

**CITY OF FOREST PARK  
MAYOR & CITY COUNCIL AGENDA  
REGULAR MEETING  
June 4, 2018**

**ANGELYNE BUTLER**  
MAYOR



**Kimberly James**  
*Ward 1*

**Dabouse Antoine**  
*Ward 2*

**Sandra Bagley**  
*Ward 3*

**Latresa Akins-Wells**  
*Mayor Pro-Tem/ Ward 4*

**Allan Mears**  
*Ward 5*

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**City Hall Council Chambers  
745 Forest Parkway  
Forest Park, GA 30297**

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**Work Session 6:00PM**

- Call to Order
- City Manager's Report
- Presentation
- Discussion of City Farmers Market Event
- Discussion of Business Recycling Program
- Discussion of Food Trucks
- Adjournment

Mayor Butler  
Angela Redding  
Mayor Butler  
Councilwoman Bagley  
Councilwoman Bagley  
Councilwoman Bagley

**Regular Meeting 7:00PM**

- I.** Call to Order – 7:00 p.m.
- II.** Invocation
- III.** Pledge of Allegiance
- IV.** Roll Call
- V.** Comment Period
- VI.** Approval of Minutes

- 1. Work Session of Mayor & Council of May 21, 2018
- 2. Regular Meeting of Mayor & Council of May 21, 2018

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**VII. Agenda Items**

1. Consider the Award of Quintech Solutions to install 125 LF of guardrail along each side of Old Jonesboro Road at creek in the amount of \$28,500.

**SUMMARY AND BACKGROUND**

Guardrail – The project consist of the removal of 60 LF of existing guardrail along the East side of the roadway and the replacement of 125 LF of new GDOT guardrail on each side of the road. The existing guardrail along the East side of the roadway is not the appropriate length, does not provide protection across the creek, and there is no guardrail along the West side of the roadway. The project was bid on two different occasions, March 9, 2018 and April 20, 2018 and only one (1) company bid during each bid process. The lowest and only responsible and responsive bidder is Quintech Solutions with a bid price of \$28,500.00. The project expense is covered by an LMIG Safety Grant in the amount of \$19,950.00 and \$8,550.00 in SPLOST funds.

2. Consider an Amendment to the Urban Cooperation Agreement between Clayton County & The City of Forest Park

**SUMMARY AND BACKGROUND**

HUD Notice CPD 18-02 states that periodically, statutory regulatory changes may require Urban counties to amend their Agreement to add new provisions. As a result of the HUD Notice, the Cooperation Agreement between Clayton County and the cities needs to be amended to allow for a new Section “18” as shown on the attached Amendment Number one.

**VIII. Executive Session for Personnel, Litigation, and Real Estate Matters**

**IX. Legal Matters**

**X. Comments by Governing Body**

**XI. Adjournment**



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**Call to Order:** The Work Session of Mayor and Council of May 21, 2018 was called to order by Mayor Angelyne Butler at 6:00 p.m.

**Present:** Mayor Angelyne Butler and Councilmembers Dabouze Antoine, Kimberly James, Latresa Wells and Allan Mears.

Also present were City Manager Angela Redding, Director of IT Darren Duke, Director of Public Works Jeff Eady, Interim Director of Planning and Zoning Fredalyn Frasier, Director of Recreation and Leisure Services Elaine Corley, Chief Eddie Buckholts, Director of Support Services Christine Terrell, Interim Finance Director Ken Thompson, Major Jamie Reynolds, Chief Dwayne Hobbs, Deputy City Clerk Regina Ivie, and Steve Queen, City Attorney's Office

**Yard of the Quarter:** Councilwoman Wells presented the Yard of the Month Award for Ward 4 to Water Oaks Village Apartments located at 5094 Old Dixie Highway.

**City Manager's Report:** Mrs. Redding gave the following report:

- The 42<sup>nd</sup> class graduated from the Citizens Police Academy and Mayor Butler was one of the graduates. In addition to the graduation, Officer Sterrett and Officer Hutcherson were presented with medals.
- Mrs. Redding stated she had meetings with Commissioner Dana Lemon, who is the GDOT Commissioner, regarding the catch basins on Forest Parkway. Mrs. Redding stated not only is it a hazard for the residents, but it is a liability for GDOT. Mrs. Redding displayed photos that Jeff Eady sent to one of the local offices in 2014. The meeting with the Commissioner resulted in the problem being repaired. Mrs. Redding displayed before and after pictures of the catch basins showing the results.
- Forest Park High School Graduation will be held Friday, May 25, 2018 at 4:30pm with seating time at 3:45pm. The graduation will be held at the Georgia International Convention Center. Congratulations was extended to Councilwoman Latresa Wells and



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Councilwoman Kimberly James who have graduates this year.

- Reminder: Monday, May 28, 2018 City offices will be closed due to Memorial Day Holiday.
- Summer Day Camp starts May 29, 2018 – July 20, 2018.
- Currently, there are no more openings at this time. Mrs. Corley stated that the first two weeks are booked, however, there may be an opportunity for someone to register if any openings come available. Friday mornings are the best day to check on any available registration.
- May 24, 2018 there will be a Business Certification Workshop from 10:00am – 12:00noon located at the Virginia Gray Recreation Center in Riverdale, Georgia.
- 2<sup>nd</sup> Annual Jazz Festival will be held Saturday, June 9, 2018 at Starr Park.
- JC Penney will be holding a Job Fair on May 24, 2018 from 11:00am-3:00pm
- Mrs. Redding read a letter received from the City of Newnan City Manager. The letter thanks The City of Forest Park Public Safety Personnel for assisting with a Nazi rally that was held April 21, 2018.
- Government Nathan Deal issued an Executive Order in conjunction with the Proclamation by the President of the United States that the US Flag and the State of Georgia Flag be flown at half-staff on all state buildings and grounds as a mark of respect for the victims of the tragic shooting at Santa Fe High School in Texas. The Flag should be flown at half-staff until sunset on Tuesday, May 22, 2018.





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**Starr Park  
Master Plan  
Presentation:**

Mr. Kiser gave a presentation on the Starr Park Master Plan. Mr. Kiser stated that he wanted to give an update and share the next steps in the process. He stated this is a three-phase project. Mr. Kiser stated that Phase 1 is complete, which was the existing conditions and analysis phase. During this phase an assessment included, survey of all parks and recreation facilities, programming, and all the parks within the City of Forest Park and within a 10-mile radius. There was also a need priority assessment that was done. Phase 2 Visioning is where they are now. Phase 3 will be the implementation and the adoption of a final report. Mr. Kiser stated that the project was started April 2017. Phase 1 was completed in September 2017. Mr. Kiser stated that a needs assessment process was conducted to determine what the city presently has. During this assessment they reached out to the community, did online surveys, held stakeholder advisory committee meetings, public workshops to gauge what people would want to see in the parks, the services that would be beneficial to them and what improvements they would like to see. Mr. Kiser gave an in-depth presentation. He gave the potential challenges that may arise in Starr Park. He also gave plausible solutions such as: open lawn where you can picnic, throw a football, play soccer, keep existing buildings and renovating them, and expanding the footprint of Starr Park and increasing Parks and Recreation resources. Mr. Kiser stated that per their research it has been noticed that the City of Forest Park and a couple of sister cities parks and recreation departments are not funded by their property tax revenue. In summary Mr. Kiser stated since they have successfully completed Phase 1 they are now in Phase 2 which was started in September. The input that was received from phase 1 was used to explore what could be done at a design level for Starr Park and the Starr Park neighborhood. They will have public workshops, and advisory meetings to give more briefings on the status until the project is completed.



