity John. We sincerely recognize the importance of this project and the impact it will have on our City. Hopefully, to date, we have conveyed our excitement and have demonstrated our commitment and capabilities. We remain enthusiastic and look forward to continue working with you on this important project.

Sincerely,



John Jokerst  
Senior Vice President

Accepted: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

CC: Conor McNally, Carter

## Appendix A

### Project Staffing Plan and Scope of Services

This following outlines Carter Program Management's Staffing Plan and Scope of Services for the Sandy Springs City Center Project:

#### Staffing:



##### **John Jokerst**

In his past 16 years at Carter, John Jokerst has successfully brought online approximately \$2 billion of capital improvements. The majority of these have been in public private partnership delivery structures. As Senior Vice President and leader of Carter's Program Management Practice, John works closely with Carter's institutional partners to deliver first rate facilities and improvements for owners and users alike. John's will be the City's main point of contact for the Sandy Spring City Center Project and will work closely with members of City staff, the design and construction teams for the public components, the private development group, and of course will lead the Carter program management team. As a resident of Sandy Springs

for the past 12 years and in active member in the community this project has John's close attention and significant personal involvement.



##### **Malloy Peterson**

As Senior Vice President and leader of Carter's Strategic Planning and Advisory Services practice, Malloy brings unique perspective in terms of strategic thinking and planning in the initial Stages of the project as well as complementary value add abilities including project branding, coordination with public relations, and marketing strategies. Prior to nearly a decade of experience with Carter, Malloy served as Director of Competitive Strategy for Choice Point. Her role in the Sandy Springs City Center project includes her involvement to date in the initial strategic planning stages of the project and she will continue in that role

through first quarter of 2015. Malloy will also be available over the course of the project and up to opening in terms of strategic planning, branding, and PR coordination as appropriate.



##### **Kendall Golightly**

Kendall Golightly is a Project Manager in Carter's Program Management Practice. Kendall brings significant experience in both the public and private sectors and will be able to draw on that experience in both managing the public components of the Sandy Springs City Center project and coordinating with the private development team on the residential and retail components. Kendall's recent public sector experience includes the successful delivery of public school program for the City of Enid, Oklahoma including capital improvements totaling over \$100 million. Prior to joining Carter, Kendall also successfully managed the BP oil

cleanup project in the Gulf of Mexico.

On the private equity side, Kendall has successfully managed residential projects at Valencia in Ponte Vedra, Florida, as well as off-campus residences at the University of Texas San Antonio. He has also successfully managed and delivered exciting entertainment venues such as the \$130 million Capella Pedregal five-star resort

in Cabo San Lucas. Kendall's role on the Sandy Spring City Center project will be to act as full-time day today project manager coordinating with all members of the design and construction teams on the public components and coordinating as required with the development team for the private components.



**Carla Thomas**

As Senior Staff Accountant, Carla has provided project accounting services for Carter over the past four years. She has worked closely with John and his team on past projects and will provide project accounting services for the public components of the Sandy Springs City Center Project. Carla will coordinate with members of the program management team in setting the project budgets, assembling and tracking project expenditures against budget and preparing draws for the owners approval and payment.



**Kathy Lex**

Kathy Lex is the most senior member of Carter's Program Management Team with over two decades of expertise supporting Carter and our clients. Kathy will be available to the program management team in terms of administrative support. She is also available to coordinate with members of the City of Sandy Springs administrative staff as appropriate.

**On site coordination:**

As the project moves closer to the construction phase, Carter will identify the appropriate on-site resource and will present credentials to the City of Sandy Springs for approval. This individual will have significant construction experience in the field and will be on site full-time to observe progress and coordinate with the Ownership team throughout the course of construction and through project closeout.

The entire program management team will be engaged through project closeout activities which we anticipate to conclude by the end of first-quarter 2018.

**Anticipated project duration and resource allocation:**

The anticipated duration for services as related to the Sandy Springs City Center project is 45 months. This includes initial administrative, programming and conceptual design activities which have been underway since mid-June, a design and construction period through the targeted project opening of December 2017, and a 3 month close out period as indicated above. For an overall allocation of project resources please refer to the diagram that follows.

**Carter Program Management Resource Allocation**  
Sandy Springs City Center

	Q3-2014	Q4-2014	Q1-2015	Q2-2015	Q3-2015	Q4-2015	Q1-2016	Q2-2016	Q3-2016	Q4-2016	Q1-2017	Q2-2017	Q3-2017	Q4-2017	Q1-2018	
John Jokerst	2/3	2/3	2/3	2/3	2/3	2/3	2/3	2/3	2/3	2/3	2/3	2/3	2/3	2/3	2/3	1/3
Malloy Peterson	1/3	1/3	1/3	1/3	1/3	1/3	1/3	1/3	1/3	1/3	1/3	1/3	1/3	1/3	1/3	1/3
Kendall Golightly	Full															
On Site Coordination*	Full															
Carla Thomas	As Needed															
Kathy Lex	As Needed															

1/3 Time
2/3 Time
Full Time
As Needed

\*To be presented to City near construction start

**Program Management Scope of Services:**

The attached outlines proposed program management services for the Sandy Spring City Center Project. The services will be performed by the project team outlined above specifically as related to the public components of the project including; the Performing Arts Center, City Office Building including Public Offices, Public Meeting Spaces, Family Theatre in the Lobby area and associated support spaces throughout. Also included is the Public Park and all associated public improvements including walks, roads, parking (surface and subterranean), landscape, and associated improvements. Finally, the scope will also include utility relocation and surrounding roadwork including the Bluestone Extension and the "triangle park" on the east side of Roswell Road.

**A. Administration**

1. Working Relationships. With Owner, establish responsibilities for Owner's Project team members and define primary and secondary lines of communication.
2. Communication. Determine Owner's requirements for communication for each individual and each facet of each Project.
3. Decision Making. Establish the Project review and approval process with Owner.
4. Guidelines. Determine/establish guidelines for communication/coordination with Owner's Project team.
5. Meetings. Establish a regular schedule of meetings with Owner, consultants and the Owner's Project team, prepare agendas, and distribute minutes and action items from each meeting on a timely basis.
6. Reporting. Establish the nature, content, and schedule for periodic reports to be promulgated during the life of each Project.
7. Schedule. Develop an integrated master schedule for the Projects, with particular regard to both milestone events and necessary approvals by both Owner, other governing agencies and constituency groups.

**B. Information Gathering**

1. Feasibility and Due Diligence. Review existing critical conditions data and coordinate collection of additional critical conditions data.

2. Site Analysis. Once all Site information has been compiled, analyze same with respect to its impact on the developability of a Site. Assist the architect and engineers in definition of all zoning and permit requirements; work with Owner to develop as appropriate.
3. Constituencies. With Owner, determine which constituencies within organization and outside (i.e. neighbors, etc.) need to be involved in each Project, and their level of involvement at each stage of each applicable Project.
4. Program. Understand the existing program and the programmatic objectives with regard to architectural style, sense of community, and relationship to the street and neighboring developments. Coordinate modification of the program as needed.
5. Objectives and Goals. Understand the underlying non-programmatic objectives and goals for each Project. Evaluate and report throughout the course of each Project.
6. Strategic Planning. With Owner, create a specific, time-based, achievable, results-oriented program that can be tracked over the course of each Project.

### C. Team Selection

1. Request for Proposals. Work with Owner to formulate a RFQ/RFP incorporating Project objectives and goals.
2. Selection Process. Recommend an efficient, detailed process to select Owner's Project team members as required for each Project, including comparative analysis.
3. Decision Criteria. Develop and recommend a complete list of selection decision criteria, along with the relative importance of each criterion for each Project team member to be selected.
4. Shortlist and Interviews. Conduct review meetings with Owner and coordinate and manage shortlist and interview process.
5. Selection. Conduct a meeting, providing Owner with all information, including Program Manager's qualitative analysis of proposals, reference checks, and scoring criteria. Facilitate ranking/scoring with selection committee.
6. Negotiations. At Owner's direction, assist in negotiations with selected Project team members in regard to contractual documents. It is expected that all contractual documents will be drafted by City Attorney or outside counsel to Owner.

