



City of Cartersville

P.O Box 1390 – 10 Public Square – Cartersville, Georgia 30120
Telephone: 770-387-5616 – Fax 770-386-5841 – www.cityofcartersville.org

COUNCILPERSONS:

Matt Santini – Mayor
Dianne Tate – Mayor Pro Tem
Kari Hodge
Lindsey McDaniel, Jr.
Lori Pruitt
Jayce Stepp
Louis Tonsmeire, Sr.

AGENDA

Council Chamber, Third Floor of City Hall– 7:00
PM – 7/7/2011
Work Session – 6:00 PM

CITY MANAGER:

Sam Grove

CITY ATTORNEY:

David Archer

CITY CLERK:

Connie Keeling

I. Opening of Meeting

- Invocation
- Pledge of Allegiance
- Roll Call

II. Regular Agenda

A. Council Meeting Minutes

1. June 16, 2011 (Page 3-27)

[Attachments](#)

B. Public Hearing - 2nd Reading of Zoning/Annexation Requests

1. Rezoning application by Henry Floyd for property located at the intersection of West Avenue and Euharlee Road from O-C to G-C (Page 28-38)

[Attachments](#)

2. Special Use Application by Roy Rozanske for property located at 324 W. Porter Street to allow a salvage yard to operate in the H-I zoning district. (Page 39-50)

[Attachments](#)

C. Other

1. GA DOT Letter Of Concurrence: Leake Mounds-Etowah Riverwalk (Page 51-53)

[Attachments](#)

D. Contracts/Agreements

1. Construction Manager At Risk: Potts Construction/Graham Commercial Contractors (Page 54-123)

[Attachments](#)

E. Bid Award/Purchases

1. USA Software for Police Department (Page 124-129)

[Attachments](#)

2. Electric Line Reclosers (Page 130-132)

[Attachments](#)

3. FY 2011-2012 Audit Services (Page 133-138)

[Attachments](#)

4. Rebuild Water Recycle Pumps at Water Pollution Control Plant (Page 139)

[Attachments](#)

F. Engineering Services

1. Water Main Crossing Sugar Valley Road (Page 140-145)

[Attachments](#)

G. Change Order

1. C & L Contractors for Water Pollution Control Plant Pipe Replacement (146)

[Attachments](#)

2. Reroofing Distribution and Collections Building (Page 147-148)

[Attachments](#)

H. Presentations

1. Citizen Survey Results (Page 149-151)

[Attachments](#)



City of Cartersville

City Council Meeting
7/7/2011 7:00:00 PM
June 16, 2011

| | |
|---|--|
| SubCategory: | Council Meeting Minutes |
| Department Name: | Clerk |
| Department Summary Recommendation: | Attached are the minutes for your review and approval. |
| City Manager's Remarks: | Minutes have been generated and reviewed by staff and are recommended for your approval. |
| Financial/Budget Certification: | |
| Legal: | |
| Associated Information: | |

City Council Meeting
10 N. Public Square
June 16, 2011
6:00 P.M. – Work Session 7:00 P.M.

I. Opening Meeting

Invocation by Council Member Tate

Pledge of Allegiance led by Mayor Santini

The City Council met in Regular Session with Matt Santini, Mayor presiding and the following present: Kari Hodge, Council Member Ward One; Jayce Stepp, Council Member Ward Two; Louis Tonsmeire, Sr., Council Member Ward Three; Lindsey McDaniel Council Member Ward Four; Dianne Tate, Council Member Ward Five; Lori Pruitt, Council Member Ward Six; Sam Grove, City Manager; Connie Keeling, City Clerk and Keith Lovell, Assistant City Attorney. David Archer, City Attorney was absent.

II. Regular Agenda

A. Council Meeting Minutes

1. June 2, 2011

A motion to approve the June 2, 2011 City Council Meeting minutes as presented was made by Council Member Tate and seconded by Council Member Tonsmeire. Motion carried unanimously. Vote 6-0

B. Second Reading of Ordinances

1. Amendment to City Charter Regarding Ward Redistricting

Randy Mannino, Planning and Development Director stated that the City of Cartersville is required to submit a new ward boundary map based on the 2011 Census. Mr. Mannino stated that the proposed districts are in compliance with the justice department requirements for minority and populations and racial deviation, and maintained to the extent possible use of census blocks as the basis of the wards. Mr. Mannino stated that the map is basically the same as our current map; however there are some areas of change which he described and presented a map with the marked changes to the Mayor and Council. A public notice has been published to run May 26, June 2, and June 9, 2011 as required by law. Mr. Mannino stated that adoption of a ward map, requires the city to amend its Charter per state law and requires actions by City Council to be two public hearings and adoption of Ward Boundaries Changes in a city ordinance. Once approved the City Attorney will forward this to the Justice Department for preclearance and if a response is received by August 28, 2011, the November 2011 elections will be held pursuant to the new ward map; if not the November election will be held pursuant to the existing

map. Mr. Mannino stated that there have been no changes or additions since the first reading and recommended approval of the Ward Map and Ordinance.

Mayor Santini declared a Public Hearing for the second reading of the 2011 Redistricting Ward Boundary Map open. After no comments Mayor Santini declared the public hearing closed.

A motion to approve amendment to the Charter (Ordinance No. 16-11) pertaining to Ward Boundary Changes was made by Council Member Stepp and seconded by Council Member Tonsmeire. Motion carried unanimously. Vote 6-0

Ordinance
of the
City of Cartersville, Georgia

Ordinance No. 16-11

NOW BE IT AND IT IS HEREBY ORDAINED by the Mayor and City Council of the City of Cartersville, Georgia, that the CITY OF CARTERSVILLE CHARTER, CHAPTER 8. ELECTIONS. Sec. 8-5. Ward Boundaries is hereby amended by deleting said Section in its entirety and replacing it with the following:

1.

“Sec. 8-5. Ward Boundaries

(A) As required by the charter, the city is hereby divided into six (6) wards as follows:

Ward 1

All that tract or parcel of land which is bound by visible features which are readily distinguishable upon the ground, such as streets, railroad tracks, streams, lakes and ridges, and which are indicated upon official department of transportation maps including census tracts and census blocks, metes and bounds property descriptions; or the city limits of the City of Cartersville existing as of JUNE 16, 2011 as shown colored in green on that map entitled “CARTERSVILLE, GEORGIA AND VICINITY; PROPOSED WARD BOUNDARIES” adopted by city council June 16, 2011 includes annexations approved by the Justice Department since April 1, 2011, attached hereto and included by reference as Exhibit A.

Said ward boundaries for Ward 1 are more particularly described as follows:

**Bartow GA County
Census Tract 9604.02**

Blocks 3039 through 3041, 3051 through 3055, 3059
Census Tract 9605.00
Blocks 1002, 1014, 1017, 1045
Census Tract 9607.00
Blocks 1028, 1033, 1035, 1036, 1039, 1064, 1068 through 1075, 1084 through 1086, 1088, 1096 through 1099
Blocks 1100 through 1106, 1113 through 1115, 1118, 1119, 1120, 1127 through 1129, 1137
Blocks 2000 through 2002, 2004 through 2008, 2011 through 2015, 2017, 2018, 2023, 2025 through 2032, 2034, 2035, 2036, 2038 through 2040, 2060, 2062 through 2064
Blocks 3006, 3007, 3010, 3015, 3022, 3023, 3025 through 3030, 3032 through 3035, 3037, 3039 through 3041, 3045, 3047 through 3050
Blocks 4000, 4003 through 4014, 4016 through 4020, 4022, 4024
Blocks 5000 through 5004, 5007 through 5010

Ward 2

All that tract or parcel of land which is bound by visible features which are readily distinguishable upon the ground, such as streets, railroad tracks, streams, lakes and ridges, and which are indicated upon official department of transportation maps including census tracts and census blocks, metes and bounds property descriptions; or the city limits of the City of Cartersville existing as of JUNE 16, 2011 as shown colored in blue on that map entitled “CARTERSVILLE, GEORGIA AND VICINITY; PROPOSED WARD BOUNDARIES” adopted by city council June 16, 2011 includes annexations approved by the Justice Department since April 1, 2011”, attached hereto and included by reference as Exhibit A.

Said ward boundaries for Ward 2 are more particularly described as follows:

Bartow GA County

Census Tract 9606.00
Blocks 2016, 2018 through 2027
Blocks 4000 through 4013, 4015 through 4029
Blocks 5014 through 5030
That part of Block 5033, being described as follows:

True point of beginning is the intersection of the southern right of way of Old Mill Road with the Western Right of Way of Pine Grove Road;
Thence travel southerly along the western right of way of Pine Grove Road to its intersection with the northern right of way of Parkview Drive to a point;
Thence from said point of intersection travel westerly along the north right of way of Parkview Drive to its intersection with the western boundary line of land lot 667, 4th District, 3rd Section to a point;
Thence traveling from said point along the western boundary line of land lot 667 and 630 North 01 degrees 32 minutes 26 seconds East a distance of 507.16 feet to a point;

Thence traveling from said point, along the western boundary line of land lot 630, 4th District, 3rd Section North 01 degrees 32 minutes 10 seconds East a distance of 384.52 feet to a point;

Thence traveling from said point South 89 degrees 54 minutes and 06 seconds East a distance of 1296.88 feet to a point on the western boundary line of land lot 631, 4th District, 3rd Section to a point;

Thence traveling from said point southerly along the western boundary of land lot 631, 4th District, 3rd Section South 0 degrees 05 minutes 35 seconds East a distance of 164.89 feet to a point, said point being an iron pin;

Thence traveling from said point, being an iron pin North 89 degrees 54 minutes 00 seconds west a distance of 50 feet to a point marked by a concrete monument;

Thence traveling from said point being a concrete monument North 0 degrees 05 minutes 30 seconds west a distance of 944.88 feet to a point, being a concrete monument on the southern right of way line of Old Mill;

Thence traveling from said point being a concrete monument easterly along the southerly right of way of Old Mill Road to its intersection with the western right of way of Pine Grove Road, to a point, said point being the true point of beginning.

Blocks 5039, 5040, 5042, 5043, 5044, 5046, 5048, 5049, 5079

Blocks 6027, 6028, 6033, 6034, 6037 through 6039

Census Tract 9607.00

Blocks 1132, 1133

Blocks 5035, 5040 through 5054

Ward 3

All that tract or parcel of land which is bound by visible features which are readily distinguishable upon the ground, such as streets, railroad tracks, streams, lakes and ridges, and which are indicated upon official department of transportation maps; or the city limits of the City of Cartersville existing as of JUNE 16, 2011 as shown colored in purple on that map entitled "CARTERSVILLE, GEORGIA AND VICINITY; PROPOSED WARD BOUNDARIES" adopted by city council June 16, 2011 includes annexations approved by the Justice Department since April 1, 2011", attached hereto and included by reference as Exhibit A.

Said ward boundaries for Ward 3 are more particularly described as follows:

Bartow GA County

Census Tract 9606.00

Blocks 5004 through 5010, 5011, 5013, 5031

All of Block 5033, less and except the following:

True point of beginning is the intersection of the southern right of way of Old Mill Road with the Western Right of Way of Pine Grove Road;
Thence travel southerly along the western right of way of Pine Grove Road to its intersection with the northern right of way of Parkview Drive to a point;
Thence from said point of intersection travel westerly along the north right of way of Parkview Drive to its intersection with the western boundary line of land lot 667, 4th District, 3rd Section to a point;
Thence traveling from said point along the western boundary line of land lot 667 and 630 North 01 degrees 32 minutes 26 seconds East a distance of 507.16 feet to a point;
Thence traveling from said point, along the western boundary line of land lot 630, 4th District, 3rd Section North 01 degrees 32 minutes 10 seconds East a distance of 384.52 feet to a point;
Thence traveling from said point South 89 degrees 54 minutes and 06 seconds East a distance of 1296.88 feet to a point on the western boundary line of land lot 631, 4th District, 3rd Section to a point;
Thence traveling from said point southerly along the western boundary of land lot 631, 4th District, 3rd Section South 0 degrees 05 minutes 35 seconds East a distance of 164.89 feet to a point, said point being an iron pin;
Thence traveling from said point, being an iron pin North 89 degrees 54 minutes 00 seconds west a distance of 50 feet to a point marked by a concrete monument;
Thence traveling from said point being a concrete monument North 0 degrees 05 minutes 30 seconds west a distance of 944.88 feet to a point, being a concrete monument on the southern right of way line of Old Mill;
Thence traveling from said point being a concrete monument easterly along the southerly right of way of Old Mill Road to its intersection with the western right of way of Pine Grove Road, to a point, said point being the true point of beginning.

Blocks 5034 through 5038, 5041, 5045, 5047, 5050, 5051, 5058, 5060 through 5062, 5064, 5066, 5069, 5071, 5072, 5074 through 5078, 5084, 5087, 5089, 5090, 5092, 5094, 5097

Blocks 6025, 6026

Census Tract 9608.03

Blocks 3003, 3007 through 3009, 3012 through 3014, 3016, 3020 through 3025, 3047 through 3053, 3055, 3056, 3058 through 3062, 3067, 3070 through 3074, 3077, 3091, 3093, 3094, 3097, 3098

Blocks 3103, 3104, 3110, 3113, 3114, 3116, 3135, 3143, 3146, 3148, 3152, 3155, 3156

Census Tract 9609.01

Blocks 1000 through 1003

Blocks 2000, 2003 through 2010, 2012, 2024, 2032, 2073, 2074, 2078, 2082

Census Tract 9609.02

Blocks 2018, 2019, 2021 through 2027, 2029, 2031, 2034

Ward 4

All that tract or parcel of land which is bound by visible features which are readily distinguishable upon the ground, such as streets, railroad tracks, streams, lakes and ridges, and which are indicated upon official department of transportation maps including census tracts and census blocks, metes and bounds property descriptions; or the city limits of the City of Cartersville existing as of JUNE 16, 2011 as shown colored in red on that map entitled “CARTERSVILLE, GEORGIA AND VICINITY; PROPOSED WARD BOUNDARIES” adopted by city council June 16, 2011 includes annexations approved by the justice department since April 1, 2011”, attached hereto and included by reference as Exhibit A.

Said ward boundaries for Ward 4 are more particularly described as follows:

Bartow GA County

Census Tract 9605.00

Blocks 1027 through 1033, 1035, 1044, 1046, 1050, 1052

Census Tract 9606.00

Blocks 1062, 1084 through 1086, 1096, 1097

Blocks 2000 through 2015, 2017

Blocks 3000 through 3024

Blocks 6000 through 6003, 6005, 6006, 6030 through 6032

Census Tract 9607.00

Blocks 2041 through 2059, 2061

Blocks 4001, 4002, 4015, 4021, 4023

Blocks 5005, 5006, 5011 through 5034, 5036, 5037, 5038, 5039

Ward 5

All that tract or parcel of land which is bound by visible features which are readily distinguishable upon the ground, such as streets, railroad tracks, streams, lakes and ridges, and which are indicated upon official department of transportation maps; or the city limits of the City of Cartersville existing as of JUNE 16, 2011 as shown colored in orange on that map entitled “CARTERSVILLE, GEORGIA AND VICINITY; PROPOSED WARD BOUNDARIES” adopted by city council June 16, 2011 includes annexations approved by the Justice Department since April 1, 2011”, attached hereto and included by reference as Exhibit A.

Said ward boundaries for Ward 5 are more particularly described as follows:

Bartow GA County

Census Tract 9605.00

Blocks 1024 through 1026

Blocks 4028 through 4030, 4036, 4037, 4039, 4040, 4043, 4044

Census Tract 9606.00

Blocks 1000 through 1038, 1043 through 1056, 1059 through 1061, 1063 through 1083, 1087 through 1091, 1095, 1098, 1099

Blocks 1100 through 1104, 1106, 1107
Blocks 6004, 6007 through 6014, 6016, 6017, 6019, 6020 through 6022, 6024, 6029,
6035, 6036, 6040
Census Tract 9609.02
Blocks 1002, 1004
Blocks 2000 through 2003
Blocks 4014 through 4016, 4018, 4020 through 4022, 4024, 4026 through 4032, 4035,
4038, 4040, 4041, 4044, 4045

Ward 6

All that tract or parcel of land which is bound by visible features which are readily distinguishable upon the ground, such as streets, railroad tracks, streams, lakes and ridges, and which are indicated upon official department of transportation maps; or the city limits of the City of Cartersville existing as of JUNE 16, 2011 as shown colored in yellow on that map entitled “CARTERSVILLE, GEORGIA AND VICINITY; PROPOSED WARD BOUNDARIES” adopted by city council June 16, 2011 includes annexations approved by the Justice Department since April 1, 2011”, attached hereto and included by reference as Exhibit A.