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Mr. Kiser stated in September, they decided on the things they were going to tackle during Phase 2 such as: expanding the park into the neighborhood, creating a list of programs based on what they heard and what people want to see in the park, identifying which park elements will be used, replaced or renovated, identifying parking improvements, potential enhancements to the recreation facility, identify housing options, redevelopment options, open space strategies and public safety strategies. The elements based on what the advisory board and residents wanted were: City wide park improvements and Starr Park. Specific things the residents wanted to see were: expand the walking trail, renovate the stadium, soccer fields, splash pads, basketball courts and renovating picnic pavilions.

Mayor Butler asked Mr. Kiser will the visioning phase to be designed based on our current budget and funding sources?

Mr. Kiser stated yes, what they will do is look at an overall dream plan, but it will be done in segments which identify this is the budget for Phase 1 and identify what they think for Phase 2 to the end of all Phases in the process. There will be an overall Masterplan in which they breakdown into more workable phases.

Councilman Antoine stated in Ward 2 there are a lot of elderly people and disabled people. He stated where the seniors are now is privately owned. Councilman Antoine asked Mr. Kiser with the Master Plan what are his suggestions on how to keep the senior population within the City?

Mr. Kiser stated what they would do is identify properties in the neighborhood where subsidized senior housing could be created. Mr. Kiser stated that will require public private partnerships to get this accomplished. Mr. Kiser stated that they can provide



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strategies that have worked in other places and identify properties around Starr Park that may be available. Mr. Kiser also stated that the senior population would be great near Starr Park because of the amenities such as, a pool, walking trails etc.

Councilman Antoine asked is the Master Plan being funded by SPLOST Funds? Mrs. Redding stated no, funds were appropriated about 2 months ago for the Master Plan.

Councilman Antoine asked if there is money in the SPLOST Fund and how can it be used? Mrs. Redding stated that there is money in SPLOST for Park improvements, Kiwanis Stadium, and the indoor/outdoor pool. Mrs. Redding stated that there are some funds available in the SPLOST for the Recreation Department.

Councilman Antoine asked if property tax was a city ordinance or a State Ordinance. Mr. Kiser stated it must be sponsored by and voted on at the State Capitol. If you were going to implement property taxes in the City of Forest Park the State Legislature will have to vote on that. Mrs. Redding stated that when property taxes were removed the delegation passed a referendum and the citizens voted to remove the property tax. To reinstate property taxes citizens will have to vote on reinstating property tax.

Councilman Antoine asked how was Perkins Park driving down the score? Mr. Kiser stated that the parks that were low scoring were parks such as: Theater Drive Park, the green space behind the school on Scott Blvd, Second Street Park. Mr. Kiser stated that Perkins Park has great amenities. However, since a lot of the parks were built around the same time, they all have similar equipment. Mr. Kiser stated that variation is needed in the neighborhood parks.



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Councilwoman Kimberly James stated that she had comments regarding the challenges that Mr. Kiser named earlier. Councilwoman James stated there has been a great improvement in schools and as a county the schools are on an upswing and moving in the right direction. Councilwoman James stated that the low wage jobs be resolved soon as well. She commended Mr. Kiser on his presentation and stated that she is looking forward to the next phase.

Mayor Butler asked Mr. Kiser when can we expect to see the vision. Mr. Kiser stated the next event will be the public workshop which they will be scheduling soon. Once the public workshop is done it will be a matter of 6 weeks in which they will have plans available.

Councilman Antoine asked if the presentation was on the website. Mr. Kiser advised the full report is located at City Hall for review or he can send out an electronic copy. Mr. Kiser stated that the website has yet to be updated. Councilman Antoine suggested that be updated so the residents can see the information.

**Discussion of  
HR Audit:**

Councilwoman Kimberly James stated she wanted to discuss an HR Audit that was put on hold before she was in Office. Councilwoman James stated on May 5, 2014 there was a hiring firm requested to audit each department and it doesn't appear that was done. She stated on July 21, 2014 there was a request for proposal to audit recruitment or promotions, disciplinary and termination procedures in which no action was taken. She stated on February 16, 2015 there was discussion about a personnel audit and no action was taken. Councilwoman James stated she brings this up to make sure that the employees are being taken care of and to start fresh.

Mrs. Redding stated the items in 2014/2015 there were no actions taken. In January 2018 Mayor and Council put out an RFP for an HR Audit. There was only one RFP received.



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Councilwoman James stated that she would like to propose to Mayor and Council that another RFP be done for an HR Audit.

Mayor Butler asked if the RFP's received for the Forensic Audit included pricing for the HR Audit? Mrs. Redding stated that the RFP's received for the Forensic Audit consists of pricing for the Forensic Audit only. Mrs. Redding stated the HR audit was advertised on the GMA website, city website newspaper and ACCG. Mrs. Redding suggests that we can look at other outlets such as the Atlanta Business Chronicle and check their pricing.

**Discussion on  
Ice Cream  
Truck:**

Councilwoman Latresa Wells stated she has been getting a few inquiries from the residents on why the city has banned ice cream trucks from the city. Councilwoman Wells stated she wants to know why the ice cream trucks are banned for the kids and we are bringing in food for the adults. She wants to look into possibly changing the ordinance to allow ice cream trucks back into the city for the kids.

Councilman Mears stated there are a lot of stipulations surrounded the ordinance regarding the ice cream truck.

Attorney Stephen Queen stated Attorney Mike Williams asked him to speak on this particular topic. There are 2 relevant ordinances: one prohibits ice cream trucks and the other allows and limits food trucks. That is defined in a way that would include ice cream trucks if they were not prohibited. So, if you were to remove the ice cream truck prohibition ordinance, then ice cream trucks could operate just like a food truck in which there are very specific limitations (getting permits and stationed in an area). If you wanted to go a step further and allow the ice cream trucks to roam around the area, you will have to repeal the ordinance that prohibits ice cream trucks and adjust the food truck ordinance that will put ice cream trucks in a



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special status rather than the same status as a food truck.

Councilman Wells stated that she is looking to repeal that ordinance to be fair to the kids.

***Discussion  
of IGA  
Agreement  
with DeKalb  
County:***

Chief Buckholts introduced Chief Fullem and stated that Chief Fullem approached him about a year ago about a partnership. Chief Buckholts stated with the addition of Station 3 at Ft. Gillem, Chief Fullem asked if we would entertain an automatic aid agreement with DeKalb County. As a benefit to the City, we will have access to their training facilities.

Chief Fullem thanked Mayor and Council for consideration of the proposed Intergovernmental Agreement. He stated their training facility is one of the few in the Metro area that has all the amenities which includes a burn building and a seven-story tower. He states these amenities are great for fire departments.

Councilman Mears stated the City of Forest Park is closer will they be the first to respond. Chief Fullem stated yes, they are asking for one unit to get on the scene quickly and DeKalb County will still send a full alarm as they would normally send and once they are on the scene, they will relieve the city's unit as quickly as possible.

***Designate  
Voting  
Delegate  
For GMA:***

Councilwoman James proposed that Mayor Butler be designated as the voting delegate to represent the City of Forest Park. It was seconded by Councilman Mears. Voting was unanimous.

***Adjournment:***

Councilwoman James made a motion to adjourn the work session. It was seconded by Councilman Mears. Voting was unanimous.



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**Call to Order:** The Regular Meeting of Mayor and Council of May 21, 2018 was called to order by Mayor Angelyne Butler at 7:20p.m.

**Invocation:** The invocation was given by Reverend Clinkscales followed by the Pledge of Allegiance to the American Flag.

**Roll Call:** Present were: Mayor Angelyne Butler and Councilmembers Kimberly James, Dabouze Antoine, Latresa Wells and Allan Mears.

Also present were City Manager Angela Redding, Director of IT Darren Duke, Director of Public Works Jeff Eady, Interim Director of Planning and Zoning Fredalyn Frasier, Director of Recreation and Leisure Services Elaine Corley, Chief Eddie Buckholts, Director of Support Services Christine Terrell, Interim Finance Director Ken Thompson, Major Jamie Reynolds, Chief Dwayne Hobbs, Deputy City Clerk Regina Ivie, and Steve Queen, City Attorney's Office

**Comment Period:** Carl Evans – stated there were various activities to recognize this month such as National Police Week and National EMS Week. Mr. Evans stated in the future he would like to see the City be more proactive and recognize Police and EMS during the designated week instead of after the fact.