### D. Finance / Budget

1. Project Economics. On behalf of and in coordination with Owner, identify acceptable financing options as necessary, develop the Project economics and create associated budget for each Project.
2. Approved Budget Monitoring. Monitor Approved Budget, making recommendations throughout each Project regarding cost saving measures as appropriate to manage overall Project expenditures. Report same.
3. Value Add Alternatives. Maintain and manage a "wish list" of items to be put into each applicable Project as "value add" items as savings are realized.
4. Project Accounting. Track and provide Project accounting.

### E. Design and Pricing

1. Preliminary Program. Review and validate the preliminary program with Owner, the architects, the construction manager, and others as required.
2. Detailed Program. Review the detailed program with constituency groups and recommend modifications as appropriate. Coordinate with Owner's Project team in terms of the overall Master Plan.

3. Schedule. Direct the Project team in the preparation of a detailed design and construction schedule, incorporating approvals and other requirements as appropriate.
4. Preliminary Design. Monitor the architects in the preparation of preliminary Project design, focusing on alternate solutions, consistency with the program and sustainability as required.
5. Analysis of Design. Analyze the capital cost, functional, and aesthetic implications of the Project design, and make recommendations to Owner on alternatives.
6. Design Reviews. Review the schematic, design development, and construction drawings for conformance with the approved preliminary program, and make suggestions for improvements.
7. Approved Budget. Review the detailed Approved Budget and coordinate with Owner's Project team as necessary. Secure approvals from Owner as required.
8. Guaranteed Maximum Price. Assist Owner in execution of a guaranteed maximum price contract with the construction manager as appropriate.
9. Approvals. Coordinate with Owner and assist the architects, engineers and construction manager in obtaining all requisite permits and approvals in support of construction start.

#### F. Construction

1. Subcontractor Selection. Monitor the bidding of major subcontractors by the construction manager, review buyout against contingency, and provide recommendations to Owner, when necessary.
2. Job Meetings. Represent Owner at regularly scheduled job meetings and report the outcome of same in writing to appropriate parties. Also manage and distribute action item list to Project team.
3. Decision Resolution. As required during the course of construction, analyze alternatives and make recommendations to Owner for resolution of issues impacting schedule or budget.
4. On-Site Visits. Provide on Site visits during the course of construction to observe construction progress in the field and coordinate with Owner and Project team as needed. It is anticipated that on Site visits will occur on a regular basis with frequency to be agreed upon by Owner and Program Manager.
5. Pay Requests. Review monthly draw requests from architects/construction manager/consultants, request each group to make any necessary modifications, then submit the draw request to Owner with Program Manager's recommendation regarding payment.
6. Change Order Request. Review all change order requests and other proposed budget modifications, and recommend disposition to Owner.
7. Approved Budget and Schedule Monitoring. Continuously monitor progress against the Approved Budget and schedule and update Owner as appropriate.
8. FF&E Move-In. Monitor and coordinate purchase and installation of movable furniture, fixtures and other equipment.

#### G. Post Construction

1. Punch List. Represent Owner to the architects and construction manager in reviewing punch lists.
2. Turnover. Coordinate turnover of as-built drawings, specifications, manuals and warranties to Owner.
3. Management Transition. Coordinate and monitor construction manager's systems training of the personnel who will be managing the Project upon Completion.

4. Warranty Review. Prior to the expiration of warranties or guaranties provided in connection with the construction of the Project that expire prior to the date one (1) year after the Completion Date, assist Owner with a warranty review with construction manager and assist as requested in making claims under any warranty or guaranty provided with respect to the Project.
5. Final Close-Out. Coordinate final cost and budget close-out, including coordination of collection of lien waivers and proper distribution of any Project savings.

**MASTER AGREEMENT  
FOR  
PROGRAM MANAGEMENT SERVICES**

**THIS MASTER AGREEMENT FOR PROGRAM MANAGEMENT SERVICES** (this **“Agreement”**) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2014 (the **“Execution Date”**), effective as of the 1<sup>st</sup> day of July, 2014 (the **“Effective Date”**), by and between **CITY OF SANDY SPRINGS, GEORGIA**, a public body corporate and politic (**“Owner”**); and **C&A DEVELOPMENT, LLC**, a Georgia limited liability company (**“Program Manager”**).

**BACKGROUND INFORMATION**

Owner and Program Manager desire to execute and enter into this Agreement for the purpose of setting forth the terms and conditions pursuant to which Owner desires to engage Program Manager, and Program Manager has agreed to be engaged for the provision of program management services.

**STATEMENT OF AGREEMENT**

In consideration of the mutual covenants and agreements herein contained, the compensation to be paid to Program Manager hereunder, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

**ARTICLE 1.           DEFINITIONS.**

In addition to any other terms which are defined in this Agreement, each of the following terms, when used in this Agreement with an initial capital letter, shall have the following meaning:

**“Approved Budget”** means, in respect of a Project, the schedule of all Project Costs, as submitted by Program Manager to Owner with Program Manager’s request for Owner’s approval thereof as, and as approved by Owner as, the Approved Budget for such Project.

**“Completion”** means, in respect of a Project, the substantial completion of construction of the Improvements, which shall in any event be deemed to have occurred upon the occurrence of any of the following events: (i) the issuance by the Project architect of a certificate of substantial completion; (ii) the issuance by the appropriate governmental authority of a certificate of occupancy for such Project; or (iii) the commencement of beneficial occupancy of such Project by Owner or persons or entities claiming under Owner.

**“Completion Date”** means, in respect of a Project, the date upon which Completion has occurred.

**“Improvements”** means, in respect of a Project, collectively, the improvements to be developed, constructed and installed within a Site pursuant to this Agreement.

**“Performance Standard”** means the level of effort, care, and competency which program managers are expected to bring to bear in the commercially prudent performance of duties comparable to those specified herein with respect to projects of comparable size, cost, and complexity in the geographical areas in which the Projects are to be located, giving due regard to the Approved Budget, applicable staffing levels and the authority and restrictions on authority contemplated hereby.

**“Program Management Fee”** means, in respect of a Project, means the fee to be paid by Owner to Program Manager pursuant to **Sections 8.1** and **8.2**.

**“Program Manager Team”** means the personnel to be assigned by Program Manager to perform the Services hereunder as described on **Exhibit A** attached hereto.

**“Project”** means each Site, together with the Improvements to be developed, constructed and installed therein and thereon. The **“Projects”** are scheduled and described on **Exhibit B** attached hereto.

**“Project Costs”** means, in respect of a Project, the total of all costs and expenses incurred by or on behalf of Owner with respect to the Project Matters for such Project, including all amounts to be paid under agreements entered into by Program Manager or Owner with third parties pursuant to this Agreement.

**“Project Matters”** means, in respect of a Project, the development, design, construction and installation of the Improvements therefor.

**“Reimbursable Expenses”** means reasonable travel expenses related to out-of-town travel for which prior written authorization is granted by Owner to the Program Manager in connection with any Project hereunder.

**“Services”** means, in respect of a Project, the services and functions required to be performed and provided by Program Manager pursuant to this Agreement, as defined and described in **Exhibit C** attached hereto.

**“Site”** means, in respect of a Project, the parcel of land (including offsite and right-of-way areas), or the space in an existing building or structure, upon or within which the Improvements therefor are to be constructed and installed pursuant to this Agreement.

## **ARTICLE 2.                  ENGAGEMENT OF PROGRAM MANAGER.**

**2.1     Engagement of Program Manager.** Owner hereby engages Program Manager to perform, and hereby grants to Program Manager the exclusive right to perform, the Services in respect of the Projects, subject to and in accordance with the Performance Standard and **Section 5.4** and the other terms and provisions of this Agreement, and in accordance with all federal, state and local laws, rules and regulations applicable to the performance of the Services.

**2.2     Acceptance by Program Manager.** Program Manager hereby accepts its engagement by Owner, and agrees to perform the Services for the benefit of and on behalf of Owner, subject to and in accordance with the terms and provisions of this Agreement.

## **ARTICLE 3.                  NATURE OF ENGAGEMENT.**

**3.1     Status of Program Manager.** In the performance of its duties and obligations under this Agreement, Program Manager is, and shall at all times during the term of this Agreement be, an independent contractor, and not an employee of Owner. Program Manager is not authorized to sign any agreement on behalf of Owner, execute any agreement or change order, modify any part of the work or otherwise bind Owner in any manner. Program Manager shall act solely as the agent of Owner in the performance of its duties and obligations under this Agreement.