Said ward boundaries for Ward 6 are more particularly described as follows:

Bartow GA County

Census Tract 9601.02
Blocks 1046 through 1049
Blocks 3045, 3046
Census Tract 9604.01
Blocks 1004, 1005, 1007 through 1010, 1012, 1014 through 1016, 1033, 1035, 1036,
1038, 1041, 1043, 1046, 1049
Blocks 2003 through 2005, 2011, 2013 through 2015, 2026, 2028 through 2031, 2036
through 2041, 2056, 2059, 2060, 2063, 2068, 2069, 2070, 2075, 2076, 2079, 2080,
2082, 2083, 2086, 2088, 2091 through 2094, 2096
Blocks 2106, 2107, 2111, 2113
Census Tract 9604.02
Blocks 1007, 1009, 1010, 1014, 1015, 1020, 1039, 1040, 1042, 1046, 1048, 1053, 1054,
1056, 1058 through 1060, 1062, 1063, 1068, 1072 through 1074, 1077, 1082 through 1085,
1087 through 1089
Blocks 3001 through 3005, 3007, 3060, 3062, 3063, 3065, 3067, 3069, 3075, 3076, 3079,
3080, 3082, 3083, 3085, 3088 through 3098
Blocks 3100 through 3102
Census Tract 9605.00
Blocks 1013
Blocks 2006, 2007 2009, 2014 through 2022, 2026 through 2028, 2030
Blocks 3031
Census Tract 9607.00

Blocks 3000, 3002, 3003, 3008, 3009, 3013, 3017, 3019, 3042 through 3044, 3046, 3053

(B) Any property within the City limits of the City of Cartersville at the time of adoption of this Ordinance shall become a part of and be included in the ward that is contiguous with; if contiguous with more than a single ward, it shall become part of the ward that has the least population based on the 2011 U.S. Census data.

(C) Any property annexed after the adoption of this Ordinance, shall become a part of and be included in the ward that it is contiguous with; if contiguous with more than a single ward, it shall become part of the ward with the least population according to the 2011 U.S. Census data.

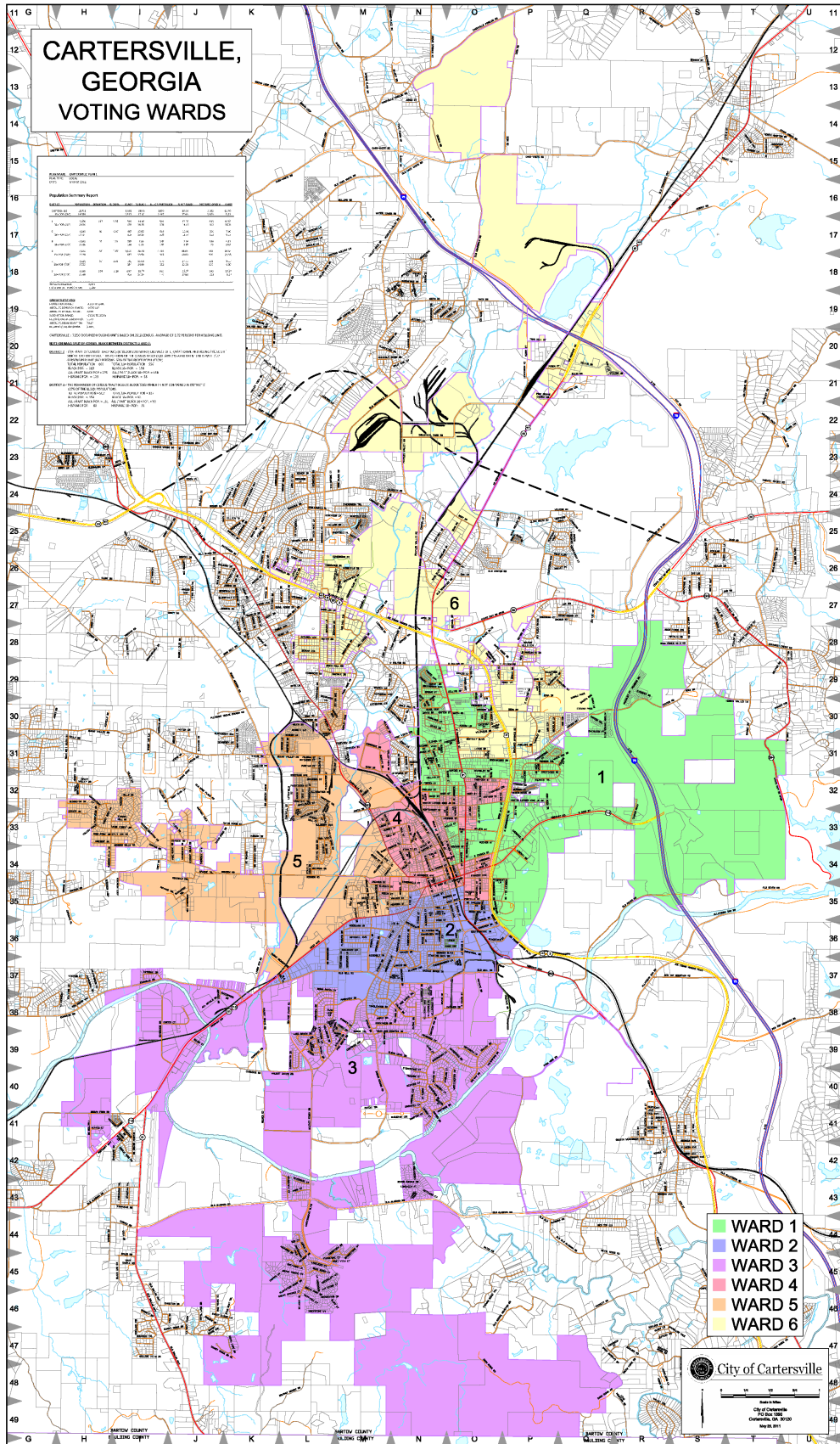
(D) This Ordinance and map shall become effective after approval by the United States Justice Department, however if said approval is not received before August 28, 2011, then the November 2011 election shall be conducted based on the currently existing ward boundaries as approved by the United States Justice Department on October 21, 2003.

BE IT AND IT IS HEREBY ORDAINED.

**ADOPTED this the 2nd day of June 2011. First Reading
ADOPTED this the 16th day of June 2011. Second Reading.**

**/s/ Matthew Santini
Matthew Santini
Mayor**

**ATTEST:
/s/ Connie Keeling
Connie Keeling
City Clerk**



2. Budget Ordinance for Fiscal Year 2011-2012

Tom Rhinehart, Finance Director presented the Fiscal Year 2011-2012 budget proposal to the Mayor and Council. He stated that there were changes since the first reading. Mr. Rhinehart stated that the updated proposed budget is a 10.72% increase from last years' budget and totals \$157,935,080. The largest increase occurred in the capital area with a \$12.8 million increase. There were no city property tax increases, however a proposed 5% rate increase was added in the water and sewer fund. The budget continued with the 5-year capital plan. This budget includes 15 positions added (12 positions being Fire Personnel for Station 4 to be hired April 2012) along with debt issued in the SPLOST and Water and Sewer Funds. Also incorporated into the budget was the recycling program to begin in January 2012. Mr. Rhinehart stated that this is a balanced budget and recommended approval.

A motion to approve Fiscal Year 2011-2012 Budget as presented, Ordinance No. 17-11 was made by Council Member Tonsmeire and seconded by Council Member Tate. Motion carried. Vote 5-1 with Council Member Pruitt voting against.

Ordinance

of the

City of Cartersville, Georgia

Ordinance No. 17-11

NOW BE IT HEREBY ORDAINED by the Mayor and City Council that pursuant to the City of Cartersville Charter; the City of Cartersville Fiscal Year 2011 - 2012 budget.

2011 - 2012 Budget Summary

| <u>General Fund</u> | <u>Revenues</u> | <u>Expenditures</u> |
|-----------------------------------|------------------------|----------------------------|
| Revenues | \$39,532,415 | |
| Expenditures: | | |
| Legislative | | \$19,562,380 |
| Administration | | \$ 1,012,265 |
| Finance Dept. | | \$ 1,025,760 |
| City Clerk Dept. | | \$ 691,735 |
| Police | | \$ 5,170,490 |
| Fire | | \$ 5,393,635 |
| Public Works | | \$ 2,497,435 |
| Recreation | | \$ 3,249,595 |
| Planning & Development | | \$ 929,120 |

Special Revenue Funds

| | | |
|--------------------------|--------------|--------------|
| SPLOST – 2003 | \$ 5,200,000 | \$ 5,200,000 |
| SPLOST – 2007 | \$12,555,000 | \$12,555,000 |
| DEA | \$ 433,690 | \$ 433,690 |
| State Forfeiture | \$ 3,000 | \$ 3,000 |
| Hotel/Motel Tax | \$ 340,000 | \$ 340,000 |
| Motor Vehicle Rental Tax | \$ 40,000 | \$ 40,000 |
| Grant Funds | \$ 1,319,015 | \$ 1,319,015 |
| Impact Fees | \$ 24,935 | \$ 24,935 |
| Development Fees | \$ 5,000 | \$ 5,000 |

Enterprise Funds

| | | |
|-------------------------------|--------------|--------------|
| Fiber Optics | \$ 1,646,900 | \$ 1,646,900 |
| Electric | \$43,600,295 | \$43,600,295 |
| Gas | \$28,845,855 | \$28,845,855 |
| Solid Waste | \$ 2,587,900 | \$ 2,587,900 |
| Stormwater | \$ 1,181,000 | \$ 1,181,000 |
| Water & Sewer | \$19,051,945 | \$15,297,140 |
| Water Pollution Control Plant | | \$ 1,993,715 |
| Water Treatment Plant | | \$ 1,761,090 |

BE IT AND IT IS HEREBY ORDAINED.

**ADOPTED, this 2nd day of June 2010. First Reading.
ADOPTED this 16th day of June 2010. Second Reading.**

**/s/ Matthew J. Santini
Matthew J. Santini
Mayor**

ATTEST:

**/s/ Connie Keeling
Connie Keeling
City Clerk**

3. Amendment to Utilities Ordinance Regarding Water/Sewer Rates

Tom Rhinehart, Finance Director stated that in order to balance the FY 2012 Water and Sewer Fund budget, a 5% proposed increase in water and sewer rates is needed. The increase will allow the City to continue to maintain the existing system as well as update the system by

completing projects that are needed to fulfill the needs of existing customers along with any future needs of the water and sewer system. He presented data showing that even with this small increase in rates, the City of Cartersville will still have one of the lowest water and sewer rates in the surrounding area. Mr. Rhinehart stated that there had been no changes or additions since the first reading and recommended approval of the proposed rate increase to begin July 1, 2011.

A motion to approve Ordinance No. 18-11 as presented was made by Council Member Tonsmeire and seconded by Council Member Stepp. Motion carried unanimously. Vote 6-0

Ordinance
of the
City of Cartersville, Georgia
Ordinance No. 18-11

Now be it and it is hereby **ORDAINED** by the Mayor and City Council of the City of Cartersville, that the **CITY OF CARTERSVILLE CODE OF ORDINANCES CHAPTER 24. UTILITIES. ARTICLE IV. WATER SERVICE Section 24-64 (a) and (b) Water and Sewage Rate and Section 24-147 (a.) Sewage Rates** is hereby amended by deleting said Section 24-64 (a) and (b), and Section 24-147 (a) in their entirety and replacing them with the following:

Sec. 24-64. Water & Sewage Utility Rates.

| (a.) Water Monthly Billing | City | Outside City |
|--|--------------------|--------------------|
| Minimum bill according to meter size: | | |
| 5/8" or 3/4" | \$ 6.00 | \$ 11.00 |
| 3/4" full flow | \$ 9.00 | \$ 16.00 |
| 1" | \$ 14.00 | \$ 26.00 |
| 1 1/4" or 1 1/2" | \$ 28.00 | \$ 48.00 |
| 2" | \$ 54.00 | \$ 99.00 |
| 4" | \$101.00 | \$185.00 |
| 6" | \$156.00 | \$280.00 |
| 8" | \$200.00 | \$387.00 |
| Plus consumption as follows: | | |
| (i) Residential Meters | \$1.26/100 cu. ft. | \$2.52/100 cu. ft. |
| (a) 0 – 10 consumptions per month | \$2.57/100 cu. ft. | \$3.24/100 cu. ft. |
| (b) 11 – 14 consumptions per month | \$4.66/100 cu. ft. | \$4.66/100 cu. ft. |
| (c) 15 – 19 consumptions per month | \$6.50/100 cu. ft. | \$6.50/100 cu. ft. |
| (d) 20 + consumptions per month | \$2.09/100 cu. ft. | \$3.08/100 cu. ft. |
| (ii) Apartments, Multiples & Commercial | \$4.66/100 cu. ft. | \$4.66/100 cu. ft. |

| | | |
|---|---------------------------|---------------------------|
| Meters (iii) Irrigation System Meters (iv) Industrial and All Other Meters | \$1.26/100 cu. ft. | \$2.52/100 cu. ft. |
|---|---------------------------|---------------------------|

| (b.) Sewage Monthly Billing | City | Outside City |
|--|---------------------------|---------------------------|
| Minimum bill according to meter size: | | |
| 5/8" or 3/4" | \$ 6.00 | \$ 6.00 |
| 3/4" full flow | \$ 9.00 | \$ 9.00 |
| 1" | \$ 14.00 | \$ 14.00 |
| 1 ¼" or 1 ½" | \$ 28.00 | \$ 28.00 |
| 2" | \$ 54.00 | \$ 54.00 |
| 4" | \$101.00 | \$101.00 |
| 6" | \$156.00 | \$156.00 |
| 8" | \$200.00 | \$200.00 |
| Plus consumption | \$1.39/100 cu. ft. | \$2.78/100 cu. ft. |

Sec. 24-147. Sewage rates.

| (a.) Sewage Monthly Billing | City | Outside City |
|--|---------------------------|---------------------------|
| Minimum bill according to meter size: | | |
| 5/8" or 3/4" | \$ 6.00 | \$ 6.00 |
| 3/4" full flow | \$ 9.00 | \$ 9.00 |
| 1" | \$ 14.00 | \$ 14.00 |
| 1 ¼" or 1 ½" | \$ 28.00 | \$ 28.00 |
| 2" | \$ 54.00 | \$ 54.00 |
| 4" | \$101.00 | \$101.00 |
| 6" | \$156.00 | \$156.00 |
| 8" | \$200.00 | \$200.00 |
| Plus consumption | \$1.39/100 cu. ft. | \$2.78/100 cu. ft. |

This Ordinance shall become effective on July 1, 2011.

BE IT AND IT IS HEREBY ORDAINED.

First Reading this the 2nd day of June 2011.

ADOPTED this the 16th day of June 2011. Second Reading.

/s/ Matthew J. Santini
Matthew J. Santini
Mayor

ATTEST:

/s/ **Connie Keeling**
Connie Keeling
City Clerk

C. Public Hearing – 1st Reading of Zoning/Annexation Requests

1. Rezoning application by Henry Floyd for property located at the intersection of West Avenue and Euharlee Road from O-C to G-C.

Mr. Randy Mannino, Planning and Development Director, stated that the Public Official Forms have been received and there are no conflicts of interest. All adjacent property owners have been notified and the required legal notices have been advertised. Mr. Mannino requested that the application and zoning ordinance be made part of the official record. Copies of the adopted procedures and zoning standards are available upon request. Mr. Mannino stated that this tract is located the intersection of West Avenue and Euharlee Road. The applicant seeks to rezone the property from medium-use commercial (O-C) to high-use commercial (G-C) to allow for a general commercial development. Mr. Mannino stated that staff had no objections and the Planning Commission had recommended approval.

Mayor Santini declared a Public Hearing for the zoning application open. Jeff Watkins, representative for applicant came forward. After no comments, Mayor Santini declared the Public Hearing closed.

No Action required on first reading.

Ordinance

of the

City of Cartersville, Georgia

Ordinance No.

Petition No. Z11-03

NOW BE IT AND IT IS HEREBY ORDAINED by the Mayor and City Council of the City of Cartersville, Georgia, that all that certain tract of land owned by Henry Floyd. Property is located at the intersection of West Avenue (SR 61/113) and Euharlee Road. Said property contains 1.58 acres located in the 4th District, 3rd Section, Land Lot(s) 634 and 663 as shown on the attached plat Exhibit "A". Property is hereby rezoned from O-C (Office Commercial) to G-C (General Commercial). Zoning will be duly noted on the official zoning map of the City of Cartersville, Georgia.

BE IT AND IT IS HEREBY ORDAINED.