Ms. Muffington – stated she is an advocate for the seniors and would like to know if the City has funding available to help build senior apartments in vacant areas within the City. Ms. Muffington stated she will continue to speak on behalf of the seniors until they get what they deserve.

Yolanda Watson – stated she wanted to comment on the rental rates for the city rental facilities. Ms. Watson stated that the fees are extremely high and she wanted to share ways to decrease the fees. She suggested the fees can be decreased by reducing the security deposit and the cleanup fee based on the number of hours the buildings are being rented. She stated that she would love to utilize the buildings in her community instead of going outside of the city due to the rental prices.





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**Approval of  
Minutes:**

Councilwoman James made a motion to approve the minutes of the Work Session and Regular Meeting of May 7th. It was seconded by Councilman Mears. Voting for the motion was unanimous.

**Agenda Items:**

Councilman Dabouze Antoine made a motion to amend the agenda to add Recognition for Yard of the Quarter Ward 2. It was seconded by Councilwoman James. Voting for the motion was unanimous.

**Yard of the:  
Quarter:**

Recognition for Yard of the Quarter Ward 2:  
Councilman Antoine presented an award to Rock Church of Atlanta located at 4815 Courtney Drive.

**Proclamation  
Presentations:**

Mayor Butler presented Proclamations to Officer Timothy Blake Sterrett and Officer Demarkus Hutcherson Honoring them for their sacrifice, courage, and devotion above and beyond the call of duty.

Chief Hobbs announced that on Tuesday both Officers received a Medal of Honor and the Purple Heart.

Mayor Butler presented the Proclamation for National Police Week.

**Appointment  
to Clayton  
County Land  
Bank:**

Request was made to consider the appointment of Fredalyn Frasier to the Clayton County Land Bank.

Councilwoman James made a motion to approve the appointment of Fredalyn Frasier to the Clayton County Land Bank. It was seconded by Councilman Antoine. Voting was unanimous.

**Approval of the  
IGA:**

Request was made to consider the approval of the Intergovernmental Agreement for the Provision of Fire and Rescue Services between DeKalb County and the City of Forest Park.

Councilwoman Wells made a motion to approve the Intergovernmental Agreement. It was seconded by Councilman Mears. Voting was unanimous.





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- Consider Voting Delegate for GMA:** Request was made to consider appointment of voting Delegate for the Georgia Municipal Association Annual Convention in Savannah.
- Councilwoman James made a motion to designate Mayor Butler as the voting delegate. It was seconded by Councilman Mears. Voting was unanimous.
- Resolution - Times, Dates Locations for Meetings:** Request was made to consider a Resolution to Designate meeting times, dates and locations of the City Council.
- Councilman Mears made a motion to Approve the Resolution. It was seconded by Councilwoman James. Voting was unanimous.
- Governing Body Comments:** Councilman Antoine thanked everyone for coming out and on Friday there will be a talent show at the Rock Church of Atlanta located at 4815 Courtney Drive. This is for the youth to showcase their talent.
- Councilwoman James wanted to remind everyone to vote on Tuesday. Continue to pray for all students worldwide who are exiting high school.
- Councilwoman Wells thanked everyone for attending the meeting. She also invites everyone to attend graduation on Friday. Councilwoman Wells stated Councilwoman James and herself both have graduates this year.
- Councilman Mears thanked everyone for coming out and asks that everyone continue to come and as the city is moving forward community support will be needed.
- Adjournment:** Councilwoman James made a motion to adjourn the meeting. It was seconded by Councilwoman Wells. Voting for the motion was unanimous.

## **THE CONTRACT FOR CONSTRUCTION AND INCORPORATED GENERAL CONDITIONS**

This Agreement is made by and between the City of Forest Park, Georgia (hereinafter referred to as the "Owner") and Quintech Solutions, Inc., (hereinafter referred to as the "Contractor") under seal for construction and/or tasks of removing the existing guardrail and installing a 125 LF of guardrail along each side of the roadway along a section of Old Jonesboro Road (hereinafter referred to as the "Project"), the Owner and the Contractor hereby agree as follows:

### **ARTICLE I**

#### **THE CONTRACT AND THE CONTRACT DOCUMENTS**

##### **1.1 The Contract**

1.1.1 The Contract between the Owner and the Contractor, of which this Agreement is a part, consists of the Contract Documents. It shall be effective on the date this Agreement is executed by the last party to execute it.

##### **1.2 The Contract Documents**

1.2.1 The Contract Documents consist of this Agreement, the Specifications, the Drawings, all Change Orders and Field Orders issued hereafter, any other amendments hereto executed by the parties hereafter, together with the following (if any):

Advertisement for Competitive Sealed Proposals; Instructions to Offerors; Proposal Form; Bid Bond; Payment Bond; Performance Bond; Notice of Award; Change Order; Certificate of Final Completion; Notice to Proceed; Applicable Georgia Department of Transportation Specifications.

Documents not enumerated in this Paragraph 1.2 are not Contract Documents and do not form part of this Contract.

##### **1.3 Entire Agreement**

1.3.1 This Contract, together with the Contractor's performance, payment, and maintenance bonds for the Project, constitute the entire and exclusive agreement between the Owner and the

Contractor with reference to the Project. Specifically, but without limitation, this Contract supersedes any bid documents and all prior written or oral communications, representations and negotiations, if any, between the Owner and the Contractor.

#### **1.4 No Privity with Others**

1.4.1 Nothing contained in this Contract shall create or be interpreted to create privity or any other contractual agreement between the Owner and any person or entity other than the Contractor.

#### **1.5 Intent and Interpretation**

1.5.1 The intent of this Contract is to require complete, correct and timely execution of the Work. Any Work that may be required, implied or inferred by the Contract Documents, or any one or more of them, as necessary to produce the intended result shall be provided by the Contractor for the Contract Price.

1.5.2 This Contract is intended to be an integral whole and shall be interpreted as internally consistent. What is required by any one Contract Document shall be considered as required by the Contract.

1.5.3 When a word, term or phrase is used in this Contract, it shall be interpreted or construed, first, as defined herein; second, if not defined, according to its generally accepted meaning in the construction industry; and third, if there is no generally accepted meaning in the construction industry, according to its common and customary usage.

1.5.4 The words "include", "includes", or "including", as used in this Contract, shall be deemed to be followed by the phrase, "without limitation".

1.5.5 The specification herein of any act, failure, refusal, omission, event, occurrence or condition as constituting a material breach of this Contract shall not imply that any other, non-specified act, failure, refusal, omission, event, occurrence or condition shall be deemed not to constitute a material breach of this Contract.

1.5.6 Words or terms used as nouns in this Contract shall be inclusive of their singular and plural forms, unless the context of their usage clearly requires a contrary meaning.

1.5.7 The Contractor shall have a continuing duty to read, carefully study and compare each of the Contract Documents, the Shop Drawings and the Product Data and shall give written notice to the Owner of any inconsistency, ambiguity, error or omission which the Contractor may discover with respect to these documents before proceeding with the affected Work. The issuance, or the express or implied approval by the Owner of the Contract Documents, Shop Drawings or Product Data shall not relieve the Contractor of the continuing duties imposed hereby, nor shall any such approval be evidence of the Contractor's compliance with this

Contract. The Owner has obtained certain documents for the Project, including the Drawings and Specifications for the Project, which are accurate, adequate, consistent, coordinated and sufficient for construction. HOWEVER, THE OWNER MAKES NO REPRESENTATION OR WARRANTY OF ANY NATURE WHATSOEVER TO THE CONTRACTOR CONCERNING SUCH DOCUMENTS. By the execution hereof, the Contractor acknowledges and represents that it has received, reviewed and carefully examined such documents, has found them to be complete, accurate, adequate, consistent, coordinated and sufficient for construction, and that the Contractor has not, does not, and will not rely upon any representation or warranties by the Owner concerning such documents as no such representation or warranties have been or are hereby made.