**3.2     No Partnership or Joint Venture.** Nothing contained in this Agreement shall constitute or be deemed or construed to create a partnership or joint venture between Owner and Program Manager.

**3.3     No Subcontracting by Program Manager.** The Services shall be performed exclusively by Program Manager, and the Services may not be subcontracted or otherwise performed by third parties on behalf of Program Manager without the prior written consent of Owner. The parties further agree that all persons employed by Program Manager to assist Program Manager in connection with its performance of the Services, shall be deemed employees or agents of Program Manager and not of Owner, and that Program Manager shall be solely responsible for their actions, omissions, compensation and benefits.

**3.4     Program Manager Team.** Program Manager shall have in its employ at all times a sufficient number of capable employees comprising the Program Manager Team to properly and fully perform the Services on behalf of Program Manager. No member of the Program Manager Team shall be changed, replaced or substituted without the prior consent of Owner, which consent shall not be unreasonably withheld by Owner; **provided, however,** that the consent of Owner to the change, replacement or substitution of a Program Manager Team member shall not be required if such individual shall become ill or disabled, but Owner shall have the right to approve the replacement individual, which approval shall not be unreasonably withheld by Owner.

**3.5 Replacement or Substitution of Program Manager Team Members.** Owner may, at any time during the term of this Agreement, notify Program Manager that Owner wants Program Manager to replace a Program Manager Team member for failure to properly perform their job in accordance with the Performance Standard, as determined by Owner in its reasonable judgment. Upon receipt of such notification, Program Manager shall immediately terminate such employee's performance of the Services, and submit to Owner, for Owner's consent (which consent shall not be unreasonably withheld by Owner) the name and credentials of the employee that Program Manager suggests as the replacement for the terminated employee. Upon receipt of notification from Owner of the acceptability of such proposed replacement employee, Program Manager shall cause such replacement to immediately commence the performance of the Services, or the applicable portion thereof. Owner shall have no responsibility for, and Program Manager shall indemnify, defend and hold Owner harmless from, all costs, damages and expenses (including reasonable attorneys' fees and disbursements) arising from or in connection with any terms of employment (including the termination of employment) of any of the Program Manager Team by Program Manager.

**3.6 Budget Matters.** Program Manager shall promptly advise Owner in writing if Program Manager believes that the actual Project Costs for any Project will exceed any Approved Budget. Program Manager shall consult with Owner regarding the application of any amounts in contingency budget categories. If Program Manager at any time determines that any Approved Budget is not compatible with the then-prevailing status of any Project and does not adequately provide for the Completion of such Project or Projects, Program Manager shall promptly prepare and shall submit to Owner an appropriate revision to the Approved Budget for Owner's prior written approval.

#### **ARTICLE 4.            TERM OF AGREEMENT.**

**4.1 Term.** The term of this Agreement shall commence on the Effective Date, and shall expire in respect of each Project upon Completion of such Project; **provided however**, that Program Manager shall remain obligated (without additional fee or payment other than with respect to any Reimbursable Expenses associated therewith) beyond such date to the extent required to sign off on the completion of all punch list items.

**4.2 Termination for Convenience.** This Agreement may be terminated by Owner for convenience, for any reason or for no reason, without cause, in Owner's sole discretion, upon not less than **thirty (30) days** written notice to Program Manager ("**Termination for Convenience**"). In the event of Termination for Convenience by Owner, Owner shall pay to Program Manager the Termination Payment within **thirty (30) days** after the effective date of termination. For the purposes hereof, the "**Termination Payment**" means the following amounts, to the extent not theretofore paid: (i) the unpaid balance of the Program Management Fee; (ii) any reasonable demobilization or other costs and expenses actually paid or incurred, or which will be paid or incurred, by Program Manager in excess of such fees as would have been otherwise payable by Program Manager at the end of the term absent a Termination for Convenience; and (iii) all Reimbursable Expenses paid or incurred, by Program Manager on or prior to the effective date of termination for which Program Manager is entitled to

reimbursement under this Agreement and for which Program Manager has not theretofore been reimbursed. In the event of a Termination for Convenience, Program Manager will not be entitled to lost profits, consequential damages, or any other compensation or damages of any kind and such termination shall not give rise to any claim against the Owner, other than for the fees and costs set forth in this **Section 4.2**.

**4.3 Suspension of Services.** At any time and from time to time during the term of this Agreement, Owner may, in its sole and absolute discretion and upon **thirty (30) days'** advance written notice to Program Manager: (i) instruct Program Manager to temporarily cease the performance of the Services on the date specified in Owner's notice, and thereafter (ii) instruct Program Manager to recommence the performance of the Services on the date specified in any such notice. Program Manager shall cause the performance of the Services to so cease and/or re-commence, as and when instructed by Owner (and no Program Management Fee shall be due for the period that Services are suspended). The term of this Agreement shall be extended by the aggregate number of days during which Program Manager shall temporarily cease the performance of the Services pursuant to this **Section 4.3; provided, however,** that the parties agree that Owner shall not be entitled to suspend the performance of the Services for a period in excess of **six (6) months** in the aggregate. If any Project is suspended by Owner for more than **thirty (30) consecutive days**, Program Manager shall be compensated for services performed prior to notice of such suspension and Program Manager will have the right to terminate this Agreement on **thirty (30) days'** advance notice to Owner; **provided, however,** that Program Manager's election to terminate this Agreement shall be null and void, and this Agreement will not be terminated, if, during said **thirty (30) day** period, Owner rescinds the suspension of performance. In the event of any suspension pursuant to this **Section 4.3**, "Reimbursable Expenses shall thereafter include any reasonable demobilization, remobilization and other costs and expenses paid or incurred by Program Manager as a result of such suspension in excess of such fees as would have been payable by Program Manager at the end of the term in the absence of a suspension of services.

## **ARTICLE 5. PROGRAM MANAGEMENT SERVICES.**

**5.1 Description of Services.** The Services to be performed by Program Manager with respect to each Project are set forth on **Exhibit B** attached hereto.

### **5.2 Nature of Program Manager's Services and Responsibilities.**

**5.2.1** Owner acknowledges and agrees that Program Manager's responsibilities under this Agreement consist solely of advising and consulting with Owner in connection with certain Project Matters, and monitoring the activities of the design and engineering professionals, contractors and other third parties for the benefit of Owner, each in accordance with the Performance Standard. Program Manager shall devote sufficient time and personnel to manage the coordination and implementation by others of the Projects and the Services relating thereto so as to cause each Project to be completed by the applicable Completion Date therefor, in accordance with the Approved Budget for

each such Project, in substantial compliance with all plans and specifications, and in accordance with applicable law.

**5.2.3** Owner acknowledges that Program Manager is not itself preparing any design or engineering plans or specifications or performing any of the construction or furnishing any of the materials required for any Project; and, accordingly, Owner acknowledges and agrees that Program Manager shall have no liability or responsibility of any kind or nature whatsoever for or with respect to any professional services rendered, plans, designs or specifications provided, construction work performed, or materials furnished, in connection with any Project. Owner has not bargained or agreed to pay for, and Program Manager is not providing, any express or implied warranty or guarantee with respect to workmanship or materials. Owner further acknowledges and agrees that Program Manager shall have no liability or responsibility of any kind or nature whatsoever for or with respect to the cost of any Project or for the payment of any Project Costs, including, without limitation, the total Project Costs exceeding the Approved Budget relating to such Project. Owner further acknowledges that Program Manager is assisting Owner in its negotiations with professional design and engineering firms, contractors and others solely in connection with Program Manager's responsibilities under this Agreement, but that Program Manager is not providing legal assistance or advice to Owner in connection with such negotiations or otherwise. Owner further acknowledges that Program Manager is assisting Owner in the procurement and placement of insurance solely in connection with Program Manager's responsibilities under this Agreement, but that Program Manager is not providing advice to Owner of any kind with respect to such insurance.

**5.3 Program Manager's Services Not Exclusive.** The Services to be rendered by Program Manager to Owner are not exclusive and, during the term of this Agreement, Program Manager and its affiliates may render services similar or identical to those required of it hereunder to other owners of real property and may itself engage in the acquisition, development, management and operation of, or any other activities with respect to, real property for its own account or benefit or for others, without any accountability or liability whatsoever to Owner.