**First Reading this the 16th day of June 2011.
ADOPTED this the day of. Second Reading.**

**/s/ Matthew J. Santini
Matthew J. Santini
Mayor**

ATTEST:

**/s/ Connie Keeling
Connie Keeling
City Clerk**

2. Special Use Application by Roy Rozanske for property located at 3224 W. Porter Street to allow a salvage yard to operate in the H-I zoning district.

Mr. Randy Mannino, Planning and Development Director, stated that the Public Official Forms have been received and there are no conflicts of interest. All adjacent property owners have been notified and the required legal notices have been advertised. Mr. Mannino requested that the application and zoning ordinance be made part of the official record. Copies of the adopted procedures and zoning standards are available upon request. Mr. Mannino stated that this tract located at the intersection of Porter Street and N. Erwin Street. This property includes a log-cabin style commercial building constructed approximately ten years ago. The applicant seeks a special use permit to operate a salvage yard on this property that is zoned H-I (Heavy Industrial) and has historically been used for industrial purposes. Mr. Mannino stated that the applicant has also applied to the Board of Zoning Appeals for a variance, still pending, to eliminate the buffer (50 ft along non-residential and 100 ft adjacent to residential property lines) and minimum lot size (20 acres) requirements for a salvage yard. Mr. Mannino stated that the Planning Commission had recommended denial of the special use application.

Mayor Santini declared a Public Hearing for the special use application open. After no comments, Mayor Santini declared the Public Hearing closed.

No Action required on first reading.

**Ordinance
of the
City of Cartersville, Georgia
Ordinance No.
Petition No. SU11-01**

NOW BE IT AND IT IS HEREBY ORDAINED by the Mayor and City Council of the City of Cartersville, Georgia, that all that certain tract of land owned by Malbone Farms Inc. Property is located 324 West Porter Street (corner of North Erwin Street). Said property contains 4.93 acres located in the 4th District, 3rd Section, Land Lot(s) 339, 340, 380, 381, and 382 as shown on the attached plat Exhibit "A". Property is hereby rezoned to allow operation of a salvage yard in the H-I (Heavy Industrial) portion of the property. Zoning will be duly noted on the official zoning map of the City of Cartersville, Georgia.

BE IT AND IT IS HEREBY ORDAINED.

First Reading this the 16th day of June 2011.
ADOPTED this the day of. Second Reading.

/s/ Matthew J. Santini
Matthew J. Santini
Mayor

ATTEST:

/s/ Connie Keeling
Connie Keeling
City Clerk

D. Resolutions

1. Acceptance Resolutions and Notice of Intent from Georgia Department of Transportation

Bobby Elliott, Public Works Director stated that the GDOT and FHWA have requested that the City and County sign a Notice of Intent and Resolutions in order to make several changes to the State Route System numbering in conjunction with the SR20 widening and the US 411 Project EDS-00-0500-00(005). Mr. Elliott stated that these are standard resolutions that involve road inventory and are required by the FHWA so that the right-of-way acquisitions may proceed. He stated that the County has already executed these documents and if we do not sign these forms the city will risk losing Federal funding for transportation projects. Mr. Elliott recommended approval of both Resolutions and the Notice of Intent.

A motion to approve all documents as presented was made by Council Member Pruitt and seconded by Council Member Tate. Motion carried unanimously. Vote 6-0

Resolution No. 12-11

FEDERAL-AID HIGHWAY
RESOLUTION 286(049R)

WHEREAS, the Georgia Department of Transportation intends to request approval

from the Federal Highway Administration to revise the National Highway System and the Highway Functional Classification System in the Cartersville Urban Area and Bartow County; and

WHEREAS, these revisions are necessary to reflect the future relocation of State Route 20f U.S. Route 411 north of Cartersville once Project EDS-00-0500-00(005) is opened for State Route service; and

WHEREAS, also under Federal-aid Highway resolution 286(020R), revisions to the National Highway System and the Highway Functional Classification System were approved in order to relocate a portion of State Route 20 under Project STPOO-0012-01(071); and

WHEREAS, the Federal Highway Administration requires that revisions to the National Highway System and the Highway Functional Classification System be made by each state acting through its state highway agency and the appropriate local officials or Metropolitan Planning Organization acting in cooperation with each other.

NOW, THEREFORE, IT IS HEREBY RESOLVED, that the Georgia Department of Transportation take the necessary steps to revise the National Highway System and the Highway Functional Classification System as shown on the attached sketch map numbered 049R, and as described in the following paragraphs:

- 1. Add to the National Highway System as a Rural Principal Arterial a section of projected alignment, beginning at its intersection with State Routes 3/U.S. 41 and 20/U.S. 411 thus proceeding in an easterly on new alignment to its point of junction with State Route 20 east of Interstate 75 (State Route 401)**

Addition of approximately 7.31 miles (11.76 km.) projected.

- 2. Remove from the National Highway System and reclassify a section of State Route 20 from a Rural Principal Arterial to a Rural Minor Arterial, beginning at its point of junction with State Route 20 east of Interstate 75 (State Route 401) and extending in a southwesterly direction to the underpass with Interstate 75 (State Route 401) and State Route 20.**

Approximately 1.84 miles (2.96 km).

- 3. Remove from the National Highway System and reclassify a section of State Route 20 and a section of projected alignment from an Urban Principal Arterial to an Urban Minor Arterial, beginning at its underpass with Interstate 75 (State Route 401) and extending in a westerly direction to its point of junction with State Route 61/U.S.411.**

Approximately 0.15 mile (0.24 km).

4. Reclassify a section of State Route 61/U.S. 411 from an Urban Principal Arterial to an Urban Minor Arterial, beginning at its intersection with proposed Cartersville Bypass and extending in a southeasterly direction to its intersection with State Routes 3/U.S. 41 and 20/U.S. 411.

Approximately 2.06 miles (3.31 km).

5. Remove a section of State Routes 3/U.S. 41 and 20/U.S. 411 from the National Highway System, beginning at the junction of State Route 20 with State Route 61/U.S. 411 and extending in a southerly and northwesterly direction to its intersection with the proposed new alignment.

Approximately 3.35 miles (5.39 km).

IT IS FURTHER RESOLVED, that a certified copy of this resolution be furnished to the Georgia Department of Transportation.

ADOPTED this the 16th day of June 2011.

/s/ Matthew J. Santini
Matthew J. Santini
Mayor

ATTEST:

/s/ Connie Keeling
Connie Keeling
City Clerk

ADOPTED this the 13th day of April 2011

/s/ Clarence Brown
Chairman, Bartow County
Board of Commissioners

/s/ Kathy Gill
Clerk, Bartow County

Resolution No. 13-11

LOCAL STATE ROUTE ACCEPTANCE RESOLUTION 66(I420R)

GEORGIA, Bartow County and the City of Cartersville

WHEREAS, the Commissioners of Bartow County (hereinafter called the County) and Mayor of the City of Cartersville (hereinafter called the City) are being notified that the Georgia Department of Transportation (hereinafter called the Department) intends to relocate a section of State Route 20 in said County and City as described in Notice of Intent 3527 as shown on the sketch map attached thereto; and

WHEREAS, the County and the City will accept as appropriate for ownership, maintenance, utility accommodation, and as part of their local road systems the old section of State Route 20 that will remain open as a public road when removed from the State Highway System, upon completion of the work required by the Department above; and

WHEREAS, upon execution of a forthcoming Order of the Commissioner 3527, the County and the City shall accept title and ownership of the property on the old section of State Route 20 being removed from the State System; and

WHEREAS, the Department shall continue to retain jurisdictional authority and maintenance responsibility on the old section of State Route 20 being removed from the State System until the improvements referenced in Notice 3527 are completed; and

WHEREAS, upon the completion of the road improvements described in said Order, the County and the City shall by operation of law have jurisdictional as well as maintenance and operational authority over the old section of State Route 20 that will remain open as a public road; and

WHEREAS, the advancement of this project to construction is contingent upon the execution of this Resolution.

FOR THE CITY OF CARTERSVILLE TO SIGN AND RETURN TO DOT

NOW, THEREFORE, IT IS RESOLVED that the County and the City will execute this resolution and that a signed copy of this resolution be furnished to the Department.

ADOPTED this the 16th day of June 2011.

/s/ Matthew J. Santini
Matthew J. Santini
Mayor

ATTEST:

/s/ Connie Keeling
Connie Keeling
City Clerk

ADOPTED this the 13th day of April 2011.

/s/ Clarence Brown
Chairman Bartow County
Board of Commissioners

/s/ Kathy Gill
Clerk, Bartow County

2. Approval of School Bonds

Harry White, Council for Cartersville Schools presented a joint supplemental resolution providing for the approval of the execution and delivery of a bond purchase agreement. Mr. White stated that this is a purchase agreement, escrow statement and other related documents for school bonds in the amount of \$13,380,000.00 to pay off bonds from 2001-02. Mr. White stated that over the term of this bond the school will save approximately \$500,000.00. Mr. White recommended approval of this resolution and bond purchase.

A motion to approve Resolution No. 14-11 was made by Council Member Tonsmeire and seconded by Council Member Hodge. Motion carried unanimously. Vote 6-0

(Resolution and Bond is on file in the Vault at City of Cartersville City Hall)

E. Contracts/Agreements

1. Contracts for Performing Services for Fiscal Year 2011-2012

Tom Rhinehart, Finance Director stated that these are seven contracts for agencies that have been approved for funding from the City of Cartersville in the FY2011-2012 budget. The amount approved is the same as last year and Mr. Rhinehart recommended approval.

| | |
|--------------------------------|-----------|
| Cartersville – Bartow Library | \$454,500 |
| Bartow Juvenile Court | \$15,000 |
| Bartow Health Access | \$2,000 |
| Cultural Arts Alliance | \$51,000 |
| Good Neighbor House | \$2,000 |
| Downtown Development Authority | \$85,000 |
| Bartow County Library, Inc. | \$1,200 |

A motion to approve all contracts as presented was made by Council Member Tate and seconded by Council Member Tonsmeire. Motion carried unanimously. Vote 6-0

2. First Amendment to Sewer Service Agreement with Emerson

Keith Lovell, Assistant City Attorney stated that this sewer agreement with the City of Emerson needed to be amended to include the LakePointe, LLC (Sports Complex) development. Mr. Lovell stated that this agreement commits an additional 1,850,000 gpd to give Emerson a total commitment of 3,850,000 gpd with the same terms and conditions as the previous agreement and recommended approval.

A motion to approve the agreement with the City of Emerson was made by Council Member Tonsmeire and seconded by Council Member Hodge. Motion carried unanimously. Vote 6-0

3. ICMA Performance Measurement

Tom Quist, Assistant to the City Manager stated that this is the renewal of the annual

contract with the ICMA Center for Performance Measurement (CPM). He stated that the city has worked with CPM for over five years and continue to benefit from the information provided. Mr. Quist stated that the cost for this agreement is \$5,550, a budgeted item, and recommended approval.

A motion to approve the agreement with ICMA was made by Council Member Pruitt and seconded by Council Member Tonsmeire. Motion carried unanimously. Vote 6-0

4. Lighting Design Services with Spencer Bristol

Tom Quist, Assistant to the City Manager stated that the city has issued bids for lighting design services, which is part of the Department of Energy's Energy Efficiency and Conservation Block Grant. After reviewing the bids Mr. Quist recommended the low bid from Spencer Bristol Engineering in the amount of \$33,691.00.

A motion to approve the agreement with Spencer Bristol was made by Council Member Tonsmeire and seconded by Council Member Tate. Motion carried unanimously. Vote 6-0

5. Life, AD&D and Disability Insurance Renewal with UNUM

Dan Porta, Assistant City Manager stated that the city currently provides our employees with life insurance at one and one half times their annual salary up to a maximum of \$150,000, and accidental death and dismemberment is also included with life insurance coverage. In addition we provide long-term disability coverage for employees who are not vested in the city's retirement plan. Mr. Porta stated the current provider of this insurance is Fort Dearborn, and they have proposed a rate increase for the life insurance coverage. He stated that the city's insurance agent had shopped the insurance market and brought a very competitive quote from UNUM Insurance. The coverage's with UNUM are the same as those with Fort Dearborn and UNUM has provided a two-year rate guarantee. Mr. Porta recommended changing to UNUM Insurance for life insurance, AD&D and LTD coverage's.

A motion to approve the agreement with UNUM was made by Council Member Tonsmeire and seconded by Council Member McDaniel. Motion carried unanimously. Vote 6-0

6. Property and Casualty Insurance Renewal with Travelers Insurance

Dan Porta, Assistant City Manager stated that Travelers Insurance provides insurance coverage for the city's buildings, automobiles, equipment, errors and omissions, law enforcement and employment practices, along with a \$4.0 million umbrella policy. Due to properly managing the city's insurance coverage and holding employees accountable, we have been able to keep our insurance premium consistently in the \$320,000 annual premium range. Mr. Porta stated that for fiscal year 2011-12 Travelers has proposed an increase of approximately \$7,400 due to general insurance trends. After reviewing the original insurance proposal, the only change that was recommended was to increase the automobile physical damage deductible from \$1,000 per occurrence to \$2,000. This one change will reduce the renewal premium to \$324,719 or \$5,681 above the expiring insurance premium. Mr. Porta recommended approval of the

insurance renewal with Travelers Insurance.

A motion to approve the agreement with Travelers Insurance was made by Council Member Stepp and seconded by Council Member McDaniel. Motion carried unanimously. Vote 6-0

7. Georgia Department of Corrections

Greg Anderson, Parks and Recreation Director stated that this is the twelfth year that the City of Cartersville has contracted with the State of Georgia for work crews. The contracted price is \$39,500.00 per crew is the same as last year. Mr. Anderson stated that these contracts are for five (5) work crews, the contracts are identical and recommended approval.

A motion to approve the contracts with the GA Department of Corrections was made by Council Member Hodge and seconded by Council Member Tonsmeire. Motion carried unanimously. Vote 6-0

F. Bid Award

1. Pettit Creek Trail Phase II – Bridge Purchase

Greg Anderson, Parks and Recreation Director stated that the Pettit Creek Trail Phase II project documents stipulate the City furnish the needed bridge that will expand over a small tributary of Pettit Creek. Southland Engineering has investigated and found the most economical method for a pre-engineered bridge using a reconditioned railcar frame. Paragon Bridge Works of Colorado reconditions and certifies the railcar frame for uses as bridges. Mr. Anderson recommended the quote from Paragon Bridge Works in the amount of \$23,801.57 which includes shipping but not the installation. That work is to be done by a contractor.

A motion to approve purchase from Paragon Bridge Works was made by Council Member Tonsmeire and seconded by Council Member Hodge. Motion carried unanimously. Vote 6-0

G. Engineering Services

1. Engineering for Emergency Pump Station

Ed Mullinax, Assistant Water Superintendent stated that in order to proceed with installation of a pump station in the Etowah River a design is needed. Jacobs Engineering (formerly JJ&G) has provided a scope of services for design, drawings, and EPD approval of plans for this pump stations for a price not to exceed \$432,000.00. Mr. Mullinax stated that this will be financed by a revenue bond which will go toward paying for all aspects of this pump station and recommended approval.

A motion to approve the contract with Jacobs Engineering subject to the City Managers approval was made by Council Member Tonsmeire and seconded by Council Member

McDaniel. Motion carried unanimously. Vote 6-0

H. Other

1. Reimbursement to Parker Systems

Dan Porta, Assistant City Manager stated that the Fiber Department has provided Parker Systems LLC fiber optic services at few locations within the city. Some of these services were provided directly by the city and some through a third party, Georgia Public Web. Due to some confusion, services continued to be billed at some locations for a number of months before questions were raised. After meeting with David Parker, an agreement was made for the city to reimburse his firm \$15,000.00 for overpayment of fiber services. Mr. Porta recommended approval.

A motion to approve the agreement with Parker Systems was made by Council Member Pruitt and seconded by Council Member Tonsmeire. Motion carried unanimously. Vote 6-0

Mayor Santini stated that there was an item that needed to be added to the agenda. A motion to add an item to the agenda was made by Council Member Tonsmeire and seconded by Council Member Tate. Motion passed unanimously. Vote 6-0

I. Added Item

1. Anti Litem Notice

Keith Lovell, Assistant City Attorney stated that he had received an Anti Litem Notice regarding an incident with Cedric Richards. Mr. Lovell recommended the city deny the notice by Resolution.

A motion to deny the Anti Litem Notice through Resolution No. 15-11 was made by council member Tonsmeire and seconded by Council Member Hodge. Motion passed unanimously. Vote 6-0

Resolution No. 15-11

RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF CARTERSVILLE, GEORGIA

WHEREAS, on May 27, 2011, the City of Cartersville received an Ante Litem Notice from the Law Offices of G. Brian Spears, P.C. concerning an alleged wrongful arrest and detention of Cedric Richards on December 28, 2010.