1.5.8 Neither the organization of any of the Contract Documents into divisions, sections, paragraphs, articles, (or other categories), nor the organization or arrangement of the Design, shall control the Contractor in dividing the Work or in establishing the extent or scope of the Work to be performed by Subcontractors.

## **1.6 Ownership of Contract Documents**

1.6.1 The Contract Documents, and each of them, shall remain the property of the Owner. The Contractor shall have the right to keep one record set of the Contract Documents upon completion of the Project; provided, however, that in no event shall the Contractor use, or permit to be used, any or all of such Contract Documents on other projects without the Owner's prior written authorization.

## **1.7 Hierarchy of Contract Documents**

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

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## **ARTICLE II**

### **THE WORK**

**2.1** The Contractor shall perform all of the Work required, implied or reasonably inferable from, this Contract.

**2.2** The term "Work" shall mean whatever is done by or required of the Contractor to perform and complete its duties under this Contract, including the following: construction of the whole or a designated part of the Project; furnishing of any required surety bonds and insurance; and the provision or furnishing of labor, supervision, services, materials, supplies, equipment, fixtures, appliances, facilities, tools, transportation, storage, power, permits and licenses required of the Contractor, fuel, heat, light, cooling and all other utilities as required by this Contract. The Work to be performed by the Contractor is generally described as follows:

#### **General Overview:**

Shown in RFP

#### **General Requirements & Specifications:**

Shown in RFP

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## **ARTICLE III**

### **CONTRACT TIME**

#### **3.1 Time and Liquidated Damages**

3.1.1 Unless earlier terminated, this Agreement shall terminate at the end of the calendar year in which it was executed.

3.1.2 The Contractor shall commence the Work under this Agreement on the date established by a written Notice to Proceed given by the Owner to the Contractor fixing the date on which the Contract time will commence to run. The Contractor shall achieve Final Completion of the Work within the time established by the written Notice to Proceed. The number of consecutive days from the date on which the Work is permitted to proceed, through the date set forth for Final Completion, shall constitute the "Contract Time."

3.1.3 The Contractor shall pay the Owner the sum of one thousand dollars (\$1,000.00) per day for each and every business day of unexcused delay in achieving Final Completion beyond the date set forth herein for Final Completion of the Work. Any sums due and payable hereunder by the Contractor shall be payable, not as a penalty, but as liquidated damages representing an estimate of delay damages likely to be sustained by the Owner, estimated at or before the time of executing this Contract. When the Owner reasonably believes that Final Completion will be inexcusably delayed, the Owner shall be entitled, but not required, to withhold from any amounts otherwise due the Contractor an amount then believed by the Owner to be adequate to recover liquidated damages applicable to such delays. If and when the Contractor overcomes the delay in achieving Final Completion, or any part thereof, for which the Owner has withheld payment, the Owner shall promptly release to the Contractor those funds withheld, but no longer applicable, as liquidated damages.

#### **3.2 Intentionally omitted.**

3.2.1 Intentionally omitted.

#### **3.3 Time is of the Essence**

3.3.1 All limitations of time set forth in the Contract Documents are of the essence of this Contract.

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## **ARTICLE IV**

### **CONTRACT PRICE**

#### **4.1 The Contract Price**

4.1.1 The Owner shall pay, and the Contractor shall accept, as full and complete payment for the Contractor's timely performance of its obligations hereunder, the sum of \$28,500.00 upon one hundred percent (100%) completion of the Work.

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## ARTICLE V

### PAYMENT OF THE CONTRACT PRICE

#### **5.1 Intentionally omitted.**

5.1.1 Intentionally omitted.

#### **5.2 Payment Procedure**

5.2.1 The Owner shall pay the Contract Price to the Contractor as provided below.

5.2.2 **Intentionally omitted.**

5.2.3 Intentionally omitted.

5.2.4 Intentionally omitted.

5.2.5 Intentionally omitted.

5.2.6 Intentionally omitted.

#### **5.3 Withheld payment**

5.3.1 To the extent permitted by Georgia law, the Owner may decline to make payment, may withhold funds, and, if necessary, may demand the return of some or all of the amounts previously paid to the Contractor, to protect the Owner from loss because of:

- (a) defective Work not remedied by the Contractor nor, in the opinion of the Owner, likely to be remedied by the Contractor;
- (b) claims of third parties against the Owner or the Owner's property;
- (c) failure by the Contractor to pay Subcontractors or others in a prompt and proper fashion;
- (d) evidence that the balance of the Work cannot be completed in accordance with the Contract for the unpaid balance of the Contract Price;
- (e) evidence that the Work will not be completed in the time required for substantial or final completion;
- (f) persistent failure to carry out the Work in accordance with the Contract;



- (g) damage to the Owner or a third party to whom the Owner is, or may be, liable.

In the event that the Owner makes written demand upon the Contractor for amounts previously paid by the Owner as contemplated in this Subparagraph 5.3.1, the Contractor shall promptly comply with such demand.

#### **5.4 Unexcused Failure to Pay**

5.4.1 If within forty-five (45) days after the date established herein for payment to the Contractor by the Owner, the Owner, without cause or basis hereunder, fails to pay the Contractor any amount then due and payable to the Contractor, then the Contractor may after seven (7) additional days' written notice to the Owner, and without prejudice to any other available rights or remedies it may have, stop the Work until payment of those amounts due from the Owner have been received. Any payment not made within forty-five (45) days after the date due shall bear interest at the rate of four percent (4%) per annum.

#### **5.5 Intentionally omitted**

5.5.1 Intentionally omitted.

#### **5.6 Completion and Final Payment**

5.6.1 When all of the Work is finally complete and the Contractor is ready for a final inspection, it shall notify the Owner thereof in writing. Thereupon, the Owner will make final inspection of the Work and, if the Work is complete in full accordance with this Contract and this Contract has been fully performed, the Owner will promptly issue a final Certificate for Payment certifying to the Owner that the Project is complete and the Contractor is entitled to the Contract Price, less any amount withheld pursuant to this Contract. Guarantees required by the Contract shall commence on the date of Final Completion of the Work. If the Owner is unable to issue its final Certificate for Payment and is required to repeat its final inspection of the Work, the Contractor shall bear the cost of such repeat final inspection(s) which cost may be deducted by the Owner from the Contractor's final payment.

5.6.1.1 Intentionally omitted.

5.6.2 The Contractor shall not be entitled to final payment unless and until it submits to the Owner all documents required by the Contract, including, but not limited to, its affidavit that all payrolls, invoices for materials and equipment, and other liabilities connected with the Work for which the Owner, or the Owner's property might be responsible, have been fully paid or otherwise satisfied; releases and waivers of lien from all Subcontractors of the Contractor and of any and all other parties required by the Owner; consent of Surety, if any, to final payment. If any third party fails or refuses to provide a release of claim or waiver of lien as required by the Owner, the Contractor shall furnish a bond satisfactory to the Owner to discharge any such lien or indemnify the Owner from liability.

5.6.3 The Owner shall make final payment of all sums due the Contractor within thirty (30) days of its execution of a final Certificate for Payment.

5.6.4 Acceptance of final payment shall constitute a waiver of all claims against the Owner by the Contractor except for those claims previously made in writing against the Owner by the Contractor, pending at the time of final payment, and identified in writing by the Contractor as unsettled at the time of its request for final payment.

5.6.5 The Owner and Contractor expressly agree that the terms of payment, payment periods, and rates of interest herein shall control to the exclusion of any provisions set forth in the Georgia Prompt Pay Act, O.C.G.A. Section 3-11-1 et al., and the provisions of said Act are herein waived.