**5.4 Owner's Right to Perform Services.** Owner reserves the right to perform services related to the Projects other than Services with Owner's own forces (including forces of Owner's agents and subcontractors), and to award contracts in connection with the Projects that do not involve the Services. Prior to the awarding of any such contract or shortly thereafter, Owner shall notify Program Manager of the name of any contractor selected by Owner to perform work in connection with the Projects and of the scope of such work. Program Manager shall notify Owner if any such independent action will, in Program Manager's reasonable opinion, interfere with Program Manager's ability to perform under this Agreement.

## **ARTICLE 6. OWNER'S OBLIGATIONS.**

**6.1 Costs and Expenses.** Except as expressly set forth in this Agreement to the contrary, Owner shall bear all Project Costs, and all of the Services performed by Program

Manager under this Agreement shall be performed at the cost and expense of, and for the account of, Owner.

**6.2 Owner's Funds.** Owner covenants and agrees (without creating any third party beneficiary rights) to make available all funds necessary to pay all Project Costs for each Project.

**6.3 Owner's Cooperation.** Owner shall act diligently and in good faith and shall cooperate fully with Program Manager in all matters relating to each Project. Owner shall act as expeditiously as possible on all requests by Program Manager for approval and execution of any contract, agreement or other document pertaining to each Project. In exercising its rights of approval, Owner shall act reasonably and in good faith.

## **ARTICLE 7. BOOKS, RECORDS, REPORTS, FISCAL MATTERS.**

**7.1 Books.** Program Manager shall maintain for Owner current and complete books of account of all transactions with respect to each Project. Such books of account shall be maintained at Program Manager's office or at such other place as the parties shall agree upon, and Owner and Owner's accountants and auditors shall have access to such books of accounts at all reasonable times. Program Manager shall maintain said books of account in a safe manner and separate from any books not dealing directly with such Project. Such books of account shall be kept in accordance with sound accounting practices consistently applied, and otherwise in such manner as shall be reasonably required by Owner.

**7.2 Records.** Program Manager shall maintain, in a secure and safe manner, complete and identifiable records on all Services under this Agreement with respect to each Project.

**7.3 Property of Owner.** All such books of account and records shall be and remain the property of Owner, and, upon the expiration or earlier termination of this Agreement, shall be turned over to Owner as provided in **Section 10.2**. Such books and records shall thereafter be available to Program Manager at all reasonable times for inspection, audit, examination and transcription for a period of three (3) years from the final Completion Date with respect to the Projects or earlier date of termination of this Agreement, upon reasonable prior notice to Owner and at the expense of Program Manager.

**7.4 No Duty of Program Manager to Provide Funds.** Under no circumstances shall Program Manager have any duty or obligation to advance any funds for the account of Owner, but if Program Manager does advance any of its own funds for the account of Owner, Owner shall promptly reimburse Program Manager therefor.

## **ARTICLE 8. COMPENSATION.**

**8.1 Program Management Fee.** As compensation for the Services to be rendered by Program Manager pursuant to this Agreement, Owner shall pay to Program Manager a Program Management Fee of \$2,540,000.

**8.2. Payment of Program Management Fee.** The Projects are anticipated to extend for a period of forty-five (45) months, commencing on the Effective Date. Accordingly, the Program Management Fee shall be payable on such dates and in such amounts as described below, commencing on July 1, 2014, and continuing on the first (1st) day of each month thereafter until March 1, 2018; provided, however, that all installments of the Program Management Fee accruing prior to the Execution Date shall be due and payable on the first (1st) day of the first (1st) calendar month after the Execution Date:

**8.2.1** for the months of July, August and September of 2014, the Program Management Fee payment shall be \$25,000 per month;

**8.2.2** for October of 2014, the Program Management Fee payment shall be \$35,000;

**8.2.3** for November and December of 2014, the Program Management Fee payment shall be \$45,000; and

**8.2.4** for January of 2015 and for each month thereafter until March, 2018, the Program Management Fee payment shall be \$60,000 per month.

**8.3 Program Manager's Expenses.** Owner shall reimburse Program Manager for all reasonable out-of-pocket costs and expenses paid or incurred by Program Manager in connection with its performance under this Agreement for all Reimbursable Expenses. In no event shall Reimbursable Expenses include employee salaries, wages and benefits, administrative costs and home office overhead charges or any other items not specifically enumerated above (unless such item has been expressly approved by Owner in writing in advance). Owner shall not be required to reimburse Program Manager for any Reimbursable Expenses incurred by Program Manager in excess of Five Hundred Dollars (\$500) (in total and not per expense) during any calendar month, unless approved in advance in writing by Owner. At the request of Owner, and as a condition of payment, Program Manager shall provide to Owner written receipts and other reasonable evidence of all Reimbursable Expenses for which reimbursement is requested.

**8.4 Time of Reimbursement.** Program Manager shall be reimbursed for Reimbursable Expenses on a calendar monthly basis, within ten (10) days after submission to Owner of a statement therefor, together with such supporting material and detail as may be reasonably required by Owner.

**8.5 Overpayment by Owner.** If any sums are paid by Owner to Program Manager exceeding the amounts due or to become due to Program Manager, Program Manager shall promptly refund such overpayment to Owner or, with Owner's prior consent, apply such overpayment as a credit amounts later due or to become due to Program Manager.

**8.6 No Payment by Others.** Without the prior written consent of Owner, which consent may be granted or withheld in Owner's sole discretion, neither Program Manager nor its principals, agents or employees shall accept any fee, compensation, remuneration or

reimbursement of any kind, direct or indirect, actual or promised, from any entity other than Owner as consideration for the performance of the Services on behalf of Owner (“**Prohibited Compensation**”); **provided, however**, that Prohibited Compensation shall not include, and the foregoing shall not prohibit the payment or acceptance of, fees, compensation, remuneration or reimbursements from private parties (including affiliates of Program Manager) for services performed by Program Manager in connection with any privately owned project, even if related to the Projects. Any such acceptance by Program Manager (or its principals, agents or employees) of any Prohibited Compensation shall constitute a breach by Program Manager of its obligations hereunder, and shall entitle Owner, in addition to any remedy set forth herein or available at law or in equity, (i) to terminate this Agreement immediately upon notice to Program Manager, and (ii) to recover from Program Manager, in addition to any other damages to which Owner may otherwise be entitled, the full amount of such fee, compensation, remuneration or reimbursement.

## **ARTICLE 9. DEFAULT AND REMEDIES.**

**9.1 Default by Program Manager.** Program Manager shall be in default under this Agreement if Program Manager fails to perform any of its duties and obligations under this Agreement and does not cure or remedy such failure to perform within **thirty (30) days** after receipt of written notice from Owner with respect thereto (but that there shall be no cure period available for breach of **Section 8.6**); **provided, however**, that, if such failure to perform shall necessitate a longer cure period than **thirty (30) days**, then such cure period shall be extended for such period of time as is reasonably necessary to cure such failure to perform if Program Manager commences such cure within **thirty (30) days** after receipt of written notice from Owner and thereafter proceeds diligently and in good faith to cure, with such additional cure period not to exceed an additional **thirty (30) days**.

**9.2 Remedies of Owner.** Upon the occurrence of a default by Program Manager under this Agreement, Owner may pursue any one or more of the following remedies, separately or concurrently or in any combination, without further notice or demand whatsoever:

**9.2.1** Owner may terminate this Agreement by giving Program Manager written notice of such termination, in which event this Agreement shall be terminated at the time designated by Owner in its notice of termination to Program Manager.

**9.2.2** With or without terminating this Agreement, Owner may bring an action against Program Manager to recover from Program Manager all damages, recoverable at law, suffered, incurred or sustained by Owner as a result of, by reason of or in connection with such default; provided, however, that in no event shall Program Manager be liable to Owner under this Agreement for any consequential, special, exemplary, incidental, punitive or similar damages, all rights to recover any such damages being hereby waived by Owner.

**9.2.3** In the event that Owner shall terminate this Agreement by reason of a default of Program Manager, Program Manager shall be paid the Program Management

Fee for the period up to the effective date of the termination, less any damages of Owner recoverable pursuant to **Section 9.2.2**.