NOW THEREFORE IT IS HEREBY RESOLVED by the Mayor and City Council that the City of Cartersville denies the Ante Litem Notice claim submitted as referenced above based on the information currently available to it, and directs the City Attorney's Office to inform the Law Offices of G. Brian Spears, P.C. of said denial.

BE IT AND IT IS HEREBY RESOLVED this 16th day of June, 2011.

/s/ Matthew J. Santini
Matthew J. Santini
Mayor

ATTEST:

/s/ Connie Keeling
Connie Keeling
City Clerk

J. Monthly Financial Statement

1. April 2011

Tom Rhinehart, Finance Director, presented the April 2011 monthly financial statement with comparisons from the previous year of April 2010, by fund, along with supplemental financial information comparing the year to date revenues and expenses for each fund and a report of cash position through April 2011.

A motion to adjourn the meeting was made by Council Member Hodge and needing no second. Motion carried unanimously. Vote 6-0

Meeting Adjourned

/s/ _____
Matthew J. Santini
Mayor

ATTEST:

/s/ _____
Connie Keeling
City Clerk



City of Cartersville

City Council Meeting
7/7/2011 7:00:00 PM

Rezoning application by Henry Floyd for property located at the intersection of West Avenue and Euharlee Road from O-C to G-C

| | |
|---|--|
| SubCategory: | Public Hearing - 2nd Reading of Zoning/Annexation Requests |
| Department Name: | Planning and Development |
| Department Summary Recommendation: | The subject tract is located at the intersection of West Avenue (SR 61/113) and Euharlee Road. The applicant seeks to rezone the property from medium-use commercial (O-C) to high-use commercial (G-C) to allow for a general commercial development. Planning Commission recommended Approval. |
| City Manager's Remarks: | The Planning Commission recommends approval of this rezone. |
| Financial/Budget Certification: | |
| Legal: | |
| Associated Information: | |

ZONING SYNOPSIS

Petition Number(s): **Z11-03**

APPLICANT INFORMATION AND PROPERTY DESCRIPTION

Applicant: **Henry Floyd**
Representative: **Jeff Watkins**
Property Owner: **Same as applicant**
Property Location: **Intersection of West Ave (SR 61/113) and Euharlee Rd**
Access to the Property: **Euharlee Road**

Site Characteristics:

Tract Size: Acres: **1.58 acres** District: **4th** Section: **3rd** LL(S): **634 and 663**
Ward: **3** Council Member: **Louis Tonsmeire**

LAND USE INFORMATION

Current Zoning: **O-C (Office Commercial)**
Proposed Zoning: **G-C (General Commercial)**
Proposed Use: **Allow for a general commercial development.**
Current Zoning of Adjacent Property:
North: **O-C (Office Commercial)**
South: **H-I (Heavy Industrial)**
East: **Bartow County jurisdiction**
West: **O-C (Office Commercial)**

The Future Development Plan designates the subject property as:
Community Village Center with recommended zoning districts O-C, M-U, and P-S.

ZONING ANALYSIS

City Departments Reviews

Water and Sewer:

No objections.

Public Works:

No objections.

Gas:

No objections.

Electric:

No objections.

Fire:

No objections.

Police:

No comments.

The subject tract is located at the intersection of West Avenue (SR 61/113) and Euharlee Road. The applicant seeks to rezone the property from medium-use commercial (O-C) to high-use commercial (G-C) to allow for a general commercial development.

STANDARDS FOR EXERCISE OF ZONING POWERS.

- A. *Whether the zoning proposal will permit a use that is suitable in view of the use and development of adjacent and nearby property.*
The proposed G-C zoning may permit a use that is suitable in view of the existing commercial development of adjacent properties.
- B. *Whether the zoning proposal will create an isolated district unrelated to adjacent and nearby districts.*
The proposed G-C zoning may not create an isolated district since there is a nearby property zoned in a similar manner in the City. In addition, the adjacent property in Bartow County jurisdiction is a heavy commercial use that would be suitable as G-C.
- C. *Whether the zoning proposal will adversely affect the existing use or usability of adjacent or nearby property.*
The G-C zoning proposal may not adversely affect the existing use of adjacent properties.
- D. *Whether the property to be affected by the zoning proposal has a reasonable economic use as currently zoned.*
As currently zoned for medium-use commercial (O-C), the property may have a reasonable, if limited, economic use with frontage on the four-lane arterial State Route 61/113.
- E. *Whether the zoning proposal will result in a use which will or could cause an excessive or burdensome use of existing streets, transportation facilities, utilities, or schools.*
The G-C zoning proposal may not cause an excessive use of existing streets and facilities. Utility, Public Works, and Planning & Development staff would review any future development based on possible industrial use on roads, utilities, and other factors.
- F. *Whether the zoning proposal is in conformity with the adopted local Comprehensive Land Use Plan.*
The zoning proposal for G-C is not in conformity with the adopted Future Development Map of the Cartersville 2030 Comprehensive Plan.

G. Whether the zoning proposal will result in a use which will or could adversely affect the environment, including but not limited to drainage, wetlands, groundwater recharge areas, endangered wildlife habitats, soil erosion and sedimentation, floodplain, air quality, and water quality and quantity.

The G-C zoning proposal may not result in a use which could adversely affect the environment. Utility, Public Works, and Planning & Development staff would review any future development based on possible environmental factors related to industrial use.

H. Whether there are other existing or changing conditions affecting the use and development of the property which give supporting grounds for either approval or disapproval of the zoning proposal.

Commercial development on and adjacent to West Avenue (SR 61/113) from the intersection of Douthit Ferry Road / Burnt Hickory Road west to the City limits has expanded greatly in the last five years, including the additions of Arby's, CVS, and Zaxby's. Recently completed and anticipated future commercial growth on the four-lane section of this road could give supporting grounds for a change in commercial zoning from medium use to high use.

STAFF RECOMMENDATION

Staff has no objections.

PLANNING COMMISSION RECOMMENDATION:

APPROVAL

Application for Rezoning
Planning and Development Department
10 North Public Square
City of Cartersville
(770) 387-5600

Application Number 211-03

Hearing Date June 7, 2011

\$400
paid 5-6-11

Applicant HENRY FLOYD Business Phone 678-758-2535

Address 10 EUHARLEE ROAD, SW
City CARTERSVILLE State GA Zip 30120

Jeffrey A. Watkins Business Phone (770) 382-9591 Cell or Fax# (770) 382-3833
(Representative's Printed Name (if other than Applicant))

[Signature] Representative's Signature
[Signature] Applicant's Signature

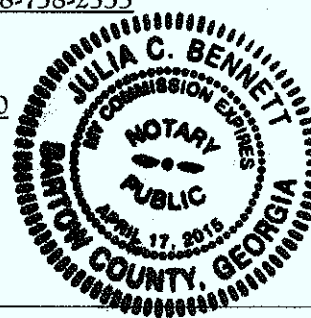
Signed, sealed and delivered in presence of:
[Signature]
Notary Public My commission expires: _____



Titleholder HENRY FLOYD Business Phone 678-758-2535

Address 10 EUHARLEE ROAD, SW
City CARTERSVILLE State GA Zip 30120

Signature [Signature]
Signed, sealed and delivered in presence of:
[Signature]
Notary Public My commission expires: _____



Present Zoning District O-C Requested Zoning District(s) G-C

Acreage 1.579 Land Lot(s) 634, 635, 662 & 663 District(s) 4TH Section (s) 3RD

Location of Property INTERSECTION OF HWY 113 (WEST AVE) AND EUHARLEE ROAD
(Street address, nearest intersection, etc.)

Reason for requesting rezoning and/or annexation: To allow for a general commercial development.
(attach additional statement as necessary)

Attach a copy of a current boundary survey showing metes and bounds and indicating all existing site improvements.

Planning Commission Recommendation:

Approved: _____ Conditions: _____

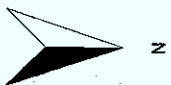
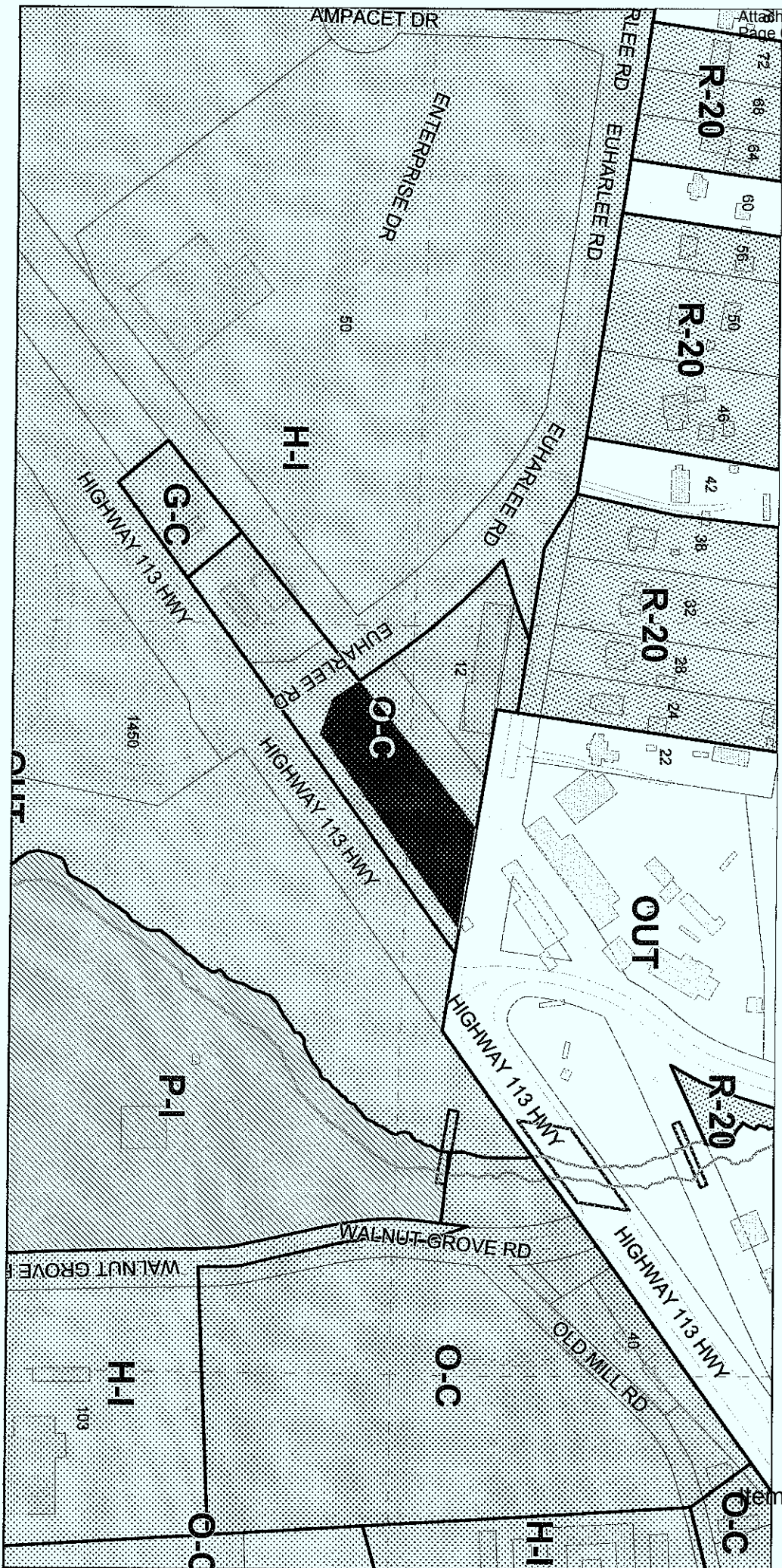
Disapproved: _____ Date: _____

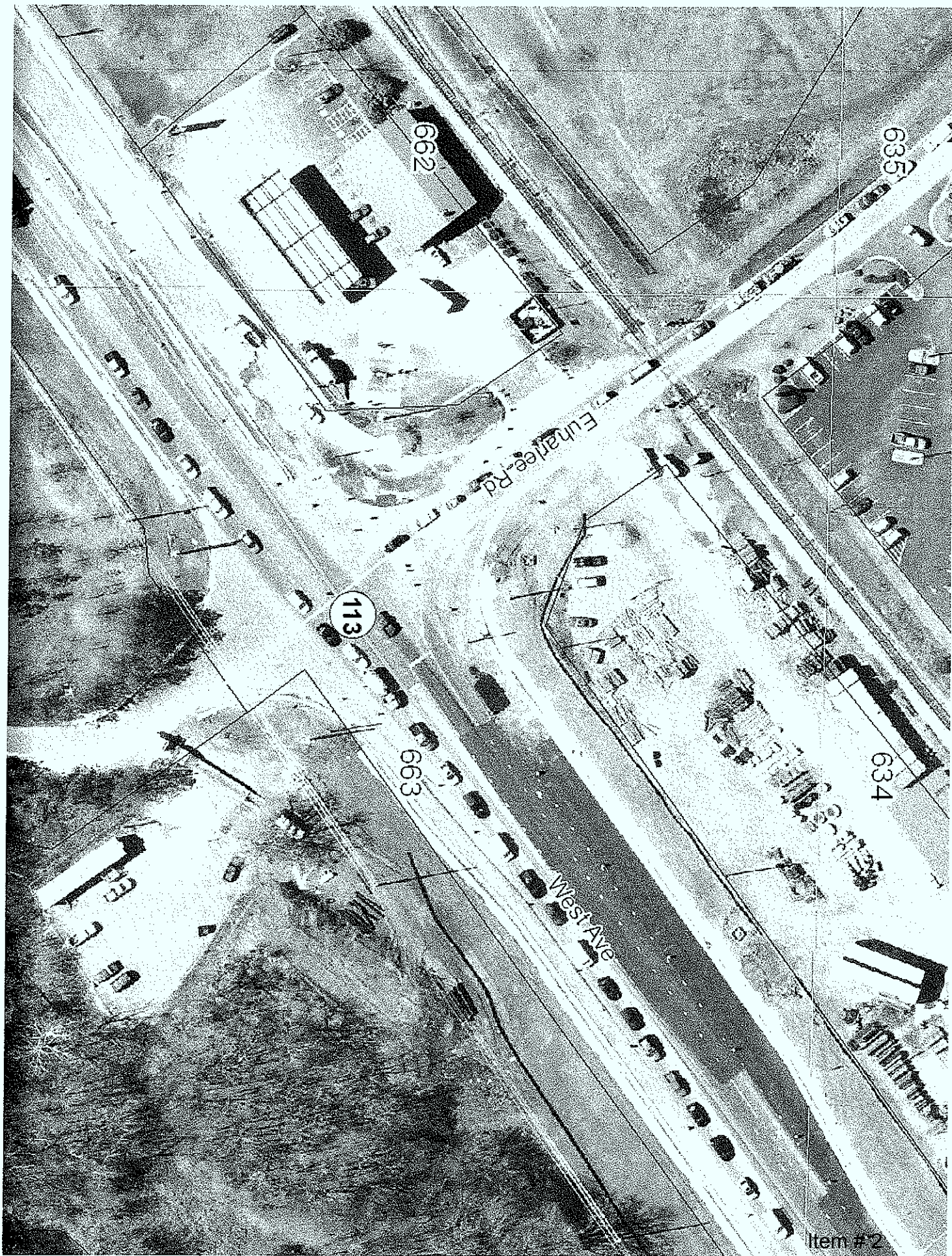
City Council Decision:

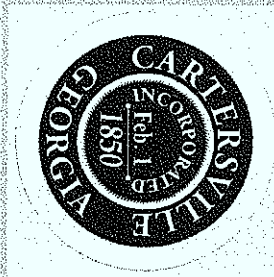
Approved: _____ Conditions: _____

Disapproved: _____ Date: _____

West Ave & Euharlee Rd - rezoning case Z11-03







West Ave & Euharlee Rd case Z11-03

Item # 2



05/16/2011



City of Cartersville

PLANNING AND DEVELOPMENT

P.O. Box 1390 • 10 North Public Square • Cartersville, Georgia 30120
Telephone: 770-387-5600 • Fax: 770-387-5605 • www.cityofcartersville.org

File # **Z11-03**

DISCLOSURE OF INTERESTS BY LOCAL OFFICIAL

(To be completed by Mayor, City Council, and Planning Commission)

Henry Floyd (Jeff Watkins, representative) has made a rezoning request on the following property: Approximately 1.58 acres located at the intersection of West Avenue and Euharlee Road in the 4th District, 3rd Section, Land Lots 634, 635, 662, and 663 from O-C to G-C.