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## **ARTICLE VI**

### **THE OWNER**

#### **6.1 Information, Services and Things Required from Owner**

6.1.1 If the Contractor requests in writing, the Owner shall furnish to the Contractor, prior to the execution of this Contract, any and all written and tangible material in its possession concerning conditions below ground at the site of the Project. Such written and tangible material is furnished to the Contractor only in order to make complete disclosure of such material and for no other purpose. By furnishing such material, the Owner does not represent, warrant, or guarantee its accuracy either in whole, in part, implicitly or explicitly, or at all, and shall have no liability therefor. The Owner shall also furnish surveys, legal limitations and utility locations (if known), and a legal description of the Project site.

6.1.2 Excluding permits and fees normally the responsibility of the Contractor, the Owner shall obtain all approvals, easements, and the like required for construction and shall pay for necessary assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

6.1.3 The Owner shall furnish the Contractor, free of charge, five (5) copies of the Contract Documents for execution of the Work. The Contractor will be charged, and shall pay the Owner, \$75.00 per additional set of Contract Documents which it may require.

#### **6.2 Right to Stop Work**

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

#### **6.3 Owner's Right to Perform Work**

6.3.1 If the Contractor's Work is stopped by the Owner under Paragraph 6.2, and the Contractor fails within seven (7) days of such stoppage to provide adequate assurance to the Owner that the cause of such stoppage will be eliminated or corrected, then the Owner may, without prejudice to any other rights or remedies the Owner may have against the Contractor, proceed to carry out the subject Work. In such a situation, an appropriate Change Order shall be issued deducting from the Contract Price the cost of correcting the subject deficiencies. If the unpaid portion of the Contract Price is insufficient to cover the amount due the Owner, the Contractor shall pay the difference to the Owner.

## **ARTICLE VII**

### **THE CONTRACTOR**

**7.1** The Contractor is again reminded of its continuing duty set forth in Subparagraph 1.5.7. The Contractor shall perform no part of the Work at any time without adequate Contract Documents or, as appropriate, approved Shop Drawings, Product Data or Samples for such portion of the Work. If the Contractor performs any of the Work knowing it involves a recognized error, inconsistency or omission in the Contract Documents without such notice to the Owner, the Contractor shall bear responsibility for such performance and shall bear the cost of correction.

**7.2** The Contractor shall perform the Work strictly in accordance with this Contract.

**7.3** The Contractor shall supervise and direct the Work using the Contractor's best skill, effort and attention. The Contractor shall be responsible to the Owner for any and all acts or omissions of the Contractor, its employees and others engaged in the Work on behalf of the Contractor.

#### **7.4 Warranty**

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

**7.4.2** A minimum 2 year warranty is required on all materials, and a minimum 1 year warranty is required on all labor, with a guarantee of no cracks in the concrete.

**7.5** The Contractor shall obtain and pay for all permits, inspections, fees and licenses necessary and ordinary for the Work. The Contractor shall comply with all lawful requirements applicable to the Work and shall give and maintain any and all notices required by applicable law, ordinance, or regulation pertaining to the Work.

#### **7.6 Supervision**

**7.6.1** The Contractor shall employ and maintain at the Project site only competent supervisory personnel. Absent written instruction from the Contractor to the contrary, the superintendent shall be deemed the Contractor's authorized representative at the site and shall be authorized to receive and accept any and all communications from the Owner.

7.6.2 Key supervisory personnel assigned by the Contractor to this Project are as follows:

<u>Name</u>	<u>Function</u>
Harold Gillens	President/CEO
Charles Halls	Operations Manager

So long as the individuals named above remain actively employed or retained by the Contractor, they shall perform the functions indicated next to their names unless the Owner agrees to the contrary in writing. In the event one or more individuals not listed above subsequently assumes one or more of those functions listed above, the Contractor shall be bound by the provisions of this Subparagraph 7.6.2 as though such individuals had been listed above.

## **7.7 Schedules**

7.7.1 The Contractor, within fifteen (15) days of commencing the Work, shall submit to the Owner, the Contractor's schedule for completing the Work. Additionally, within fifteen (15) days of commencing the Work, the Contractor shall submit to the Owner a separate shop drawing and submittal schedule detailing the schedule for the submission to the Owner of all shop drawings, submittals, product data and other similar documents. Each of the schedules required herein shall be revised no less frequently than monthly (unless the parties otherwise agree in writing) and shall be revised to reflect conditions encountered from time-to-time and shall be related to the entire Project. Each such revision shall be furnished to the Owner. The schedules, and all revisions, shall be in such form, and shall contain such detail, as the Owner may require. THE PARTIES SPECIFICALLY AGREE THAT ANY FLOAT CONTAINED IN THE SCHEDULES SHALL BELONG TO THE PROJECT AND IN NO EVENT SHALL THE CONTRACTOR MAKE CLAIM FOR ANY ALLEGED DELAY, ACCELERATION, OR EARLY COMPLETION SO LONG AS THE PROJECT IS COMPLETED WITHIN THE CONTRACT TIME. Strict compliance with the requirements of this Paragraph is a condition precedent for payment to the Contractor, and failure by the Contractor to strictly comply with said requirements shall constitute a material breach of this Contract.

7.8 The Contractor shall continuously maintain at the site, for the benefit of the Owner, one record copy of this Contract marked to record on a current basis changes, selections and modifications made during construction. Additionally, the Contractor shall maintain at the site for the Owner the approved Shop Drawings, Product Data, Samples and other similar required submittals. Upon final completion of the Work, all of these record documents shall be delivered to the Owner.

## **7.9 Shop Drawings, Product Data and Samples**

7.9.1 Shop Drawings, Product Data, Samples and other submittals from the Contractor do not constitute Contract Documents. Their purpose is merely to demonstrate the manner in which the

Contractor intends to implement the Work in conformance with information received from the Contract Documents.

7.9.2 The Contractor shall not perform any portion of the Work requiring submittal and review of Shop Drawings, Product Data or Samples unless and until such submittal shall have been approved by the Owner.

#### **7.10 Cleaning the Site and the Project**

7.10.1 The Contractor shall keep the site reasonably clean during performance of the Work. Upon final completion of the Work, the Contractor shall clean the site and the Project and remove all waste, together with all of the Contractor's property therefrom.

#### **7.11 Access to Work**

7.11.1 The Owner shall have access to the Work at all times from commencement of the Work through final completion. The Contractor shall take whatever steps necessary to provide access when requested.

#### **7.12 Indemnity**

7.12.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner and its agents from and against liability, claims, damages, losses and expenses, including attorneys' fees, arising out of or resulting from performance of the Work, provided that such liability, claims, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including loss of use resulting therefrom, but only to the extent caused in whole or in part by willful or negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such liability, claim, damage, loss or expense is caused in part by a party indemnified hereunder.

7.12.2 In claims against any person or entity indemnified under this Paragraph 7.12 by an employee of the Contractor, a Subcontractor, any one directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Paragraph 7.12 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

#### **7.13 Means, Methods, Techniques, Sequences, Procedures and Safety**

7.13.1 The Contractor is fully responsible for, and shall have control over, all construction means, methods, techniques, sequences, procedures and safety, and shall coordinate all portions of the work required by the Contract Documents.

## **7.14 Separate Contracts**

7.14.1 The Owner reserves the right to perform work on the premises with its own forces or by the use of other contractors. In such event, the Contractor shall fully cooperate with the Owner and such other contractors and shall coordinate, schedule and manage its work so as not to hinder, delay or otherwise interfere with the separate work of the Owner or other contractors.