**9.3 Default by Owner.** Owner shall be in default under this Agreement if Owner fails to perform any of its duties and obligations under this Agreement and does not cure or remedy such failure to perform within **thirty (30) days** after receipt of written notice from Program Manager with respect thereto; provided, however, that, if such failure to perform shall necessitate a longer cure period than **thirty (30) days**, then such cure period shall be extended for such period of time as is reasonably necessary to cure such failure to perform if Owner commences such cure within **thirty (30) days** after receipt of written notice from Program Manager and thereafter proceeds diligently and in good faith to cure, with such additional cure period not to exceed an additional **thirty (30) days**.

**9.4 Remedies of Program Manager.** Upon the occurrence of a default by Owner under this Agreement, Program Manager may pursue any one or more of the following remedies, separately or concurrently or in a combination, without further notice or demand whatsoever:

**9.4.1** Program Manager may terminate this Agreement by giving Owner written notice of such termination, in which event this Agreement shall be terminated at the time designated by Program Manager in its notice of termination to Owner.

**9.4.2** With or without terminating this Agreement, Program Manager may bring an action against Owner to recover from Owner all damages, recoverable at law, suffered, incurred or sustained by Program Manager as a result of, by reason of or in connection with such default; provided, however, that in no event shall Owner be liable to Program Manager under this Agreement for any consequential, special, incidental or punitive damages, all rights to recover any such damages being hereby waived by Program Manager.

**9.5 Other Remedies.** In the event of the occurrence of a default hereunder, the prevailing party shall, in addition to its other rights and remedies hereunder, have the right to recover from the party in default all reasonable costs and expenses incurred by the prevailing party in enforcing its rights and remedies hereunder, including reasonable attorneys' fees. The termination of this Agreement by either Program Manager or Owner by reason of default by the other party shall not relieve either party of any of its duties and obligations theretofore accrued under this Agreement prior to the effective date of such termination.

## **ARTICLE 10. EXPIRATION, TERMINATION.**

**10.1 Terminating Events.** The engagement of Program Manager hereunder may be terminated upon the happening of any of the following events pursuant to the provisions described below:

**10.1.1** Owner notifies Program Manager of its intention to terminate this Agreement as provided at **Section 4.2**.

**10.1.2** Either Owner or Program Manager defaults under this Agreement and the non-defaulting party elects to terminate this Agreement as provided in **Article 9**.

**10.1.3** The giving of written notice from Owner in the event: (i) any receiver, trustee or custodian shall be appointed for all or any substantial part of the property or assets of Program Manager; (ii) Program Manager shall commence any voluntary proceeding under present or future federal bankruptcy laws or under any other bankruptcy, insolvency or other laws respecting debtor's rights; or (iii) an "order for relief" or other judgment or decree by any court of competent jurisdiction is entered against Program Manager in any involuntary proceeding against Program Manager under present or future federal bankruptcy laws or under any other bankruptcy, insolvency or other laws respecting debtor's rights, or any such involuntary proceeding shall be commenced against Program Manager and shall continue for a period of ninety (90) days after commencement without dismissal.

**10.1.4** The giving of written notice from Program Manager in the event: (i) any receiver, trustee or custodian shall be appointed for all or any substantial part of the property or assets of Owner; (ii) Owner shall commence any voluntary proceeding under present or future federal bankruptcy laws or under any other bankruptcy, insolvency or other laws respecting debtor's rights; or (iii) an "order for relief" or other judgment or decree by any court of competent jurisdiction is entered against Owner in any involuntary proceeding against Owner under present or future federal bankruptcy laws or under any other bankruptcy, insolvency or other laws respecting debtor's rights, or any such involuntary proceeding shall be commenced against Owner and shall continue for a period of ninety (90) days after commencement without dismissal.

**10.2 Program Manager's Obligations.** Upon the expiration or earlier termination of this Agreement, Program Manager shall promptly:

**10.2.1** Subject to Program Manager's obtaining any consent of any third party required therefor, and upon request by Owner, deliver to Owner or such other person as Owner shall designate all materials, supplies, equipment, keys, contracts and documents, all books of account maintained pursuant to **Section 7.1**, and all records maintained pursuant to **Section 7.2**, pertaining to this Agreement and the Projects.

**10.2.2** Subject to Program Manager's obtaining any consent of any third party required therefor, assign all existing contracts relating to the Projects to Owner or such other person or entity as Owner shall designate.

**10.2.3** Furnish all such information, take all such other action, and cooperate with Owner as Owner shall reasonably require in order to effectuate an orderly and systematic termination of Program Manager's Services, duties, obligations and activities hereunder.

**10.2.4** Within thirty (30) days after the expiration or termination of this Agreement, cause to be furnished to Owner a report similar in form and content to

Program Manager's monthly reports covering the period from the last previous monthly report to the date of expiration or termination of this Agreement.

**10.3 Owner's Obligations.** Upon the expiration or earlier termination of this Agreement, Owner shall promptly:

**10.3.1** Assume any contracts which may have been entered into by Program Manager in its own name relating to the Project, and, to the extent permitted by applicable law, indemnify Program Manager against any liability by reason of anything done or required to be done under any such contract by Program Manager after the effective date of such expiration or termination.

**10.3.2** Pay for and, to the extent permitted by applicable law, indemnify Program Manager against the cost of all services, materials and supplies, if any, which may have been ordered by Program Manager as a result of its obligations arising under this Agreement but which may not have been charged to or paid by Program Manager and reimbursed under this Agreement at the time of expiration or termination.

**ARTICLE 11.      INSURANCE. [SUBJECT TO FURTHER REVIEW]**

**11.1 Owner's Insurance Requirements.** Owner shall carry the insurance set forth in Exhibit D, at its own expense.

**11.2 Program Manager's Insurance Requirements.** Program Manager shall carry the insurance set forth in Exhibit E, at its own expense.

**ARTICLE 12.      STANDARD OF CARE: LIABILITY; INDEMNITY.**

**12.1 Standard of Care.** In the performance of its duties and obligations under this Agreement, Program Manager shall, subject to budgetary constraints and limitations, perform diligently and in good faith and in accordance with the Performance Standard.

**12.2 Limitations on Liability.** Neither Program Manager nor any agent or employee of Program Manager shall have any liability to Owner or any other party for any mistakes or errors of judgment, for any mistakes of fact or of law, or for any act or omission believed by Program Manager in good faith to be within the scope of the authority conferred upon Program Manager by this Agreement; **provided, however,** that the foregoing shall not extend to losses, damages or expenses suffered or incurred by Owner if and to the extent the same are caused by any negligent act or willful misconduct of Program Manager or its agents or employees.

**12.3 Indemnity of Program Manager.** To the extent permitted by applicable law, Owner shall defend, indemnify and hold harmless Program Manager, its subsidiaries and affiliates and the employees, partners, officers, directors, members, shareholders and agents of each (collectively, the "**Program Manager Indemnified Parties**") from any and all losses, liabilities, costs and expenses, including reasonable attorney's fees, expert witness fees and court

costs which Program Manager may suffer or incur, or which may be asserted against Program Manager, whether meritorious or not, and which arise in connection with any injury to persons (including death) or damage to intangible property (other than any Project, any larger project of which any Project is a part, and any other adjacent or related property of Program Manager Indemnified Parties) or any payment obligations of Owner to any contractor or consultant of Owner under this Agreement, which indemnity shall continue notwithstanding the expiration or earlier termination of this Agreement with respect to any occurrence preceding such expiration or termination, **provided, however**, that in no event shall the indemnity provided under this **Section 12.3** extend to a claim, demand, action, cause of action, suit, liability, damage, loss, cost or expense (i) if and to the extent the same is within the scope of the indemnity of Owner by Program Manager pursuant to **Section 12.4**, or (ii) if and to the extent the same is caused by any default, negligent act or willful misconduct of Program Manager or its officers, directors, agents or employees, or by any failure to comply with the standard of care set forth in **Section 12.1**.