Pursuant to O.C.G.A § 36-67A-2 any local government official considering a rezoning request must disclose if he has any of the following interest:

1. A Property interest in any real property affected by a rezoning request.
Yes _____ No _____ If the answer is Yes, please disclose the nature and extent of such interest.

2. A financial interest in any business entity which has a property interest in any real property affected by a rezoning action.
Yes _____ No _____
If the answer is Yes, please disclose the nature and extent of such interest.

3. A spouse, mother, father, brother, sister, son, or daughter with either of the above interests.
Yes _____ No _____ If the answer is Yes, please disclose the nature and extent of such interest.

TITLE: _____

DATE: _____



City of Cartersville

City Council Meeting
7/7/2011 7:00:00 PM

Special Use application by Roy Rozanske for property located at 324 W. Porter Street to allow a salvage yard to operate in the H-I zoning district.

| | |
|---|---|
| SubCategory: | Public Hearing - 2nd Reading of Zoning/Annexation Requests |
| Department Name: | Planning and Development |
| Department Summary Recommendation: | <p>The subject tract is located at the intersection of Porter Street and N. Erwin Street. This property includes a log-cabin style commercial building constructed approximately ten years ago. The applicant seeks a special use permit to operate a salvage yard on this property that is zoned H-I (Heavy Industrial) and has historically been used for industrial purposes. The applicant has also applied to the Board of Zoning Appeals for a variance, still pending, to eliminate the buffer (50 ft along non-residential and 100 ft adjacent to residential property lines) and minimum lot size (20 acres) requirements for a salvage yard.</p> <p>Planning Commission recommended Denial.</p> |
| City Manager's Remarks: | Planning Commission recommends denial of this rezone. |
| Financial/Budget Certification: | |
| Legal: | |
| Associated Information: | |

SPECIAL USE APPLICATION SYNOPSIS

Petition Number(s): SU11-01

APPLICANT INFORMATION AND PROPERTY DESCRIPTION

Applicant: Roy Rozanske

Representative: None

Property Owner: Malbone Farms Inc.

Property Location: 324 W. Porter Street (corner N. Erwin Street)

Access to the Property: Porter Street and N. Erwin Street

Site Characteristics:

Tract Size: Acres: 4.93 acres District: 4th Section: 3rd LL(S): 339, 340, 380, 381, 382

Ward: 4 Council Member: Lindsey McDaniel

LAND USE INFORMATION

Current Zoning: H-I (Heavy Industrial) and less than 1/2 acre M-U (Multiple Use)

Proposed Special Use: Allow operation of a salvage yard in the H-I portion of the property

Current Zoning of Adjacent Property:

North: H-I (Heavy Industrial) and P-I (Public Institutional)

South: H-I (Heavy Industrial)

East: H-I (Heavy Industrial)

West: H-I (Heavy Industrial)

The Future Development Plan designates the subject property as:

Workplace Center with recommended zoning districts H-I, L-I, and P-D.

ZONING ANALYSIS

City Departments Reviews

Water and Sewer:

The application will have an effect on water and sewer service to this property.

Public Works:

No objections.

Gas:

No exceptions are taken – note that natural gas facilities exist within the road right-of-ways and access to such facilities shall not be impeded.

Electric:

No objections.

Fire:

No objections.

Police:

No comments.

The subject tract is located at the intersection of Porter Street and N. Erwin Street. This property includes a log-cabin style commercial building constructed approximately ten years ago. The applicant seeks a special use permit to operate a salvage yard on this property that is zoned H-1 (Heavy Industrial) and has historically been used for industrial purposes.

The applicant has also applied to the Board of Zoning Appeals for a variance, still pending, to eliminate the buffer (50 ft along non-residential and 100 ft adjacent to residential property lines) and minimum lot size (20 acres) requirements for a salvage yard.

Please review the following findings, as stated in the Zoning Ordinance, that are to be utilized in determining justification for approval or denial of special use request(s).

Sec. 16.1. Scope and intent.

This article specifies uses which are not classified as permitted uses as a matter of right in zoning districts, and are therefore only allowed through the approval of a Special use. The standards which apply to each use are enumerated and must be met in order for an application to be granted.

In the interest of the public health, safety and welfare, the Mayor and Council may exercise limited discretion in evaluating the site proposed for a use which requires a Special use. In exercising such discretion pertaining to the subject use, the Mayor and Council may consider:

- A. The effect of the proposed activity on traffic flow along adjoining streets;
- B. The availability, number and location of off-street parking;
- C. Protective screening;
- D. Hours and manner of operation of the proposed use;
- E. Outdoor lighting;
- F. Ingress and egress to the property; and
- G. Compatibility with surrounding land use.

In granting a Special use, conditions may be attached as are deemed necessary in the particular case for the protection or benefit of neighbors in order to assimilate the proposed development or use into the neighborhood with minimal impact.

Sec. 16.2. Application of regulations and approval.

Uses allowable with a Special use and the minimum standards for such uses are listed in section 16.4 of this article.

Uses in the districts enumerated herein may be authorized by Special use only. The regulations contained in this article shall not apply to any permitted use as a matter of right in any zoning district.

Any use which may be authorized by Special use shall be approved by the Mayor and Council in accordance with section 16.1, scope and intent, provided:

- A. The standards for the Special use as specified herein can be met;
- B. Recommendations have been received from the planning and development staff and other appropriate City departments.
- C. A public hearing has been held in relation to the Special use before the Planning Commission in conformance with the advertising standards outlined in article XXIV of this chapter. The

Planning Commission shall make recommendations to the Mayor and Council regarding the application for a Special use; and

- D. A public hearing has been held in relation to the Special use before the Mayor and Council in conformance with the advertising standards outlined in article XXIV of this chapter.

Sec. 16.3. Additional restrictions.

Any use which may be authorized by special use shall comply with all other City regulations, zoning district regulations and other regulations contained herein, and conditions of zoning approval if applicable. Whenever a standard contained in this section is in conflict with another provision of this chapter, the more restrictive provision shall prevail.

Sec. 16.4. Minimum Special use standards.

16.4.14. *Salvage yards*

A. *Allowable districts:* H-I

B. *Standards:*

1. Salvage yards shall have a minimum fifty (50) foot wide buffer along all abutting non-residential property lines and a one hundred (100) foot wide buffer along all abutting residential property lines to provide a visual screen in accordance with section 4.17 of this chapter.

Staff review: The applicant has applied for a variance to eliminate this requirement.

2. Salvage yards shall not stack vehicles or salvage material so as to be visible from any adjoining property or street.

Staff review: Based on discussions, the applicant proposes to adhere to this requirement.

3. Salvage yards shall have a minimum lot size of twenty (20) acres.

Staff review: The applicant has applied for a variance to eliminate this requirement.

STAFF RECOMMENDATION

Staff has reservations about recommending this use without having additional details from the applicant regarding screening / buffers and more information on the operation.

PLANNING COMMISSION RECOMMENDATION:

DENIAL

6-20 BZA
5-9 (a) 4:30 PM
6-7 PC
5-18 (a) 6:00 PM

6-16 Council
5-19 (a) 7:00 PM
7-7 Council
6-2 (a) 7:00 PM

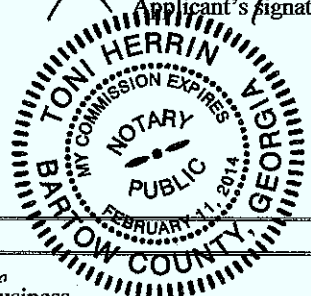
All meetings
City Council Chambers

Application for Special Use
Planning and Development Department
10 North Public Square
City of Cartersville
(770) 387-5600

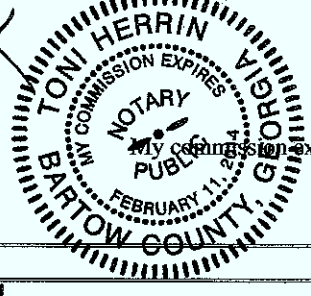
4-1-11
Paid \$450
fee + legal

Application Number VII-04
Hearing Dates 5-9, 5-10, 5-19, 6-2
SW11-01 and

Applicant Roy Rozanske Business Phone 414-303-3241
 (applicant's printed name)
 Address 207 Willow Ridge Dr Home Phone " "
 City White State GA Zip 30184
 Phone _____ Fax # _____
 (Representative's printed name (if other than applicant))
 Representative's signature _____
 Signed, sealed and delivered in presence of: _____
 Notary Public _____
 Applicant's signature [Signature]
royrozanske@yahoo.com
 My commission expires: _____



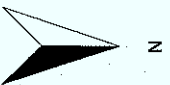
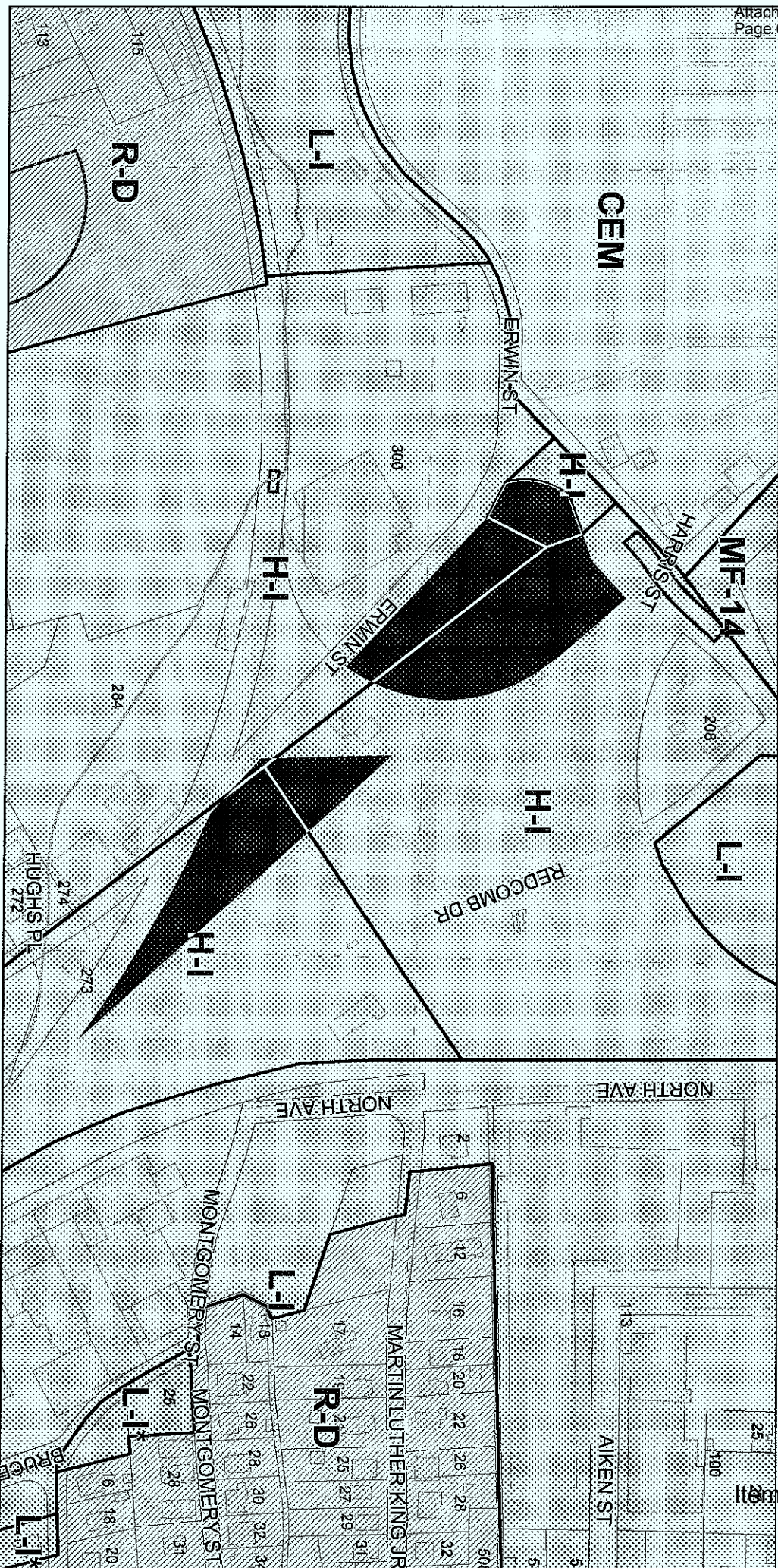
Titleholder Malbone Farms Inc. Business _____ Home _____
 (titleholder's printed name)
 *attach additional notarized signatures as needed on separate application page
 Address Pg Box 490 Cartersville 30120
 Signature [Signature]
 Signed, sealed, delivered in presence of: _____
 Notary Public _____
 My commission expires: _____

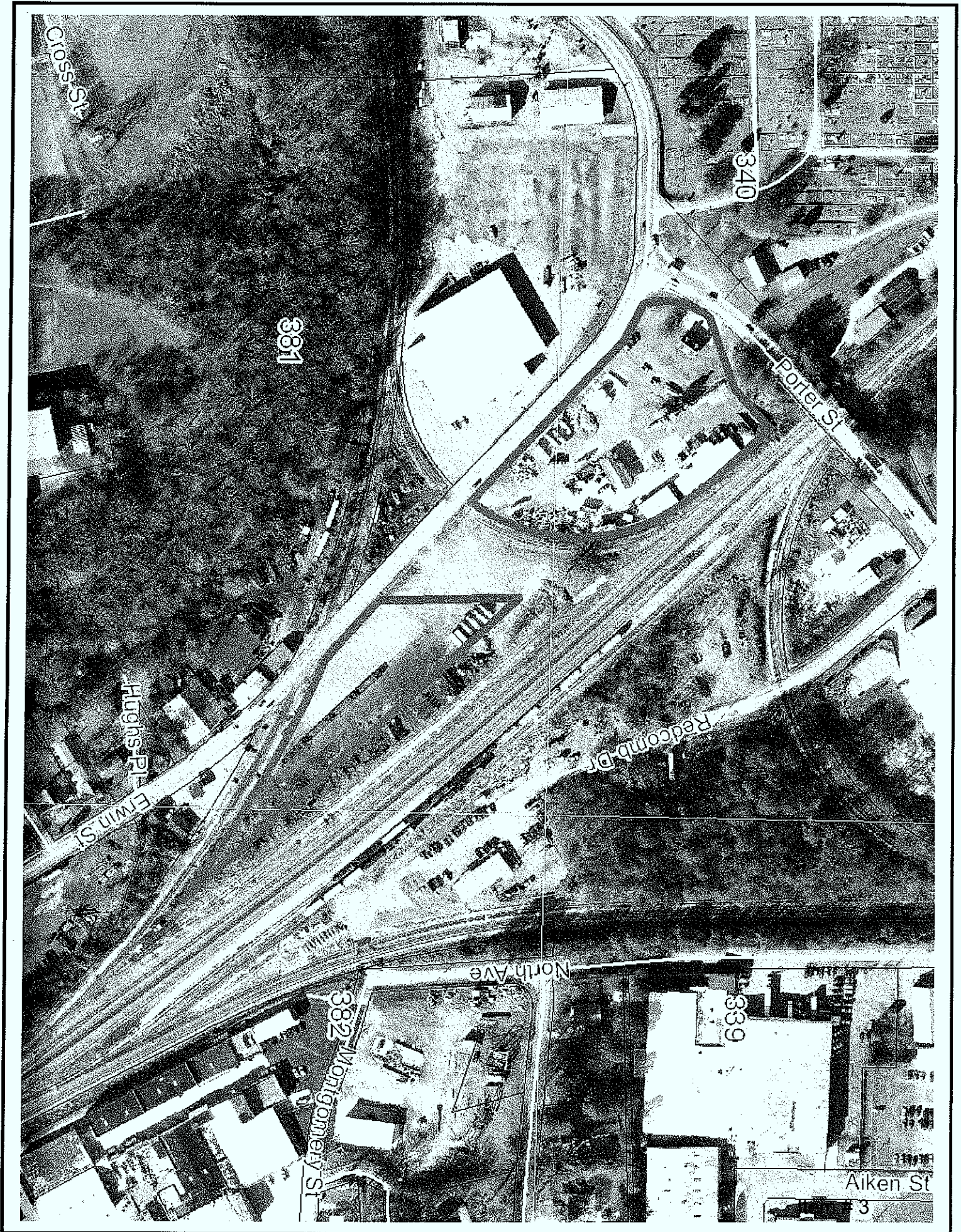


Present Zoning District(s) H-I and M-U Requested Special Use Salvage Yard in H-I
 Acreage 4.93 Land Lot(s) 339, 340, 380-382 District(s) 4 Section(s) 3
 Location of Property 324 W. Porter St
 (street address, nearest intersections, etc)
 Reason for requested Special Use: Allow for new business operation
 (attach additional statement as necessary)

Attach a copy of a current boundary survey showing metes and bounds and indicating all existing site improvements and confirmation of the availability of all public utilities. Said site must meet the proposed zoning district development standards and access requirements of the City's regulations.