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## ARTICLE VIII

### CONTRACT ADMINISTRATION

**8.1 Intentionally Omitted.**

**8.2 Intentionally Omitted.**

**8.3 Claims by the Contractor**

8.3.1 All Contractor claims shall be initiated by written notice and claim to the Owner. Such written notice and claim must be furnished within seven (7) days after occurrence of the event, or the first appearance of the condition, giving rise to the claim.

8.3.2 Pending final resolution of any claim of the Contractor, the Contractor shall diligently proceed with performance of this Contract and the Owner shall continue to make payments to the Contractor in accordance with this Contract. The resolution of any claim under this Paragraph 8.3 shall be reflected by a Change Order executed by the Owner and the Contractor.

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

8.3.4 **Claims for Additional Costs** -- If the Contractor wishes to make a claim for an increase in the Contract Price, as a condition precedent to any liability of the Owner therefor, the Contractor shall give the Owner written notice of such claim within seven (7) days after the occurrence of the event, or the first appearance of the condition, giving rise to such claim. Such notice shall be given by the Contractor before proceeding to execute any additional or changed Work. The failure by the Contractor to give such notice and to give such notice prior to executing the Work shall constitute a waiver of any claim for additional compensation.

8.3.4.1 In connection with any claim by the Contractor against the Owner for completion in excess of the Contract Price, any liability of the Owner shall be strictly limited to direct costs incurred by the Contractor and shall in no event include indirect costs or consequential damages of the Contractor. The Owner shall not be liable to the Contractor for claims of third parties,



including Subcontractors, unless and until liability of the Contractor has been established therefor in a court of competent jurisdiction.

**8.3.5 Claims for Additional Time** -- If the Contractor is delayed in progressing any task which at the time of the delay is then critical or which during the delay becomes critical, as the sole result of any act or neglect to act by the Owner or someone acting in the Owner's behalf, or by changes ordered in the Work, unusual delay in transportation, unusually adverse weather conditions not reasonably anticipatable, fire or any causes beyond the Contractor's control, then the date for achieving Final Completion of the Work shall be extended upon the written notice and claim of the Contractor to the Owner, for such reasonable time as the Owner may determine. Any notice and claim for an extension of time by the Contractor shall be made not more than seven (7) days after the occurrence of the event or the first appearance of the condition giving rise to the claim and shall set forth in detail the Contractor's basis for requiring additional time in which to complete the Project. In the event the delay to the Contractor is a continuing one, only one notice and claim for additional time shall be necessary. If the Contractor fails to make such claim as required in this Subparagraph, any claim for an extension of time shall be waived.

**8.3.6 Extension of Contract Time for Unusually Adverse Weather Conditions not Reasonably Anticipated**

8.3.6.1 Pursuant to the provisions of subparagraph 8.3.5 of the Contract for Construction and Incorporated General Conditions, the contract time may be extended upon written notice and claim of the Contractor to the Owner as set forth in such subparagraph and as further set forth herein. It is, however, expressly agreed that the time for completion as stated in the Contract Documents includes due allowance for calendar days on which work cannot be performed out-of-doors. For purposes of this Contract, and for purposes of extensions of contract time, the Contractor agrees that he anticipates adverse weather sufficient to prevent work in accordance with the schedule set forth hereinbelow, and the Contractor further agrees that unless he encounters actual adverse weather in excess of those days set forth hereinbelow, he shall not make, nor shall he be entitled to, any extension of the contract time:

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

Furthermore, in addition to the notice requirements set forth in the aforesaid subparagraph 8.3.5, the Contractor agrees that it shall provide written notice to the Owner on the day of any adverse weather not anticipated and for which a request for a time extension has been, or will be, made. Said notice shall state with particularity a description of the adverse weather as well as a description of the nature and extent of any delay caused by such weather. Receipt of this notice by the Owner is a condition precedent to the submission of any claim for an extension of time as provided by subparagraph 8.3.5. Furthermore, as required by subparagraph 8.3.5, the Contractor shall submit a written claim for extension of time within seven (7) days after the occurrence of

the adverse weather and such claim shall be supported by such documentation including, but not limited to, official weather reports, as the Owner may be required. To the extent that any of the terms and conditions set forth in this paragraph are in conflict with any of the terms and conditions of subparagraph 8.3.5 as identified herein, the terms and conditions of this paragraph shall govern and control.

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## **ARTICLE IX**

### **SUBCONTRACTORS**

#### **9.1 Definition**

9.1.1 A Subcontractor is an entity which has a direct contract with the Contractor to perform a portion of the Work.

#### **9.2 Award of Subcontracts**

9.2.1 Upon execution of the Contract, the Contractor shall furnish the Owner, in writing, the names of persons or entities proposed by the Contractor to act as a Subcontractor on the Project. The Owner shall promptly reply to the Contractor, in writing, stating any objections the Owner may have to such proposed Subcontractor. The Contractor shall not enter into a Subcontract with a proposed Subcontractor with reference to whom the Owner has made timely objection. The Contractor shall not be required to Subcontract with any party to whom the Contractor has objection.

9.2.2 All subcontracts shall afford the Contractor rights against the Subcontractor which correspond to those rights afforded to the Owner against the Contractor herein, including those rights afforded to the Owner by Subparagraph 12.2.1 below.

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## **ARTICLE X**

### **CHANGES IN THE WORK**

#### **10.1 Changes Permitted**

10.1.1 Changes in the Work within the general scope of this Contract, consisting of additions, deletions, revisions, or any combination thereof, may be ordered without invalidating this Contract, by Change Order.

10.1.2 Changes in the Work shall be performed under applicable provisions of this Contract and the Contractor shall proceed promptly with such changes.

#### **10.2 Change Order Defined**

10.2.1 Change Order shall mean a written order to the Contractor executed by the Owner, issued after execution of this Contract, authorizing and directing a change in the Work or an adjustment in the Contract Price or the Contract Time, or any combination thereof. The Contract Price and the Contract Time may be changed only by Change Order.

#### **10.3 Changes in the Contract Price**

10.3.1 Any change in the Contract Price resulting from a Change Order shall be determined as follows: (a) by mutual agreement between the Owner and the Contractor as evidenced by (1) the change in the Contract Price being set forth in the Change Order, (2) such change in the Contract Price, together with any conditions or requirements related thereto, being initialed by both parties and (3) the Contractor's execution of the Change Order, or (b) if no mutual agreement occurs between the Owner and the Contractor, then, as provided in Subparagraph 10.3.2 below.

10.3.2 If no mutual agreement occurs between the Owner and the Contractor as contemplated in Subparagraph 10.3.1 above, the change in the Contract Price, if any, shall then be determined by the Owner on the basis of the reasonable expenditures or savings of those performing, deleting or revising the Work attributable to the change, including, in the case of an increase or decrease in the Contract Price, a reasonable allowance for direct job site overhead and profit. In such case, the Contractor shall present, in such form and with such content as the Owner requires, an itemized accounting of such expenditures or savings, plus appropriate supporting data for inclusion in a Change Order. Reasonable expenditures or savings shall be limited to the following: reasonable costs of materials, supplies, or equipment including delivery costs, reasonable costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance, reasonable rental costs of machinery and equipment exclusive of hand tools whether rented from the Contractor or others, reasonable costs of premiums for all bonds and insurance, permit fees, and sales, use or other taxes related to the Work, and reasonable cost of direct supervision and jobsite field office overhead directly attributable to the change. In the event the Contractor performs the Work required by change order with its own forces, and not the forces of a subcontractor, the

overhead and profit due the Contractor for such work shall be twenty (20) percent. In the event the change order Work is performed by one or more subcontractors, the Contractor's overhead and profit shall be seven and one-half (7-1/2) percent. In no event shall any expenditure or savings associated with the Contractor's home office or other non-jobsite overhead expense be included in any change in the Contract Price. Pending final determination of reasonable expenditures or savings to the Owner, payments on account shall be made to the Contractor on the Certificate for Payment.