**12.4 Indemnity of Owner.** To the extent permitted by applicable law, Program Manager shall indemnify, defend and hold harmless Owner and its officers, directors, affiliates, employees, and agents (collectively, the “**Owner Indemnified Parties**”) from any and all losses, liabilities, costs and expenses, including reasonable attorney’s fees, expert witness fees and court costs, which any Owner Indemnified Parties may suffer or incur, or which may be asserted against any Owner Indemnified Parties, whether meritorious or not, if and to the extent the same arise by reason of injury to persons (including death) or damage to tangible property (other than any Project, any larger project of which any Project is a part, and any other adjacent or related property of Owner Indemnified Parties) or fines and penalties resulting from any violation of applicable law caused by any negligent act or willful misconduct of Program Manager or its officers, directors, agents or employees, or by any failure to comply with the standard of care set forth in **Section 12.1**.

**12.5 Survival of Indemnities.** The provisions of **Section 12.3** and **Section 12.4** above shall survive the completion of Program Manager’s Services hereunder or any termination of this Agreement.

**12.6 Relationship to Insurance.** In no event shall the indemnification provisions of **Section 12.3** or **Section 12.4**, diminish, affect, impede or impair, in any manner whatsoever, the benefits to which any party may be entitled under any insurance policy with respect to any Project required by this Agreement or otherwise, or under the terms of any waiver of any subrogation contained therein.

**12.6 No Third-Party Beneficiaries.** None of the duties and obligations of Program Manager under this Agreement shall in any way or in any manner be deemed to create any liability of Program Manager to, or any rights in, any person or entity other than Owner.

**12.7 Independent Contractors.** No person who shall be engaged as an independent contractor by either Owner or Program Manager, or both, shall be considered an employee, servant, agent or other person for whom either Owner or Program Manager (as the case may be) is responsible for the purposes of indemnification in the foregoing Sections of this **Article 12**.

**ARTICLE 13. GENERAL PROVISIONS.**

**13.1 Relationship Between Parties.** The relationship of the parties shall be limited to the Project. Nothing herein shall be deemed to authorize Program Manager to act as the general agent of Owner.

**13.2 Notices.** Whenever any notice, demand or request is required or permitted under this Agreement, such notice, demand or request shall be in writing and shall be delivered by hand, be sent by registered or certified mail, postage prepaid, return receipt requested, or be sent by nationally recognized commercial courier for next business day delivery, to the addresses set forth below or to such other addresses as are specified by written notice given in accordance herewith:

**OWNER:** City of Sandy Springs  
7840 Roswell Road, Building 500  
Sandy Springs, Georgia 30350  
Attention: City Manager

with a copy to:

City of Sandy Springs  
7840 Roswell Road, Suite 330  
Sandy Springs, Georgia 30350  
Attention: Wendell Willard, City Attorney

**PROJECT  
MANAGER:** C&A Development, LLC  
171 17th Street, Suite 1200  
Atlanta, Georgia 30363  
Attention: Mr. Conor P. McNally

All notices, demands or requests delivered by hand shall be deemed given upon the date so delivered; those given by mailing as hereinabove provided shall be deemed given on the date of deposit in the United States Mail and those given by commercial courier as hereinabove provided shall be deemed given on the date of deposit with the commercial courier. Nonetheless, the time period, if any, in which a response to any notice, demand or request must be given shall commence to run from the date of receipt of the notice, demand or request by the addressee thereof. Any notice, demand or request not received because of changed address of which no notice was given as hereinabove provided or because of refusal to accept delivery shall be deemed received by the party to whom addressed on the date of hand delivery, on the first calendar day after deposit with commercial courier, or on the third calendar day following deposit in the United States Mail, as the case may be.

**13.3 Assignment; Binding Effect.** The rights of the parties under this Agreement are personal to the parties and may not be assigned without the prior written consent of the other party; provided, however, that (i) Owner may assign any or all of its rights under this Agreement to the Sandy Springs Public Facilities Authority or any entity owned or controlled, directly or indirectly, by Owner and (ii) Program Manager may assign any or all of its rights under this Agreement to any affiliate of Program Manager or to any entity owned or controlled, directly or indirectly, by any two (2) of the following individuals: Robert E. Peterson, James D. Shelton, R. Scott Taylor, Jr., and John E. Carter. This Agreement shall be binding upon and enforceable against, and shall inure to the benefit of, the parties hereto and their respective legal representatives, successors and permitted assigns.

**13.4 Authorized Representatives.** Any consent, approval, authorization or other action required or permitted to be given or taken under this Agreement by Owner or Program Manager, as the case may be, shall be given or taken by one or more of the authorized representatives of each. For purposes of this Agreement: (i) the authorized representative of Owner shall be John McDonough, City Manager, and (ii) the authorized representatives of Program Manager shall be any one or more of the following – Robert E. Peterson, James D. Shelton and Conor P. McNally. Any party hereto may from time to time designate other or replacement authorized representatives to the other party hereto. The written statements and representations of any authorized representative of Owner or Program Manager shall be binding upon the party for whom such person is an authorized representative, and the other party hereto shall have no obligation or duty whatsoever to inquire into the authority of any such representative to take any action which he proposes to take.

**13.5 Headings.** The use of headings, captions and numbers in this Agreement is solely for the convenience of identifying and indexing the various provisions in this Agreement and shall in no event be considered otherwise in construing or interpreting any provision in this Agreement.

**13.6 Exhibits.** Each and every exhibit referred to or otherwise mentioned in this Agreement is attached to this Agreement and is and shall be construed to be made a part of this Agreement by such reference or other mention at each point at which such reference or other mention occurs, in the same manner and with the same effect as if each exhibit were set forth in full and at length every time it is referred to or otherwise mentioned.

**13.7 Defined Terms.** Capitalized terms used in this Agreement shall have the meanings ascribed to them at the point where first defined, irrespective of where their use occurs, with the same effect as if the definitions of such terms were set forth in full and at length every time such terms are used.

**13.8 Pronouns.** Wherever appropriate in this Agreement, personal pronouns shall be deemed to include the other genders and the singular to include the plural.

**13.9 Severability.** If any term, covenant, condition or provision of this Agreement, or the application thereof to any person or circumstance, shall ever be held to be invalid or

unenforceable, then in each such event the remainder of this Agreement or the application of such term, covenant, condition or provision to any other person or any other circumstance (other than those as to which it shall be invalid or unenforceable) shall not be thereby affected, and each term, covenant, condition and provision hereof shall remain valid and enforceable to the fullest extent permitted by law.

**13.10 Non-Waiver.** Failure by either party to complain of any action, non-action or default of the other party shall not constitute a waiver of any aggrieved party's rights hereunder. Waiver by either party of any right arising from any default of the other party shall not constitute a waiver of any other right arising from a subsequent default of the same obligation or for any other default, past, present or future.

**13.11 Rights Cumulative.** All rights, remedies, powers and privileges conferred under this Agreement on the parties shall be cumulative of and in addition to, but not restrictive of or in lieu of, those conferred by law.

**13.12 Time of Essence.** Time is of the essence of this Agreement. Anywhere a day certain is stated for payment or for performance of any obligation, the day certain so stated enters into and becomes a part of the consideration for this Agreement.

**13.13 Applicable Law.** This Agreement shall be governed by, construed under and interpreted and enforced in accordance with the laws of the State of Georgia.

**13.14 Entire Agreement.** This Agreement contains the entire agreement of Owner and Program Manager with respect to the engagement of Program Manager as the program manager for the Project, and all representations, warranties, inducements, promises or agreements, oral or otherwise, between the parties not embodied in this Agreement shall be of no force or effect.

**13.15 Modifications.** This Agreement shall not be modified or amended in any respect except by a written agreement executed by Owner and Program Manager in the same manner as this Agreement is executed.

**13.16 Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of such counterparts together shall constitute one and the same instrument.

**13.17 Confidentiality.**

**13.17.1** It is intended that Owner will furnish to Program Manager such information in Owner's possession as is reasonably required by Program Manager in connection with the performance of the Services ("**Owner's Information**"). At the request of Owner, Program Manager shall return to Owner all Owner's Information obtained from or on behalf of Owner or prepared by Program Manager for Owner, in whatever form the same shall exist, and all copies thereof.