324 W. Porter St - case SU11-01 and V11-04



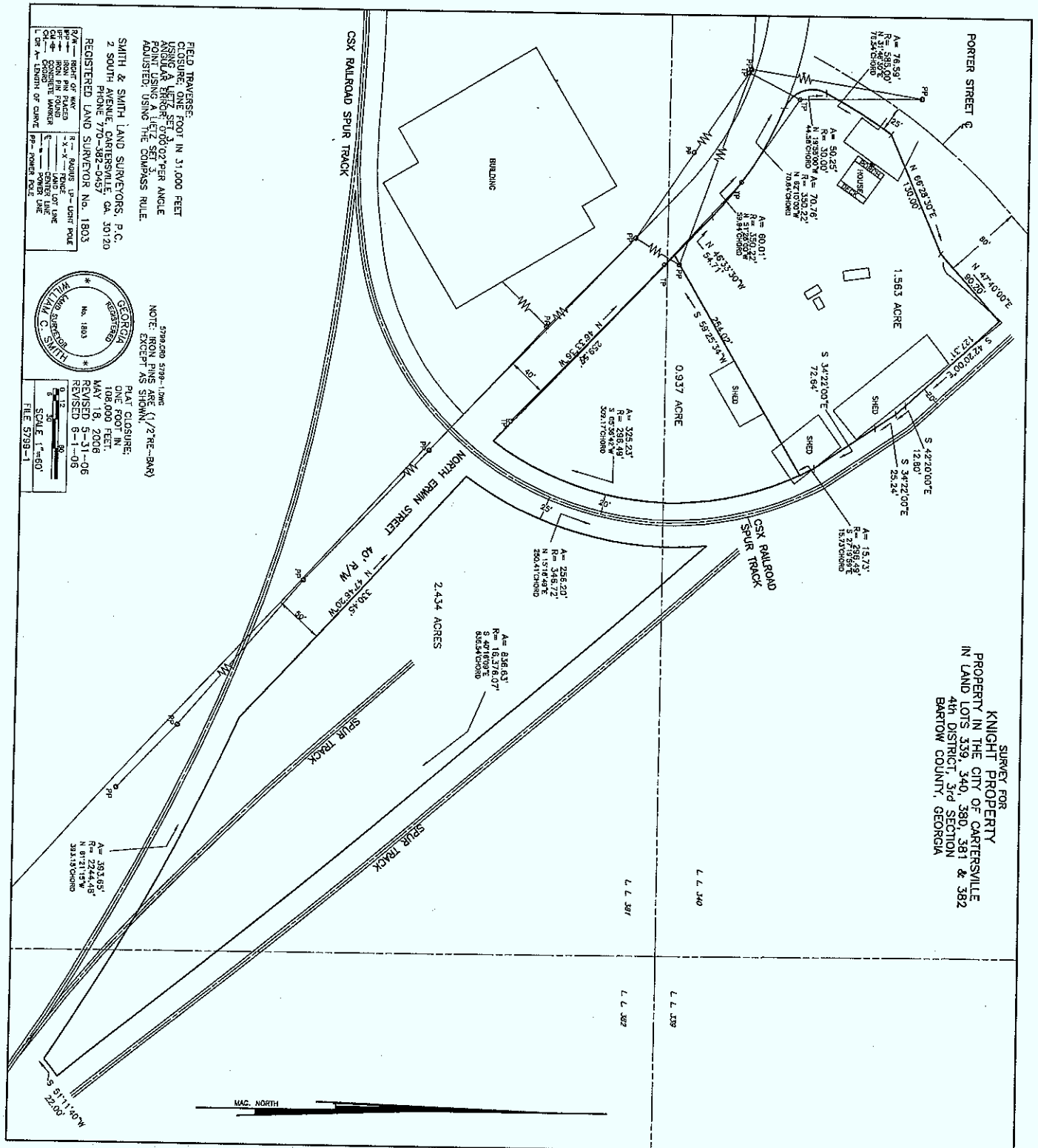




324 W. Porter St
case SU11-01



05/16/2011



SPECIAL USE JUSTIFICATION

The Mayor and City Council, upon review, may authorize a Special Use which is not classified as a permitted use as a matter of right in a zoning district.

For review of a Special Use case, an applicant must state the use applied for and demonstrate that the standards for such use have / will be met:

Use applied for:

Salvage Yard

Standard #1:

50 Ft buffer along non-residential, 100 Ft along residential

How Standard #1 has / will be met:

Screening Fence proposed, also
variance applied for, case VII-04

Standard #2:

Salvage yards shall not stack vehicles or salvage material so as to be visible from any adjoining property or street

How Standard #2 has / will be met:

Screening Fence proposed, plus vehicles
or material are not proposed to be stacked in a manner to be visible

Standard #3:

salvage yards shall have a minimum lot size of 20 acres

How Standard #3 has / will be met:

Variance applied for, case VII-04

Standard #4:

How Standard #4 has / will be met:



City of Cartersville

PLANNING AND DEVELOPMENT

P.O. Box 1390 • 10 North Public Square • Cartersville, Georgia 30120
Telephone: 770-387-5600 • Fax: 770-387-5605 • www.cityofcartersville.org

File # **SU11-01**

DISCLOSURE OF INTERESTS BY LOCAL OFFICIAL

(To be completed by Mayor, City Council, and Planning Commission)

Roy Rozanske has made a special use request on the following property: Approximately 4.93 acres located at the intersection of Porter Street and N. Erwin Street in the 4th District, 3rd Section, Land Lots 339, 340, 380, 381, and 382 to allow the use of a salvage yard on the portion of the property zoned H-I (Heavy Industrial).

Pursuant to O.C.G.A § 36-67A-2 any local government official considering a rezoning request must disclose if he has any of the following interest:

1. A Property interest in any real property affected by a rezoning request.
Yes _____ No _____ If the answer is Yes, please disclose the nature and extent of such interest.

2. A financial interest in any business entity which has a property interest in any real property affected by a rezoning action.
Yes _____ No _____
If the answer is Yes, please disclose the nature and extent of such interest.

3. A spouse, mother, father, brother, sister, son, or daughter with either of the above interests.
Yes _____ No _____ If the answer is Yes, please disclose the nature and extent of such interest.

TITLE: _____

DATE: _____



City of Cartersville

City Council Meeting
7/7/2011 7:00:00 PM

GA DOT Letter Of Concurrence - Leake Mounds - Etowah Riverwalk

| | |
|---|--|
| SubCategory: | Other |
| Department Name: | Parks and Recreation |
| Department Summary Recommendation: | <p>In reference to the letter of concurrence sent by GA DOT on the TE Grant – Leake Mounds – Etowah Riverwalk trail project. A new schedule has been set for the project completion by GA DOT. I have spoken with GA DOT officials and with our engineer on this project about the new schedule. We will meet the revised schedule for this trail project.</p> <p>I recommend approval of this letter.</p> |
| City Manager's Remarks: | Your approval of this letter and schedule is recommended. |
| Financial/Budget Certification: | |
| Legal: | |
| Associated Information: | |

Vance C. Smith, Jr., Commissioner



GEORGIA DEPARTMENT OF TRANSPORTATION

One Georgia Center, 600 West Peachtree Street, NW
Atlanta, Georgia 30308
Telephone: (404) 631-1000

June 6, 2011

The Honorable Matt Santini
10 North Public Square
Cartersville, GA 30120

Re: CSTE-0008-00(067); PI 0008067
Leake Mounds-Etowah Riverwalk Link- Phase IV, Bartow County

Dear Honorable Santini:

The above referenced project is funded with Transportation Enhancement (TE) funds provided through the Georgia Department of Transportation (GDOT). In order to promote the highest level of delivery for TE projects, GDOT has developed a toolkit of resources that includes the TE Sponsor Guidebook, a comprehensive instructional guide through all phases of project development and contracted with a TE Project Management Consultant team (MAAI). Our TE Project delivery goal is that all TE projects begin construction approximately two years after the Notice to Proceed with Preliminary Engineering (NTP-PE) is issued. The NTP-PE for this project was issued in July 2006.

Additionally, last year, a schedule was prepared for every TE project. The purpose of the schedule was to establish construction bid advertising dates and to assist in budgeting the allocation of funds for TE projects. The anticipated advertising date for this project is December 2011. However, based upon a review of the project progress to date, several key project milestones have not been met. Therefore, a new schedule must be established. The proposed new advertising date is June 2012. We are requesting your concurrence that the appropriate resources will be provided to meet the revised schedule.

The proposed schedule for project completion is:

- Right of Way (ROW) Plan Submission, Review, and Approval: September 2011
- ROW Acquisition: April 2012
- Final Plan Submission, Review and Approval: May 2012
- Construction Funds Authorization: June 2012
- Authority to Advertise for Bids: July 2012

Please note we have developed these dates for completion of the specified activity based upon conservative estimates of the time needed for completion. If the project milestones are met earlier than indicated here, we will consider adjusting the advertising date.

If this schedule is acceptable, please sign below indicating your concurrence and return the original form to MAAI at 2211 Beaver Ruin Road, Suite 190, Norcross, Georgia 30071 to the attention of Jeanne Kerney.

We are looking forward to the successful completion of this TE project. If you have any questions, please contact me at eamster@dot.ga.gov or I may be reached at (404) 631-1784.

Sincerely,

A handwritten signature in blue ink that reads "Elaine E. Armster".

Elaine E. Armster
Special Projects Chief

JK:sj

cc: Ms. Valerie Gilreath, Grantwriter, City of Cartersville

Concur: _____
Mayor

Date: _____

| | | |
|--|--|----------------|
| 0008067, Bartow County, Leake Mounds-Etowah Riverwalk Link | TE 2 Month Timeline w/o Gantt Active Last Updated: 05-25-11 | 05-25-11 13:56 |
|--|--|----------------|

| Activity ID | Activity Name | Original Duration | Remaining Duration | Start | Finish | BL Project Start | BL Project Finish |
|---|---------------------------------------|-------------------|--------------------|------------|------------|------------------|-------------------|
| Leake Mounds-Etowah Riverwalk... | | 1726 | 440 | 05-05-06 A | 02-18-13 | 05-05-06 | 04-16-12 |
| Project Setup | | 108 | 0 | 05-05-06 A | 10-06-06 A | 05-05-06 | 10-06-06 |
| 1000 | Receive Notification of Selection | 0 | 0 | 05-05-06 A | | 05-05-06 | |
| 1010 | Complete the MOU | 45 | 0 | 05-05-06 A | 07-10-06 A | 05-05-06 | 07-10-06 |
| 1020 | NTP for PE | 5 | 0 | 07-11-06 A | 07-14-06 A | 07-11-06 | 07-17-06 |
| 1030 | Consultant Selection | 60 | 0 | 07-14-06 A | 10-06-06 A | 07-14-06 | 10-06-06 |
| Concept | | 846 | 0 | 10-09-06 A | 01-29-10 A | 10-09-06 | 02-04-10 |
| 1040 | Concept Verification | 20 | 0 | 10-09-06 A | 11-03-06 A | 10-09-06 | 11-03-06 |
| 1050 | Submit Concept Report | 0 | 0 | 11-06-06 A | | 11-06-06 | |
| 1060 | GDOT Review/Approval of Concept | 30 | 0 | 10-01-07 A | 11-28-07 A | 11-06-06 | 12-19-06 |
| 1070 | Design Variance | 0 | 0 | 01-29-10 A | 01-29-10 A | 02-04-10 | 02-04-10 |
| Environmental | | 975 | 0 | 11-06-06 A | 01-20-11 A | 11-06-06 | 09-02-10 |
| 1080 | Section 106 Documents | 40 | 0 | 11-06-06 A | 01-21-09 A | 11-06-06 | 01-04-07 |
| 1090 | Ecological Documents | 40 | 0 | 06-01-09 A | 06-21-10 A | 03-03-10 | 04-27-10 |
| 1100 | Air Documents | 40 | 0 | 02-17-10 A | 05-06-10 A | 03-03-10 | 04-27-10 |
| 1110 | CE Approval Process | 90 | 0 | 06-08-10 A | 01-20-11 A | 04-28-10 | 09-02-10 |
| Design | | 1348 | 220 | 11-28-09 A | 04-05-12 | 12-20-06 | 06-03-11 |
| 1120 | Survey/Database Development | 30 | 0 | 11-28-09 A | 10-26-10 A | 12-20-06 | 02-01-07 |
| 1130 | Preliminarys Plan Development | 30 | 30 | 05-25-11 | 07-07-11 | 04-14-10 | 05-25-10 |
| 1170 | Construction Plans | 45 | 45 | 07-08-11 | 09-09-11 | 05-26-10 | 07-29-10 |
| 1190 | Request DBE Goal | 15 | 15 | 09-12-11 | 09-30-11 | 07-30-10 | 08-19-10 |
| 1200 | Bid Package Preparation | 30 | 30 | 02-24-12 | 04-05-12 | 04-22-11 | 06-03-11 |
| ROW | | 388 | 190 | 04-15-10 A | 04-05-12 | 05-26-10 | 06-03-11 |
| 1140 | ROW Plan Development | 45 | 0 | 04-15-10 A | 12-16-10 A | 05-26-10 | 07-08-10 |
| 1150 | ROW Plan Approval | 70 | 40 | 12-16-10 A | 09-01-11 | 09-03-10 | 10-29-10 |
| 1160 | ROW Acquisition | 120 | 120 | 09-02-11 | 02-23-12 | 11-01-10 | 04-21-11 |
| 1180 | ROW Certification | 30 | 30 | 02-24-12 | 04-05-12 | 04-22-11 | 06-03-11 |
| Funds Authorization | | 50 | 50 | 04-06-12 | 06-18-12 | 06-06-11 | 08-16-11 |
| 1210 | GDOT Funding Approval | 20 | 20 | 04-06-12 | 05-03-12 | 06-06-11 | 07-01-11 |
| 1220 | Federal Work Authorization Request... | 30 | 30 | 05-04-12 | 06-15-12 | 07-05-11 | 08-15-11 |
| 1280 | Execute TE Agreement | 30 | 30 | 05-04-12 | 06-15-12 | 07-05-11 | 08-15-11 |
| 1230 | NTP to Bid | 0 | 0 | 06-18-12 | | 08-16-11 | |
| Bid | | 50 | 50 | 06-18-12 | 08-28-12 | 08-16-11 | 10-26-11 |
| 1240 | Bid Phase Activities | 45 | 45 | 06-18-12 | 08-20-12 | 08-16-11 | 10-18-11 |
| 1250 | Bid Evaluation | 5 | 5 | 08-21-12 | 08-27-12 | 10-19-11 | 10-25-11 |
| 1260 | NTP to Award Construction Contract | 0 | 0 | 08-28-12 | | 10-26-11 | |
| Construction | | 120 | 120 | 08-28-12 | 02-18-13 | 10-26-11 | 04-16-12 |
| 1270 | Construction | 120 | 120 | 08-28-12 | 02-18-13 | 10-26-11 | 04-16-12 |
| 1290 | Closeout | 0 | 0 | | 02-18-13 | | 04-16-12 |

| | | |
|--|-------------|-----------------------------|
| | Page 1 of 1 | TASK filter: All Activities |
| | | © Oracle Corporation |



City of Cartersville

**City Council Meeting
7/7/2011 7:00:00 PM**

Construction Manager At Risk: Potts Construction/Graham Commercial Contractors

| | |
|---|---|
| SubCategory: | Contracts/Agreements |
| Department Name: | Administration |
| Department Summary Recommendation: | <p>After the City Council interviewed the three finalists for Construction Manager at Risk (CMR) and ranked each firm, I began to negotiate a CMR contract with Potts Construction/Graham Commercial Contractors. The attached contract details what is required by these firms for the construction of the Public Safety Headquarters and Fire Station #4. These firms will be providing builders risk insurance on these projects during the construction phase, and the cost of their work is as follows:</p> <ul style="list-style-type: none"> Pre-construction fee – amount not to exceed \$31,000.00 Construction costs (or General Conditions) – amount not to exceed \$51,907.25 per month Construction Manager at Risk fee – 5.5% of the cost of work <p>At this time it is estimated that the total cost to construct both of these buildings is \$12 million dollars and the city will retain all savings for construction costs below the guaranteed maximum price. Based on this construction cost estimate and a 12 month construction period (this can be shortened), the overall cost to the city for this project for the Construction Manager at Risk is 10.95% (this includes pre-construction fee, general conditions cost, and CMR fee of 5.5%). Keep in mind these total fees are based on two job sites which adds to the overall cost of the project. This total fee is on par with current market rates for other CMR contracts that I have reviewed, and I recommend approval of this contract.</p> <p>If the CMR contracts are approved, the next step will be for Potts Construction/Graham Commercial Contractors to begin advertising for local sub contractors who are qualified to complete phases of the project and solicit pricing for the entire project. From this the CMR will develop a guaranteed maximum price (GMP) for these projects. After review and approval by city staff, I expect to have the GMP contract on the September 1st City Council agenda for your approval.</p> |
| City Manager's Remarks: | Your approval of this agreement is recommended. |
| | <div style="text-align: right;">Cover Memo</div> <div style="text-align: right;">Item # 5</div> |

| | |
|--|---|
| Financial/Budget Certification: | Budgeted from 2007 SPLOST funds. |
| Legal: | Contracts have been reviewed. |
| Associated Information: | E-verify and SAVE documents have been received. |

**CONSTRUCTION MANAGEMENT CONTRACT
BETWEEN CITY OF CARTERSVILLE AND POTTS
CONSTRUCTION/GRAHAM COMMERCIAL CONTRACTORS**

This Construction Management Agreement (hereinafter the “Contract”) made this 7th day of July, 2011, by and between City of Cartersville, hereinafter called the “Owner”, and Potts Construction/Graham Commercial Contractors (hereinafter the “CM” or “Construction Professional”).