10.3.3 If unit prices are provided in the Contract, and if the quantities contemplated are so changed in a proposed Change Order that application of such unit prices to the quantities of Work proposed will cause substantial inequity to the Owner or to the Contractor, the applicable unit prices shall be equitably adjusted.

#### **10.4 Effect of Executed Change Order**

10.4.1 The execution of a Change Order by the Contractor shall constitute conclusive evidence of the Contractor's agreement to the ordered changes in the Work, this Contract as thus amended, the Contract Price and the Contract Time. The Contractor, by executing the Change Order, waives and forever releases any claim against the Owner for additional time or compensation for matters relating to or arising out of or resulting from the Work included within or affected by the executed Change Order.

#### **10.5 Notice to Surety; Consent**

10.5.1 The Contractor shall notify and obtain the consent and approval of the Contractor's surety with reference to all Change Orders if such notice, consent or approval is required by the Contractor's surety or by law. The Contractor's execution of the Change Order shall constitute the Contractor's warranty to the Owner that the surety has been notified of and consents to, such Change Order and the surety shall be conclusively deemed to have been notified of such Change Order and to have expressly consented thereto.

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## **ARTICLE XI**

### **UNCOVERING AND CORRECTING WORK**

#### **11.1 Uncovering Work**

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

11.1.2 If any of the Work is covered in a manner not inconsistent with Subparagraph 11.1.1 above, it shall, if required by the Owner, be uncovered for the Owner's inspection. If such Work conforms strictly with this Contract, costs of uncovering and proper replacement shall by Change Order be charged to the Owner. If such Work does not strictly conform with this Contract, the Contractor shall pay the costs of uncovering and proper replacement.

#### **11.2 Correcting Work**

11.2.1 The Contractor shall immediately proceed to correct Work rejected by the Owner as defective or failing to conform to this Contract. The Contractor shall pay all costs and expenses associated with correcting such rejected Work, including any additional testing and inspections.

11.2.2 If within one (1) year after Final Completion of the Work any of the Work is found to be defective or not in accordance with this Contract, the Contractor shall correct it promptly upon receipt of written notice from the Owner. This obligation shall survive final payment by the Owner and termination of this Contract.

11.2.3 Nothing contained in this Paragraph 11.2 shall establish any period of limitation with respect to other obligations which the Contractor has under this Contract. Establishment of the one year time period in Subparagraph 11.2.2 relates only to the duty of the Contractor to specifically correct the Work.

#### **11.3 Owner May Accept Defective or Nonconforming Work**

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

## ARTICLE XII

### CONTRACT TERMINATION

#### **12.1 Termination by the Contractor**

12.1.1 If the Work is stopped for a period of ninety (90) days by an order of any court or other public authority, or as a result of an act of the Government, through no fault of the Contractor or any person or entity working directly or indirectly for the Contractor, the Contractor may, upon ten (10) days' written notice to the Owner, terminate performance under this Contract and recover from the Owner payment for the actual reasonable expenditures of the Contractor (as limited in Subparagraph 10.3.2 above) for all Work executed and for materials, equipment, tools, construction equipment and machinery actually purchased or rented solely for the Work, less any salvage value of any such items.

12.1.2 If the Owner shall persistently or repeatedly fail to perform any material obligation to the Contractor for a period of fifteen (15) days after receiving written notice from the Contractor of its intent to terminate hereunder, the Contractor may terminate performance under this Contract by written notice to the Owner. In such event, the Contractor shall be entitled to recover from the Owner as though the Owner had terminated the Contractor's performance under this Contract for convenience pursuant to Subparagraph 12.2.1 hereunder.

#### **12.2 Termination by the Owner**

##### **12.2.1 For Convenience**

12.2.1.1 The Owner may for any reason whatsoever terminate performance under this Contract by the Contractor for convenience. The Owner shall give written notice of such termination to the Contractor specifying when termination becomes effective.

12.2.1.2 The Contractor shall incur no further obligations in connection with the Work and the Contractor shall stop Work when such termination becomes effective. The Contractor shall also terminate outstanding orders and subcontracts. The Contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders. The Owner may direct the Contractor to assign the Contractor's right, title and interest under terminated orders or subcontracts to the Owner or its designee.

12.2.1.3 The Contractor shall transfer title and deliver to the Owner such completed or partially completed Work and materials, equipment, parts, fixtures, information and Contract rights as the Contractor has.

##### **12.2.1.4**

- (a) The Contractor shall submit a termination claim to the Owner specifying

the amounts due because of the termination for convenience together with costs, pricing or other data required by the Owner. If the Contractor fails to file a termination claim within six (6) months from the effective date of termination, the Owner shall pay the Contractor, an amount derived in accordance with subparagraph (c) below.

(b) The Owner and the Contractor may agree to the compensation, if any, due to the Contractor hereunder.

(c) Absent agreement to the amount due to the Contractor, the Owner shall pay the Contractor the following amounts:

(i) Contract prices for labor, materials, equipment and other services provided under this Contract;

(ii) Reasonable costs incurred in preparing to perform and in performing the terminated portion of the Work, and in terminating the Contractor's performance, plus a fair and reasonable allowance for overhead and profit thereon (such profit shall not include anticipated profit or consequential damages); provided however, that if it appears that the Contractor would have not profited or would have sustained a loss if the entire Contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss, if any;

(iii) Reasonable costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to Subparagraph 12.2.1.2 of this Paragraph. These costs shall not include amounts paid in accordance with other provisions hereof.

The total sum to be paid the Contractor under this Subparagraph 12.2.1 shall not exceed the total Contract Price, as properly adjusted, reduced by the amount of payments otherwise made, and shall in no event include duplication of payment.

## **12.2.2 For Cause**

12.2.2.1 If the Contractor persistently or repeatedly refuses or fails to perform the Work in a timely manner, supply enough properly skilled workers, supervisory personnel or proper equipment or materials, or if it fails to make prompt payment to Subcontractors or for materials or labor, or persistently disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or otherwise is guilty of a substantial violation of a material provision of this Contract (collectively "Breach"), then the Owner may, after written notice to the Contractor and a failure by Contractor within fifteen (15) days of the date of such written notice to cure the Breach, and without prejudice to any other right or remedy, terminate the



employment of the Contractor and take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon owned by the Contractor and may finish the Work by whatever methods it may deem expedient, including but not limited to use of the surety bonds. In such case, the Contractor shall not be entitled to receive any further payment until the Work is finished.

12.2.2.2 If the unpaid balance of the Contract Price exceeds the cost of finishing the work, such excess shall be paid to the Contractor. If such costs exceed the unpaid balance, the Contractor shall pay the difference to the Owner. This obligation for payment shall survive the termination of the Contract.

12.2.2.3 In the event the employment of the Contractor is terminated by the Owner for cause pursuant to Subparagraph 12.2.2 and it is subsequently determined by a Court of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a Termination for Convenience under Subparagraph 12.2.1 and the provisions of Subparagraph 12.2.1 shall apply.

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## **ARTICLE XIII**

### **OWNER'S RIGHT TO SUSPEND CONTRACTOR'S PERFORMANCE**

**13.1** The Owner shall have the right at any time to direct the Contractor to suspend its performance, or any designated part thereof, for any reason whatsoever, or without reason, for a cumulative period of up to sixty (60) calendar days. If any such suspension is directed by the Owner, the Contractor shall immediately comply with same.

**13.2** In the event the Owner directs a suspension of performance under this Paragraph 13, through no fault of the Contractor, the Owner shall pay the Contractor as full compensation for such suspension the Contractor's reasonable costs, actually incurred and paid, of:

- (i) demobilization and remobilization, including such costs paid to subcontractors;
- (ii) preserving and protecting work in place;
- (iii) storage of materials or equipment purchased for the Project, including insurance thereon;
- (iv) performing in a later, or during a longer, time frame than that contemplated by this Contract.