**13.17.2** Program Manager hereby acknowledges that Owner's Information may include information that is Owner's proprietary confidential information. In the event that any Owner's Information constitutes proprietary confidential information and is expressly identified as such by Owner to Program Manager at the time of delivery to Program Manager ("**Owner's Confidential Information**"), then Program Manager shall not disclose such Owner's Confidential Information to any third party without the prior authorization of Owner. Notwithstanding the foregoing, the following shall not constitute Owner's Confidential Information for the purposes of this Agreement: (a) any information known to Program Manager, or which was already in Program Manager's possession, prior to the Effective Date; (b) any information which is obtained by Program Manager from a source other than Owner, provided that such source is not known by Program Manager to be prohibited from so providing the information to Program Manager by a contractual or legal obligation to Owner; (c) any information which is in the public domain or comes into the public domain other than as a result of an unauthorized disclosure by Program Manager; (d) any information which is or has been independently developed by Program Manager without violation of this Agreement; and (e) any information which is lawfully required to be disclosed to any governmental authority or pursuant to legal compulsion (including by interrogatories or similar process) or is otherwise required by law to be disclosed (provided that Program Manager shall provide Owner with prompt notice so that it may contest any such required disclosure). In any event, no information shall be considered Owner's Confidential Information for purposes of this Agreement as of the date **two (2) years** the expiration of the term of, or earlier termination of, this Agreement. Program Manager will satisfy its obligations to protect Owner's Confidential Information from unauthorized disclosure by exercising reasonable care. Such care will include protecting Owner's Confidential Information using the greater of (i) those practices that Program Manager normally uses to restrict disclosure and use of its own information of like importance or (ii) the Performance Standard. Program Manager will not be in breach of this **Section 13.17.2** if it accidentally discloses Owner's Confidential Information while exercising reasonable care, provided that, upon discovery of such disclosure, Program Manager attempts to retrieve the Owner's Confidential Information and reviews its practices to attempt to prevent any further accidental disclosures.

**IN WITNESS WHEREOF**, Owner and Program Manager have caused their respective duly authorized representatives to execute, seal and deliver this Agreement, all as of the day and year first above written.

**OWNER:**

**CITY OF SANDY SPRINGS, GEORGIA**, a public body corporate and politic

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

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

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

**PROGRAM MANAGER:**

**C&A DEVELOPMENT, LLC**, a Georgia limited liability company

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

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

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

**EXHIBIT A**  
**PROGRAM MANAGER TEAM**

**EXHIBIT B**

**SCHEDULE OF PROJECTS**

**[PRELIMINARY SCHEDULE TO BE REVISED]**

City Office Building	Over subterranean parking, including Family Theatre / Black Box, Retail, Meeting space, and possible additional leasable floors
Performing Arts Center	800-1000 seat Full Performing Arts Center / Theatre
Parking	1100 spaces below and at grade (including subterranean below private development)
Park	Including multiple program elements, significant water features, internal walks, roads, plazas, "Market Square", and Triangle Park east of Roswell Road
Site Infrastructure	Entire Site (including Galambos Way)
Roads	New Bluestone Extension; Improvements at Mt Vernon Road; Sandy Springs Circle, and Johnson Ferry Road
Utilities	Within City Center Site and outside curb at roadwork mentioned above. In addition, \$22MM Georgia Power Company above ground to underground relocation

## EXHIBIT C

### PROGRAM MANAGER'S SERVICES

#### **A. Administration**

1. Working Relationships. With Owner, establish responsibilities for Owner's Project team members and define primary and secondary lines of communication.
2. Communication. Determine Owner's requirements for communication for each individual and each facet of each Project.
3. Decision Making. Establish the Project review and approval process with Owner.
4. Guidelines. Determine/establish guidelines for communication/coordination with Owner's Project team.
5. Meetings. Establish a regular schedule of meetings with Owner, consultants and the Owner's Project team, prepare agendas, and distribute minutes and action items from each meeting on a timely basis.
6. Reporting. Establish the nature, content, and schedule for periodic reports to be promulgated during the life of each Project.
7. Schedule. Develop an integrated master schedule for the Projects, with particular regard to both milestone events and necessary approvals by both Owner, other governing agencies and constituency groups.

#### **B. Information Gathering**

1. Feasibility and Due Diligence. Review existing critical conditions data and coordinate collection of additional critical conditions data.
2. Site Analysis. Once all Site information has been compiled, analyze same with respect to its impact on the developability of a Site. Assist the architect and engineers in definition of all zoning and permit requirements; work with Owner to develop as appropriate.
3. Constituencies. With Owner, determine which constituencies within organization and outside (i.e. neighbors, etc.) need to be involved in each Project, and their level of involvement at each stage of each applicable Project.
4. Program. Understand the existing program and the programmatic objectives with regard to architectural style, sense of community, and relationship to the street and neighboring developments. Coordinate modification of the program as needed.
5. Objectives and Goals. Understand the underlying non-programmatic objectives and goals for each Project. Evaluate and report throughout the course of each Project.
6. Strategic Planning. With Owner, create a specific, time-based, achievable, results-oriented program that can be tracked over the course of each Project.

#### **C. Team Selection**

1. Request for Proposals. Work with Owner to formulate a RFQ/RFP incorporating Project objectives and goals.

2. Selection Process. Recommend an efficient, detailed process to select Owner's Project team members as required for each Project, including comparative analysis.
3. Decision Criteria. Develop and recommend a complete list of selection decision criteria, along with the relative importance of each criterion for each Project team member to be selected.
4. Shortlist and Interviews. Conduct review meetings with Owner and coordinate and manage shortlist and interview process.
5. Selection. Conduct a meeting, providing Owner with all information, including Program Manager's qualitative analysis of proposals, reference checks, and scoring criteria. Facilitate ranking/scoring with selection committee.
6. Negotiations. At Owner's direction, assist in negotiations with selected Project team members in regard to contractual documents. It is expected that all contractual documents will be drafted by City Attorney or outside counsel to Owner.

**D. Finance / Budget**

1. Project Economics. On behalf of and in coordination with Owner, identify acceptable financing options as necessary, develop the Project economics and create associated budget for each Project.
2. Approved Budget Monitoring. Monitor Approved Budget, making recommendations throughout each Project regarding cost saving measures as appropriate to manage overall Project expenditures. Report same.
3. Value Add Alternatives. Maintain and manage a "wish list" of items to be put into each applicable Project as "value add" items as savings are realized.
4. Project Accounting. Track and provide Project accounting.

**E. Design and Pricing**

1. Preliminary Program. Review and validate the preliminary program with Owner, the architects, the construction manager, and others as required.
2. Detailed Program. Review the detailed program with constituency groups and recommend modifications as appropriate. Coordinate with Owner's Project team in terms of the overall Master Plan.
3. Schedule. Direct the Project team in the preparation of a detailed design and construction schedule, incorporating approvals and other requirements as appropriate.
4. Preliminary Design. Monitor the architects in the preparation of preliminary Project design, focusing on alternate solutions, consistency with the program and sustainability as required.
5. Analysis of Design. Analyze the capital cost, functional, and aesthetic implications of the Project design, and make recommendations to Owner on alternatives.
6. Design Reviews. Review the schematic, design development, and construction drawings for conformance with the approved preliminary program, and make suggestions for improvements.

7. Approved Budget. Review the detailed Approved Budget and coordinate with Owner's Project team as necessary. Secure approvals from Owner as required.
8. Guaranteed Maximum Price. Assist Owner in execution of a guaranteed maximum price contract with the construction manager as appropriate.
9. Approvals. Coordinate with Owner and assist the architects, engineers and construction manager in obtaining all requisite permits and approvals in support of construction start.

**F. Construction**

1. Subcontractor Selection. Monitor the bidding of major subcontractors by the construction manager, review buyout against contingency, and provide recommendations to Owner, when necessary.
2. Job Meetings. Represent Owner at regularly scheduled job meetings and report the outcome of same in writing to appropriate parties. Also manage and distribute action item list to Project team.
3. Decision Resolution. As required during the course of construction, analyze alternatives and make recommendations to Owner for resolution of issues impacting schedule or budget.
4. On-Site Visits. Provide on Site visits during the course of construction to observe construction progress in the field and coordinate with Owner and Project team as needed. It is anticipated that on Site visits will occur on a regular basis with frequency to be agreed upon by Owner and Program Manager.
5. Pay Requests. Review monthly draw requests from architects/construction manager/consultants, request each group to make any necessary modifications, then submit the draw request to Owner with Program Manager's recommendation regarding payment.
6. Change Order Request. Review all change order requests and other proposed budget modifications, and recommend disposition to Owner.
7. Approved Budget and Schedule Monitoring. Continuously monitor progress against the Approved Budget and schedule and update Owner as appropriate.
8. FF&E Move-In. Monitor and coordinate purchase and installation of movable furniture, fixtures and other equipment.