WHEREAS, the CM and the Owner, for the construction of the Public Safety Headquarters and Fire Station #4 (“Projects”) set forth herein, the adequacy and sufficiency of which is hereby acknowledged by each party, agree to the terms and conditions of the attached AIA Document A133 – 2009, AIA Document A201 – 2007, and CC-04 forms.

WHEREAS, during the entire duration of this contract, the CM and all sub-contractors or individuals under the CM’s direction must remain in compliance with Georgia Security and Immigration Compliance Act of 2007 and Georgia code §13-10-91 and §50-36-1.

WHEREAS, no later than September 1, 2011, the CM will provide a Guaranteed Maximum Price for these Projects to be approved by the Owner, and included with this GMP, the CM will provide payment and performance bond and builders risk insurance.

WHEREAS, the CM understands that all records pertaining to these projects are subject to the Georgia open records act and if information is requested, the CM must comply with the required deadlines.

Therefore, the City of Cartersville and Potts Construction/Graham Commercial Contractors enter into this Construction Management Agreement.

Potts Construction

BY: _____
David Buser, President

City of Cartersville

BY: _____
Matthew J. Santini, Mayor

Graham Commercial Contractors

BY: _____
Dennis Graham, Owner

Attest _____
Connie Keeling, City Clerk

AIA[®] Document A201[™] – 2007

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

Construction Management at-Risk Services for Public Safety Headquarters & Fire Station
No. 4

THE OWNER:

(Name, legal status and address)

City of Cartersville
1 North Erwin Street
Cartersville, Georgia 30120

THE ARCHITECT:

(Name, legal status and address)

Croft & Associates
3400 Blue Springs Road – Suite 200
Kennesaw, Georgia 30144

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

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

TABLE OF ARTICLES

- 1 GENERAL PROVISIONS
- 2 OWNER
- 3 CONTRACTOR
- 4 ARCHITECT
- 5 SUBCONTRACTORS
- 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS
- 7 CHANGES IN THE WORK
- 8 TIME
- 9 PAYMENTS AND COMPLETION
- 10 PROTECTION OF PERSONS AND PROPERTY
- 11 INSURANCE AND BONDS
- 12 UNCOVERING AND CORRECTION OF WORK
- 13 MISCELLANEOUS PROVISIONS
- 14 TERMINATION OR SUSPENSION OF THE CONTRACT
- 15 CLAIMS AND DISPUTES

Init.

INDEX

(Topics and numbers in bold are section headings.)

Acceptance of Nonconforming Work

9.6.6, 9.9.3, **12.3**

Acceptance of Work

9.6.6, 9.8.2, 9.9.3, 9.10.1, 9.10.3, **12.3**

Access to Work

3.16, 6.2.1, **12.1**

Accident Prevention

10

Acts and Omissions

3.2, 3.3.2, 3.12.8, 3.18, 4.2.3, 8.3.1, 9.5.1, 10.2.5, 10.2.8, 13.4.2, 13.7, 14.1, 15.2

Addenda

1.1.1, 3.11.1

Additional Costs, Claims for

3.7.4, 3.7.5, 6.1.1, 7.3.7.5, 10.3, 15.1.4

Additional Inspections and Testing

9.4.2, 9.8.3, 12.2.1, **13.5**

Additional Insured

11.1.4

Additional Time, Claims for

3.2.4, 3.7.4, 3.7.5, 3.10.2, 8.3.2, **15.1.5**

Administration of the Contract

3.1.3, **4.2**, 9.4, 9.5

Advertisement or Invitation to Bid

1.1.1

Aesthetic Effect

4.2.13

Allowances

3.8, 7.3.8

All-risk Insurance

11.3.1, 11.3.1.1

Applications for Payment

4.2.5, 7.3.9, 9.2, **9.3**, 9.4, 9.5.1, 9.6.3, 9.7, 9.10, 11.1.3

Approvals

2.1.1, 2.2.2, 2.4, 3.1.3, 3.10.2, 3.12.8, 3.12.9, 3.12.10, 4.2.7, 9.3.2, 13.5.1

Arbitration

8.3.1, 11.3.10, 13.1.1, **15.3.2**, **15.4**

ARCHITECT

4

Architect, Definition of

4.1.1

Architect, Extent of Authority

2.4.1, 3.12.7, 4.1, 4.2, 5.2, 6.3, 7.1.2, 7.3.7, 7.4, 9.2, 9.3.1, 9.4, 9.5, 9.6.3, 9.8, 9.10.1, 9.10.3, 12.1, 12.2.1, 13.5.1, 13.5.2, 14.2.2, 14.2.4, 15.1.3, 15.2.1

Architect, Limitations of Authority and Responsibility

2.1.1, 3.12.4, 3.12.8, 3.12.10, 4.1.2, 4.2.1, 4.2.2, 4.2.3, 4.2.6, 4.2.7, 4.2.10, 4.2.12, 4.2.13, 5.2.1, 7.4, 9.4.2, 9.5.3, 9.6.4, 15.1.3, 15.2

Architect's Additional Services and Expenses

2.4.1, 11.3.1.1, 12.2.1, 13.5.2, 13.5.3, 14.2.4

Architect's Administration of the Contract

3.1.3, 4.2, 3.7.4, 15.2, 9.4.1, 9.5

Architect's Approvals

2.4.1, 3.1.3, 3.5, 3.10.2, 4.2.7

Architect's Authority to Reject Work

3.5, 4.2.6, 12.1.2, 12.2.1

Architect's Copyright

1.1.7, 1.5

Architect's Decisions

3.7.4, 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 4.2.14, 6.3, 7.3.7, 7.3.9, 8.1.3, 8.3.1, 9.2, 9.4.1, 9.5, 9.8.4, 9.9.1, 13.5.2, 15.2, 15.3

Architect's Inspections

3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 13.5

Architect's Instructions

3.2.4, 3.3.1, 4.2.6, 4.2.7, 13.5.2

Architect's Interpretations

4.2.11, 4.2.12

Architect's Project Representative

4.2.10

Architect's Relationship with Contractor

1.1.2, 1.5, 3.1.3, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2, 3.5, 3.7.4, 3.7.5, 3.9.2, 3.9.3, 3.10, 3.11, 3.12, 3.16, 3.18, 4.1.2, 4.1.3, 4.2, 5.2, 6.2.2, 7, 8.3.1, 9.2, 9.3, 9.4, 9.5, 9.7, 9.8, 9.9, 10.2.6, 10.3, 11.3.7, 12, 13.4.2, 13.5, 15.2

Architect's Relationship with Subcontractors

1.1.2, 4.2.3, 4.2.4, 4.2.6, 9.6.3, 9.6.4, 11.3.7

Architect's Representations

9.4.2, 9.5.1, 9.10.1

Architect's Site Visits

3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.5.1, 9.9.2, 9.10.1, 13.5

Asbestos

10.3.1

Attorneys' Fees

3.18.1, 9.10.2, 10.3.3

Award of Separate Contracts

6.1.1, 6.1.2

Award of Subcontracts and Other Contracts for Portions of the Work

5.2

Basic Definitions

1.1

Bidding Requirements

1.1.1, 5.2.1, 11.4.1

Binding Dispute Resolution

9.7, 11.3.9, 11.3.10, 13.1.1, 15.2.5, 15.2.6.1, 15.3.1, 15.3.2, 15.4.1

Boiler and Machinery Insurance

11.3.2

Bonds, Lien

7.3.7.4, 9.10.2, 9.10.3

Bonds, Performance, and Payment

7.3.7.4, 9.6.7, 9.10.3, 11.3.9, **11.4**

Building Permit

3.7.1

Init.

Capitalization

1.3

Certificate of Substantial Completion
9.8.3, 9.8.4, 9.8.5

Certificates for Payment

4.2.1, 4.2.5, 4.2.9, 9.3.3, 9.4, 9.5, 9.6.1, 9.6.6, 9.7,
9.10.1, 9.10.3, 14.1.1.3, 14.2.4, 15.1.3

Certificates of Inspection, Testing or Approval
13.5.4

Certificates of Insurance

9.10.2, 11.1.3

Change Orders

1.1.1, 2.4.1, 3.4.2, 3.7.4, 3.8.2.3, 3.11.1, 3.12.8, 4.2.8,
5.2.3, 7.1.2, 7.1.3, 7.2, 7.3.2, 7.3.6, 7.3.9, 7.3.10, 8.3.1,
9.3.1.1, 9.10.3, 10.3.2, 11.3.1.2, 11.3.4, 11.3.9, 12.1.2,
15.1.3

Change Orders, Definition of

7.2.1

CHANGES IN THE WORK

2.2.1, 3.11, 4.2.8, 7, 7.2.1, 7.3.1, 7.4, 8.3.1, 9.3.1.1,
11.3.9

Claims, Definition of

15.1.1

CLAIMS AND DISPUTES

3.2.4, 6.1.1, 6.3, 7.3.9, 9.3.3, 9.10.4, 10.3.3, 15, 15.4

Claims and Timely Assertion of Claims

15.4.1

Claims for Additional Cost

3.2.4, 3.7.4, 6.1.1, 7.3.9, 10.3.2, 15.1.4

Claims for Additional Time

3.2.4, 3.7.4.6.1.1, 8.3.2, 10.3.2, 15.1.5

Concealed or Unknown Conditions, Claims for
3.7.4

Claims for Damages

3.2.4, 3.18, 6.1.1, 8.3.3, 9.5.1, 9.6.7, 10.3.3, 11.1.1,
11.3.5, 11.3.7, 14.1.3, 14.2.4, 15.1.6

Claims Subject to Arbitration

15.3.1, 15.4.1

Cleaning Up

3.15, 6.3

Commencement of the Work, Conditions Relating to

2.2.1, 3.2.2, 3.4.1, 3.7.1, 3.10.1, 3.12.6, 5.2.1, 5.2.3,
6.2.2, 8.1.2, 8.2.2, 8.3.1, 11.1, 11.3.1, 11.3.6, 11.4.1,
15.1.4

Commencement of the Work, Definition of

8.1.2

Communications Facilitating Contract

Administration

3.9.1, 4.2.4

Completion, Conditions Relating to

3.4.1, 3.11, 3.15, 4.2.2, 4.2.9, 8.2, 9.4.2, 9.8, 9.9.1,
9.10, 12.2, 13.7, 14.1.2

COMPLETION, PAYMENTS AND

9

Completion, Substantial

4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, 9.8, 9.9.1, 9.10.3, 12.2,
13.7

Compliance with Laws

1.6.1, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 4.1.1, 9.6.4, 10.2.2,
11.1, 11.3, 13.1, 13.4, 13.5.1, 13.5.2, 13.6, 14.1.1,
14.2.1.3, 15.2.8, 15.4.2, 15.4.3

Concealed or Unknown Conditions

3.7.4, 4.2.8, 8.3.1, 10.3

Conditions of the Contract

1.1.1, 6.1.1, 6.1.4

Consent, Written

3.4.2, 3.7.4, 3.12.8, 3.14.2, 4.1.2, 9.3.2, 9.8.5, 9.9.1,
9.10.2, 9.10.3, 11.3.1, 13.2, 13.4.2, 15.4.4.2

Consolidation or Joinder

15.4.4

**CONSTRUCTION BY OWNER OR BY
SEPARATE CONTRACTORS**

1.1.4, 6

Construction Change Directive, Definition of

7.3.1

Construction Change Directives

1.1.1, 3.4.2, 3.12.8, 4.2.8, 7.1.1, 7.1.2, 7.1.3, 7.3,
9.3.1.1

Construction Schedules, Contractor's

3.10, 3.12.1, 3.12.2, 6.1.3, 15.1.5.2

Contingent Assignment of Subcontracts

5.4, 14.2.2.2

Continuing Contract Performance

15.1.3

Contract, Definition of

1.1.2

**CONTRACT, TERMINATION OR
SUSPENSION OF THE**

5.4.1.1, 11.3.9, 14

Contract Administration

3.1.3, 4, 9.4, 9.5

**Contract Award and Execution, Conditions Relating
to**

3.7.1, 3.10, 5.2, 6.1, 11.1.3, 11.3.6, 11.4.1

Contract Documents, Copies Furnished and Use of
1.5.2, 2.2.5, 5.3

Contract Documents, Definition of

1.1.1

Contract Sum

3.7.4, 3.8, 5.2.3, 7.2, 7.3, 7.4, 9.1, 9.4.2, 9.5.1.4, 9.6.7,
9.7, 10.3.2, 11.3.1, 14.2.4, 14.3.2, 15.1.4, 15.2.5

Contract Sum, Definition of

9.1

Contract Time

3.7.4, 3.7.5, 3.10.2, 5.2.3, 7.2.1.3, 7.3.1, 7.3.5, 7.4,
8.1.1, 8.2.1, 8.3.1, 9.5.1, 9.7, 10.3.2, 12.1.1, 14.3.2,
15.1.5.1, 15.2.5

Contract Time, Definition of

8.1.1

CONTRACTOR

3

Contractor, Definition of

3.1, 6.1.2

Init.