**[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]**

## 14.1 Insurance

14.2 The limits of liability for the insurance required by the General conditions shall provide coverage for not less than the following amounts or greater where required by laws and regulations;

- A. Statutory Workers Compensations Insurance
  - Employers' Liability
  - Bodily Injury Accident - \$100,000 Each Accident
  - Bodily Injury by Disease - \$500,000 Policy Limit
  - Bodily Injury by Disease - \$100,000 Each Employee
- B. Comprehensive General Liability Insurance
  - \$500,000 Limit of Liability per Occurrence for bodily injury and property damage
- C. Auto Liability Insurance
  - \$500,000 Limit of liability per occurrence for bodily injury and property damage. Comprehensive form covering all owned, non-owned and hired vehicles
- D. Umbrella Liability Insurance- \$1,000,00 limit of liability
- E.

**[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]**

## **ARTICLE XV**

### **MISCELLANEOUS**

#### **15.1 Governing Law**

15.1.1 The Contract shall be governed by the law of the State of Georgia, exclusive of its choice of law provisions. In the event of any litigation arising from this Contract, venue shall be in any court of competent jurisdiction of the County of Fulton, Georgia.

#### **15.2 Successors and Assigns**

15.2.1 The Owner and Contractor bind themselves, their successors, assigns and legal representatives to the other party hereto and to successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in this Contract. The Contractor shall not assign this Contract without written consent of the Owner.

#### **15.3 Surety Bonds**

15.3.1 The Contractor shall furnish separate performance and payment bonds to the Owner. Each bond shall set forth a penal sum in an amount not less than the Contract Price. Each bond furnished by the Contractor shall incorporate by reference the terms of this Contract as fully as though they were set forth verbatim in such bonds. In the event the Contract Price is adjusted by Change Order executed by the Contractor, the penal sum of both the performance bond and the payment bond shall be deemed increased automatically by like amount. The performance and payment bonds furnished by the Contractor shall be in form suitable to the Owner and Owner's legal counsel and shall be executed by a surety, or sureties, reasonably suitable to the Owner.

#### **15.4 Severability**

15.4.1 If any provision; of this Contract shall be deemed invalid or unenforceable by a court of competent jurisdiction, such provision shall be modified to the extent necessary to cure such invalidity or unenforceability; provided, however, if such modification is not possible without creating a material conflict with another provision of this Contract, such invalid or unenforceable provision shall be deemed stricken from this Contract.

#### **15.5 Amendment & Waiver**

15.5.1 This Contract may not be amended, modified or waived except by a writing signed by an authorized representative of each part. No waiver of or any failure or omission to enforce any of the provisions hereof by the Owner shall be construed to be a waiver of the Owner to enforce any such provisions or any other provision(s) of this Contract.

## **15.6 Notices**

15.6.1 Notices. Where a party is required or permitted to give notice to the other pursuant to this Contract, such notice is deemed given: (i) when delivered in hand; (ii) three (3) days after it is mailed by registered or certified United States mail, return receipt requested, postage prepaid to the address listed below; or (iii) one (1) day after it is sent by courier or facsimile transmission if receipt is verified by the receiving party and such notice is addressed to the Party to receive such notice. Any notice required to be given by or on behalf of either party to the other shall be sent to the address specified above, or as such other address as may be specified, from time to time, by notice in the manner herein set forth.

Owner:

City Manager  
City of Forest Park  
745 Forest Parkway  
Forest Park, GA 30297

Contractor:

Quintech Solutions, Inc.  
102 Sangaree Park Court  
Suite 4  
Summerville, SC 29486

## **15.7 Time is of the Essence**

15.7.1 Time is of the essence for this Contract, the Contract Documents, and all supporting documents.

## **15.8 Participation in Federal Work Authorization Program**

15.8.1 The Contractor shall participate in the federal work authorization program throughout the contract period, as provided in O.C.G.A. § 13-10-91. The Contractor shall be required to, at the time of the contract, provide a signed, notarized affidavit, attesting that the it has registered with, is authorized to use, and uses the federal work authorization program; it will continue to use the federal work authorization program throughout the contract period; and it will contract for the physical performance of services in satisfaction of such contract only with subcontractors who present an affidavit containing the above information. Further, to the extent that a subcontractor is utilized, the Subcontractor's federal work authorization program user identification number and the date of authorization shall be included in the affidavit.

**[SIGNATURES APPEAR ON FOLLOWING PAGE]**

**CITY OF FOREST PARK,  
GEORGIA**

\_\_\_\_\_  
(Typed Name)

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

(Signature)

\_\_\_\_\_  
(Printed Name, Title and Address)

\_\_\_\_\_  
(Date Of Execution)

Attest: \_\_\_\_\_

(SEAL)

**QUINTECH SOLUTIONS, INC.**

\_\_\_\_\_  
(Typed Name)

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

(Signature)

\_\_\_\_\_  
(Printed Name, Title and Address)

\_\_\_\_\_  
(Date of Execution)

Attest: \_\_\_\_\_

(SEAL)

**AMENDMENT TO THE URBAN COOPERATION AGREEMENT BETWEEN  
CLAYTON COUNTY & THE CITY OF FOREST PARK**

AMENDMENT TO THE URBAN AMENDMENT COOPERATION AGREEMENT BETWEEN CLAYTON COUNTY, GEORGIA, A POLITICAL SUBDIVISION OF THE STATE OF GEORGIA (THE COUNTY) AND THE CITY OF FOREST PARK (A POLITICAL SUBDIVISION OF THE STATE OF GEORGIA ("THE CITY")) FOR JOINT PARTICIPATION IN THE COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM, HOME INVESTMENT PARTNERSHIPS (HOME) PROGRAM, THE EMERGENCY SOLUTIONS GRANT (ESG) PROGRAM

**THIS AGREEMENT** is made and entered into this \_\_\_\_ day of \_\_\_\_\_ 2018, by and between the County of Clayton, a political subdivision of the State of Georgia (hereinafter referred to as the "County") and the City of Forest Park, a political subdivision of the State of Georgia (hereinafter referred to as the "City").

**WHEREAS**, The United States Department of Housing and Urban Development (hereinafter referred to as "HUD") has determined that Clayton County is eligible, as an Urban County to receive Entitlement Community Development Block Grant (CDBG) funds under Title 1 of the Housing and Community Development Act of 1974, as amended, to address certain needs of low and moderate income persons with CDBG funds [and any program income derived from the expenditure of CDBG funds]; and

**WHEREAS**, on September 17, 1997, the County and City entered into a Cooperation Agreement (the Original Cooperation Agreement) in order for the County to requalify as an Urban County and submitted said Cooperation Agreement to the U.S. Department of Housing and Urban Development (HUD); and

**WHEREAS**, HUD Notice: CPD-18-02 Issued March 22, 2018 states that periodically, statutory regulatory changes may require Urban Counties to amend their Agreements to add new provisions.

**NOW THEREFORE**, in consideration of the mutual promises, recitals and other provisions hereof, the Parties agree as follows:

1. The Original Cooperation Agreement is hereby amended to add a new Section "18" that reads as follows:

18. The City may not sell, trade, or otherwise transfer all or any portion of CDBG funds to another metropolitan city, urban county, unit of general local government, or Indian tribe, or insular area that directly or indirectly receives CDBG funds in exchange for any other funds, credits or non-Federal considerations, but must use such funds for activities eligible under Title 1 of the Act.

2. All other provisions of the Original Cooperation Agreement not specifically amended herein remain in full force and effect.

**IN WITNESS WHEREOF**, the Parties hereto have executed this Amendment Number One to the Cooperation Agreement to be executed and attested by their proper officer thereunder duly authorized, and their official seals to be hereunto affixed, all as of the day first above written.

CITY OF FOREST PARK,  
GEORGIA

CLAYTON COUNTY, GEORGIA

\_\_\_\_\_  
NAME

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NAME

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TITLE

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TITLE

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