**G. Post Construction**

1. Punch List. Represent Owner to the architects and construction manager in reviewing punch lists.
2. Turnover. Coordinate turnover of as-built drawings, specifications, manuals and warranties to Owner.
3. Management Transition. Coordinate and monitor construction manager's systems training of the personnel who will be managing the Project upon Completion.
4. Warranty Review. Prior to the expiration of warranties or guaranties provided in connection with the construction of the Project that expire prior to the date one (1) year after the Completion Date, assist Owner with a warranty review with construction manager and assist as requested in making claims under any warranty or guaranty provided with respect to the Project.

5. Final Close-Out. Coordinate final cost and budget close-out, including coordination of collection of lien waivers and proper distribution of any Project savings.

## EXHIBIT D

### OWNER INSURANCE

Owner shall maintain the following insurance coverages and limits for the Projects:

**A. Property:**

All-risk property insurance, in an amount that is usual and customary to similar projects.

**B. Builders Risk:**

Builders risk insurance for construction that covers special risk perils including earthquake, flood, fire, and theft of materials stored at or within 1,000 feet of a Project Site. Coverage will include a waiver of subrogation in favor of Program Manager. Loss of Program Manager's tools and equipment are not covered by such insurance, and Owner shall have no liability for their loss.

**C. Commercial General Liability ("CGL") – Occurrence Basis:**

Commercial general liability insurance, in limits of not less than \$10,000,000 combined single limit for bodily injury and property damage, including contractual liability coverage.

**D. Additional Insured:** Program Manager shall be named as an additional insured under Owner's Commercial General Liability Insurance using forms CG 20 10 07 04 and CG 20 37 07 04, and such coverage shall be primary and noncontributory with respect to insurance carried by Program Manager.

**E. Primary and Non-Contributory:** For coverage outlined in item C above, these limits shall be primary and non-contributory with respect to any insurance or self-insurance program carried by an Program Manager.

**F. No Reduction or Limit of Obligation:** By requiring insurance, Program Manager does not represent that coverage and limits will necessarily be adequate to protect Owner. Insurance effected or procured by Owner will not reduce or limit Owner's indemnification obligations under Section 12.3 of this Agreement.

**G. Certificate of Insurance:** Owner shall furnish to Program Manager a certificate of insurance evidencing such coverage within ten (10) days of the start of the construction Project.

**H. Insurer Qualification:** Companies with which the insurance is placed shall have received an A.M. Best rating of A/X or better.

- I. **Notice:** Owner certifies that the required coverages will not be canceled, materially altered, or nonrenewed without at least 30 days advance written notice to Program Manager.
  
- J. **Waiver of Subrogation:** For coverages outlined in items A, B and C above, insurer must waive its subrogation rights against a Program Manager Indemnified Party, the architects, and any lenders with respect to the Projects. Owner waives any claims against a Program Manager Indemnified Party, the architects, and any lenders with respect to the Project, to the extent such claims are covered by insurance required by this exhibit. Such insurance shall not prohibit the foregoing waiver.
  
- K. **OCIP or CCIP:** Owner retains the right to provide insurance for the Project through an OCIP or CCIP. In the event any insurance for the Project is provided through an OCIP or CCIP, both Program Manager and Owner shall be insureds under the OCIP or CCIP, at no cost to Program Manager. All liability coverage for the Project under the OCIP or CCIP for claims arising out of the construction phase shall be primary to any coverage maintained by Program Manager.

**EXHIBIT E**

**PROGRAM MANAGER INSURANCE**

Program Manager shall maintain the following insurance coverages and limits for the Projects:

**A. Commercial General Liability (“CGL”) - Occurrence Basis:**

General Aggregate	\$ 2,000,000
Products - Completed Operations Aggregate	\$ 2,000,000
Personal & Advertising Injury	\$ 1,000,000
Each Occurrence	\$ 1,000,000
Fire Damage (any one fire)	\$ 300,000
Medical Expense (any one person)	\$ 10,000
Includes Blanket Contractual Liability	

**B. Automobile Liability - Any Auto (including Hired and Non-Owned Autos):**

Combined Single Limit	\$ 1,000,000
-----------------------	--------------

**C. Statutory Worker’s Compensation and Employer’s Liability:**

Workers’ Compensation	Statutory Limit
Employer’s Liability Coverage	
Each Accident	\$1,000,000
Disease - Each Employee	\$1,000,000
Disease - Policy Limit	\$1,000,000
Broad Form All States Coverage	

**D. Excess/Umbrella Liability (over CGL, automobile liability, and employer’s liability):**

Per Claim	\$10,000,000
Annual Aggregate	\$10,000,000

**E. Professional Liability – Errors and Omissions Coverage:**

Per Claim	\$5,000,000
Annual Aggregate	\$5,000,000
Maximum Deductible Permissible:	\$ 250,000

Retroactive Date shall be no later than the date of first service by the Program Manager on the Projects, even if prior to execution of this Agreement.

Program Manager is required to carry coverage for a term of ten (10) years beyond Completion of the Projects.

The terms of all such insurance policies are subject to review and approval by Owner.

- F. **Additional Insureds:** The Owner Indemnified Parties shall be named as Additional Insureds under coverages outlined in items A, B and D above with respect to liability arising out of the Program Manager's performance or failure to perform Services pursuant to this Agreement using forms CG 20 10 07 04 and CG 20 37 07 04.
- G. **Primary and Non-Contributory:** For coverages outlined in items A, B and D above, these limits shall be primary and non-contributory with respect to any insurance or self-insurance program carried by an Owner Indemnified Party.
- H. **No Reduction or Limit of Obligation:** By requiring insurance, Owner does not represent that coverage and limits will necessarily be adequate to protect Program Manager. Insurance effected or procured by Program Manager will not reduce or limit Program Manager's indemnification obligations under Section 12.4 of this Agreement.
- I. **Certificates of Insurance:** Before starting work, and thereafter upon request by the Owner, Program Manager will give Owner a certificate of insurance completed by a duly authorized representative of its insurer confirming that Program Manager has met all the insurance requirements in this Agreement. Failure of Owner to demand such certificate or other evidence of full compliance with these insurance requirements or failure of Owner to identify a deficiency from evidence that is provided will not be construed as a waiver of Program Manager's obligation to maintain such insurance. The acceptance of delivery by Owner of any certificate of insurance evidencing the required insurance coverages and limits does not constitute approval or agreement by Owner that the insurance requirements have been met or that the insurance policies shown in the certificates of insurance are in compliance with the requirements. Owner will have the right, but not the obligation, of prohibiting Program Manager from entering a Project Site until such certificates or other evidence that insurance has been placed in complete compliance with these requirements is received and approved by Owner. If any of the coverages are required to remain in force after final payment, an additional certificate evidencing continuation of such coverage will be submitted with Program Manager's final invoice and on an annual basis through the term required.
- J. **Insurer Qualification:** All insurance will be provided through companies authorized to do business in Georgia and having an A.M. Best Rating of no less than A/X.
- K. **Notice:** Program Manager certifies that the required coverages will not be canceled, materially altered, or nonrenewed without at least 30 days advance written notice to Owner.

- L. **Waiver of Subrogation:** For coverages outlined in items A, B, C and D above, insurer must waive its subrogation rights against an Owner Indemnified Party, the architects, and any lenders with respect to the Project. Program Manager waives any claims against an Owner Indemnified Party, the architects, and any lenders with respect to the Project, to the extent such claims are covered by insurance required by this exhibit. Such insurance shall not prohibit the foregoing waiver.
- M. **Remedy:** If Program Manager fails to maintain the insurance as set forth here, Owner will have the right, but not the obligation, after reasonable notice to Program Manager and period to cure, to purchase said insurance at Program Manager's expense. Alternatively, Program Manager's failure to maintain the required insurance may result in termination of this Agreement at Owner's option.