Contractor's Construction Schedules

3.10, 3.12.1, 3.12.2, 6.1.3, 15.1.5.2
Contractor's Employees
3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6, 10.2, 10.3,
11.1.1, 11.3.7, 14.1, 14.2.1.1

Contractor's Liability Insurance

11.1

Contractor's Relationship with Separate Contractors and Owner's Forces
3.12.5, 3.14.2, 4.2.4, 6, 11.3.7, 12.1.2, 12.2.4
Contractor's Relationship with Subcontractors
1.2.2, 3.3.2, 3.18.1, 3.18.2, 5, 9.6.2, 9.6.7, 9.10.2, 11.3.1.2, 11.3.7, 11.3.8
Contractor's Relationship with the Architect
1.1.2, 1.5, 3.1.3, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2, 3.5, 3.7.4, 3.10, 3.11, 3.12, 3.16, 3.18, 4.1.3, 4.2, 5.2, 6.2.2, 7, 8.3.1, 9.2, 9.3, 9.4, 9.5, 9.7, 9.8, 9.9, 10.2.6, 10.3, 11.3.7, 12, 13.5, 15.1.2, 15.2.1
Contractor's Representations
3.2.1, 3.2.2, 3.5, 3.12.6, 6.2.2, 8.2.1, 9.3.3, 9.8.2
Contractor's Responsibility for Those Performing the Work
3.3.2, 3.18, 5.3.1, 6.1.3, 6.2, 9.5.1, 10.2.8
Contractor's Review of Contract Documents
3.2
Contractor's Right to Stop the Work
9.7
Contractor's Right to Terminate the Contract
14.1, 15.1.6
Contractor's Submittals
3.10, 3.11, 3.12.4, 4.2.7, 5.2.1, 5.2.3, 9.2, 9.3, 9.8.2, 9.8.3, 9.9.1, 9.10.2, 9.10.3, 11.1.3, 11.4.2
Contractor's Superintendent
3.9, 10.2.6
Contractor's Supervision and Construction Procedures
1.2.2, 3.3, 3.4, 3.12.10, 4.2.2, 4.2.7, 6.1.3, 6.2.4, 7.1.3, 7.3.5, 7.3.7, 8.2, 10, 12, 14, 15.1.3
Contractual Liability Insurance
11.1.1.8, 11.2
Coordination and Correlation
1.2, 3.2.1, 3.3.1, 3.10, 3.12.6, 6.1.3, 6.2.1
Copies Furnished of Drawings and Specifications
1.5, 2.2.5, 3.11
Copyrights
1.5, 3.17
Correction of Work
2.3, 2.4, 3.7.3, 9.4.2, 9.8.2, 9.8.3, 9.9.1, 12.1.2, 12.2
Correlation and Intent of the Contract Documents
1.2
Cost, Definition of
7.3.7
Costs
2.4.1, 3.2.4, 3.7.3, 3.8.2, 3.15.2, 5.4.2, 6.1.1, 6.2.3, 7.3.3.3, 7.3.7, 7.3.8, 7.3.9, 9.10.2, 10.3.2, 10.3.6, 11.3, 12.1.2, 12.2.1, 12.2.4, 13.5, 14

Cutting and Patching

3.14, 6.2.5
Damage to Construction of Owner or Separate Contractors
3.14.2, 6.2.4, 10.2.1.2, 10.2.5, 10.4, 11.1.1, 11.3, 12.2.4
Damage to the Work
3.14.2, 9.9.1, 10.2.1.2, 10.2.5, 10.4.1, 11.3.1, 12.2.4
Damages, Claims for
3.2.4, 3.18, 6.1.1, 8.3.3, 9.5.1, 9.6.7, 10.3.3, 11.1.1, 11.3.5, 11.3.7, 14.1.3, 14.2.4, 15.1.6
Damages for Delay
6.1.1, 8.3.3, 9.5.1.6, 9.7, 10.3.2
Date of Commencement of the Work, Definition of
8.1.2
Date of Substantial Completion, Definition of
8.1.3
Day, Definition of
8.1.4
Decisions of the Architect
3.7.4, 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 15.2, 6.3, 7.3.7, 7.3.9, 8.1.3, 8.3.1, 9.2, 9.4, 9.5.1, 9.8.4, 9.9.1, 13.5.2, 14.2.2, 14.2.4, 15.1, 15.2
Decisions to Withhold Certification
9.4.1, 9.5, 9.7, 14.1.1.3
Defective or Nonconforming Work, Acceptance, Rejection and Correction of
2.3.1, 2.4.1, 3.5, 4.2.6, 6.2.5, 9.5.1, 9.5.2, 9.6.6, 9.8.2, 9.9.3, 9.10.4, 12.2.1
Definitions
1.1, 2.1.1, 3.1.1, 3.5, 3.12.1, 3.12.2, 3.12.3, 4.1.1, 15.1.1, 5.1, 6.1.2, 7.2.1, 7.3.1, 8.1, 9.1, 9.8.1
Delays and Extensions of Time
3.2, 3.7.4, 5.2.3, 7.2.1, 7.3.1, 7.4, 8.3, 9.5.1, 9.7, 10.3.2, 10.4.1, 14.3.2, 15.1.5, 15.2.5
Disputes
6.3, 7.3.9, 15.1, 15.2
Documents and Samples at the Site
3.11
Drawings, Definition of
1.1.5
Drawings and Specifications, Use and Ownership of
3.11
Effective Date of Insurance
8.2.2, 11.1.2
Emergencies
10.4, 14.1.1.2, 15.1.4
Employees, Contractor's
3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6, 10.2, 10.3.3, 11.1.1, 11.3.7, 14.1, 14.2.1.1
Equipment, Labor, Materials or
1.1.3, 1.1.6, 3.4, 3.5, 3.8.2, 3.8.3, 3.12, 3.13.1, 3.15.1, 4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.7, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1, 10.2.4, 14.2.1.1, 14.2.1.2

Init.

Execution and Progress of the Work
1.1.3, 1.2.1, 1.2.2, 2.2.3, 2.2.5, 3.1, 3.3.1, 3.4.1, 3.5,
3.7.1, 3.10.1, 3.12, 3.14, 4.2, 6.2.2, 7.1.3, 7.3.5, 8.2,
9.5.1, 9.9.1, 10.2, 10.3, 12.2, 14.2, 14.3.1, 15.1.3
Extensions of Time
3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3, 7.4, 9.5.1, 9.7, 10.3.2,
10.4.1, 14.3, 15.1.5, 15.2.5
Failure of Payment
9.5.1.3, 9.7, 9.10.2, 13.6, 14.1.1.3, 14.2.1.2
Faulty Work
(See Defective or Nonconforming Work)
Final Completion and Final Payment
4.2.1, 4.2.9, 9.8.2, 9.10, 11.1.2, 11.1.3, 11.3.1, 11.3.5,
12.3.1, 14.2.4, 14.4.3
Financial Arrangements, Owner's
2.2.1, 13.2.2, 14.1.1.4
Fire and Extended Coverage Insurance
11.3.1.1
GENERAL PROVISIONS
1
Governing Law
13.1
Guarantees (See Warranty)
Hazardous Materials
10.2.4, 10.3
Identification of Subcontractors and Suppliers
5.2.1
Indemnification
3.17, 3.18, 9.10.2, 10.3.3, 10.3.5, 10.3.6, 11.3.1.2,
11.3.7
Information and Services Required of the Owner
2.1.2, 2.2, 3.2.2, 3.12.4, 3.12.10, 6.1.3, 6.1.4, 6.2.5,
9.6.1, 9.6.4, 9.9.2, 9.10.3, 10.3.3, 11.2, 11.4, 13.5.1,
13.5.2, 14.1.1.4, 14.1.4, 15.1.3
Initial Decision
15.2
Initial Decision Maker, Definition of
1.1.8
Initial Decision Maker, Decisions
14.2.2, 14.2.4, 15.2.1, 15.2.2, 15.2.3, 15.2.4, 15.2.5
Initial Decision Maker, Extent of Authority
14.2.2, 14.2.4, 15.1.3, 15.2.1, 15.2.2, 15.2.3, 15.2.4,
15.2.5
Injury or Damage to Person or Property
10.2.8, 10.4.1
Inspections
3.1.3, 3.3.3, 3.7.1, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3,
9.9.2, 9.10.1, 12.2.1, 13.5
Instructions to Bidders
1.1.1
Instructions to the Contractor
3.2.4, 3.3.1, 3.8.1, 5.2.1, 7, 8.2.2, 12, 13.5.2
Instruments of Service, Definition of
1.1.7
Insurance
3.18.1, 6.1.1.1, 7.3.7, 9.3.2, 9.8.4, 9.9.1, 9.10.2, 11

Insurance, Boiler and Machinery
11.3.2
Insurance, Contractor's Liability
11.1
Insurance, Effective Date of
8.2.2, 11.1.2
Insurance, Loss of Use
11.3.3
Insurance, Owner's Liability
11.2
Insurance, Property
10.2.5, 11.3
Insurance, Stored Materials
9.3.2
INSURANCE AND BONDS
11
Insurance Companies, Consent to Partial Occupancy
9.9.1
Intent of the Contract Documents
1.2.1, 4.2.7, 4.2.12, 4.2.13, 7.4
Interest
13.6
Interpretation
1.2.3, 1.4, 4.1.1, 5.1, 6.1.2, 15.1.1
Interpretations, Written
4.2.11, 4.2.12, 15.1.4
Judgment on Final Award
15.4.2
Labor and Materials, Equipment
1.1.3, 1.1.6, 3.4, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1,
4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.7, 9.3.2, 9.3.3, 9.5.1.3,
9.10.2, 10.2.1, 10.2.4, 14.2.1.1, 14.2.1.2
Labor Disputes
8.3.1
Laws and Regulations
1.5, 3.2.3, 3.6, 3.7, 3.12.10, 3.13.1, 4.1.1, 9.6.4, 9.9.1,
10.2.2, 11.1.1, 11.3, 13.1.1, 13.4, 13.5.1, 13.5.2,
13.6.1, 14, 15.2.8, 15.4
Liens
2.1.2, 9.3.3, 9.10.2, 9.10.4, 15.2.8
Limitations, Statutes of
12.2.5, 13.7, 15.4.1.1
Limitations of Liability
2.3.1, 3.2.2, 3.5, 3.12.10, 3.17, 3.18.1, 4.2.6, 4.2.7,
4.2.12, 6.2.2, 9.4.2, 9.6.4, 9.6.7, 10.2.5, 10.3.3, 11.1.2,
11.2, 11.3.7, 12.2.5, 13.4.2
Limitations of Time
2.1.2, 2.2, 2.4, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2.7,
5.2, 5.3.1, 5.4.1, 6.2.4, 7.3, 7.4, 8.2, 9.2, 9.3.1, 9.3.3,
9.4.1, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 11.1.3, 11.3.1.5,
11.3.6, 11.3.10, 12.2, 13.5, 13.7, 14, 15
Loss of Use Insurance
11.3.3
Material Suppliers
1.5, 3.12.1, 4.2.4, 4.2.6, 5.2.1, 9.3, 9.4.2, 9.6, 9.10.5
Materials, Hazardous
10.2.4, 10.3

Init.

Materials, Labor, Equipment and
1.1.3, 1.1.6, 1.5.1, 3.4.1, 3.5, 3.8.2, 3.8.3, 3.12, 3.13.1,
3.15.1, 4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.7, 9.3.2, 9.3.3,
9.5.1.3, 9.10.2, 10.2.1.2, 10.2.4, 14.2.1.1, 14.2.1.2
Means, Methods, Techniques, Sequences and
Procedures of Construction
3.3.1, 3.12.10, 4.2.2, 4.2.7, 9.4.2
Mechanic's Lien
2.1.2, 15.2.8
Mediation
8.3.1, 10.3.5, 10.3.6, 15.2.1, 15.2.5, 15.2.6, 15.3,
15.4.1
Minor Changes in the Work
1.1.1, 3.12.8, 4.2.8, 7.1, 7.4
MISCELLANEOUS PROVISIONS
13
Modifications, Definition of
1.1.1
Modifications to the Contract
1.1.1, 1.1.2, 3.11, 4.1.2, 4.2.1, 5.2.3, 7, 8.3.1, 9.7,
10.3.2, 11.3.1
Mutual Responsibility
6.2
Nonconforming Work, Acceptance of
9.6.6, 9.9.3, 12.3
Nonconforming Work, Rejection and Correction of
2.3.1, 2.4.1, 3.5, 4.2.6, 6.2.4, 9.5.1, 9.8.2, 9.9.3, 9.10.4,
12.2.1
Notice
2.2.1, 2.3.1, 2.4.1, 3.2.4, 3.3.1, 3.7.2, 3.12.9, 5.2.1, 9.7,
9.10, 10.2.2, 11.1.3, 12.2.2.1, 13.3, 13.5.1, 13.5.2,
14.1, 14.2, 15.2.8, 15.4.1
Notice, Written
2.3.1, 2.4.1, 3.3.1, 3.9.2, 3.12.9, 3.12.10, 5.2.1, 9.7,
9.10, 10.2.2, 10.3, 11.1.3, 11.3.6, 12.2.2.1, 13.3, 14,
15.2.8, 15.4.1
Notice of Claims
3.7.4, 10.2.8, 15.1.2, 15.4
Notice of Testing and Inspections
13.5.1, 13.5.2
Observations, Contractor's
3.2, 3.7.4
Occupancy
2.2.2, 9.6.6, 9.8, 11.3.1.5
Orders, Written
1.1.1, 2.3, 3.9.2, 7, 8.2.2, 11.3.9, 12.1, 12.2.2.1, 13.5.2,
14.3.1
OWNER
2
Owner, Definition of
2.1.1
Owner, Information and Services Required of the
2.1.2, 2.2, 3.2.2, 3.12.10, 6.1.3, 6.1.4, 6.2.5, 9.3.2,
9.6.1, 9.6.4, 9.9.2, 9.10.3, 10.3.3, 11.2, 11.3, 13.5.1,
13.5.2, 14.1.1.4, 14.1.4, 15.1.3

Owner's Authority
1.5, 2.1.1, 2.3.1, 2.4.1, 3.4.2, 3.8.1, 3.12.10, 3.14.2,
4.1.2, 4.1.3, 4.2.4, 4.2.9, 5.2.1, 5.2.4, 5.4.1, 6.1, 6.3,
7.2.1, 7.3.1, 8.2.2, 8.3.1, 9.3.1, 9.3.2, 9.5.1, 9.6.4,
9.9.1, 9.10.2, 10.3.2, 11.1.3, 11.3.3, 11.3.10, 12.2.2,
12.3.1, 13.2.2, 14.3, 14.4, 15.2.7
Owner's Financial Capability
2.2.1, 13.2.2, 14.1.1.4
Owner's Liability Insurance
11.2
Owner's Relationship with Subcontractors
1.1.2, 5.2, 5.3, 5.4, 9.6.4, 9.10.2, 14.2.2
Owner's Right to Carry Out the Work
2.4, 14.2.2
Owner's Right to Clean Up
6.3
**Owner's Right to Perform Construction and to
Award Separate Contracts**
6.1
Owner's Right to Stop the Work
2.3
Owner's Right to Suspend the Work
14.3
Owner's Right to Terminate the Contract
14.2
**Ownership and Use of Drawings, Specifications
and Other Instruments of Service**
1.1.1, 1.1.6, 1.1.7, 1.5, 2.2.5, 3.2.2, 3.11.1, 3.17,
4.2.12, 5.3.1
Partial Occupancy or Use
9.6.6, 9.9, 11.3.1.5
Patching, Cutting and
3.14, 6.2.5
Patents
3.17
Payment, Applications for
4.2.5, 7.3.9, 9.2, 9.3, 9.4, 9.5, 9.6.3, 9.7, 9.8.5, 9.10.1,
14.2.3, 14.2.4, 14.4.3
Payment, Certificates for
4.2.5, 4.2.9, 9.3.3, 9.4, 9.5, 9.6.1, 9.6.6, 9.7, 9.10.1,
9.10.3, 13.7, 14.1.1.3, 14.2.4
Payment, Failure of
9.5.1.3, 9.7, 9.10.2, 13.6, 14.1.1.3, 14.2.1.2
Payment, Final
4.2.1, 4.2.9, 9.8.2, 9.10, 11.1.2, 11.1.3, 11.4.1, 12.3.1,
13.7, 14.2.4, 14.4.3
Payment Bond, Performance Bond and
7.3.7.4, 9.6.7, 9.10.3, 11.4
Payments, Progress
9.3, 9.6, 9.8.5, 9.10.3, 13.6, 14.2.3, 15.1.3
PAYMENTS AND COMPLETION
9
Payments to Subcontractors
5.4.2, 9.5.1.3, 9.6.2, 9.6.3, 9.6.4, 9.6.7, 14.2.1.2
PCB
10.3.1

Init.

Performance Bond and Payment Bond

7.3.7.4, 9.6.7, 9.10.3, 11.4

Permits, Fees, Notices and Compliance with Laws

2.2.2, 3.7, 3.13, 7.3.7.4, 10.2.2

**PERSONS AND PROPERTY, PROTECTION OF
10**

Polychlorinated Biphenyl

10.3.1

Product Data, Definition of

3.12.2

Product Data and Samples, Shop Drawings

3.11, 3.12, 4.2.7

Progress and Completion

4.2.2, 8.2, 9.8, 9.9.1, 14.1.4, 15.1.3

Progress Payments

9.3, 9.6, 9.8.5, 9.10.3, 13.6, 14.2.3, 15.1.3

Project, Definition of

1.1.4

Project Representatives

4.2.10

Property Insurance

10.2.5, 11.3

**PROTECTION OF PERSONS AND PROPERTY
10**

Regulations and Laws

1.5, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 4.1.1, 9.6.4, 9.9.1,
10.2.2, 11.1, 11.4, 13.1, 13.4, 13.5.1, 13.5.2, 13.6, 14,
15.2.8, 15.4

Rejection of Work

3.5, 4.2.6, 12.2.1

Releases and Waivers of Liens

9.10.2

Representations

3.2.1, 3.5, 3.12.6, 6.2.2, 8.2.1, 9.3.3, 9.4.2, 9.5.1, 9.8.2,
9.10.1

Representatives

2.1.1, 3.1.1, 3.9, 4.1.1, 4.2.1, 4.2.2, 4.2.10, 5.1.1, 5.1.2,
13.2.1

Responsibility for Those Performing the Work

3.3.2, 3.18, 4.2.3, 5.3.1, 6.1.3, 6.2, 6.3, 9.5.1, 10

Retainage

9.3.1, 9.6.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3

Review of Contract Documents and Field

Conditions by Contractor

3.2, 3.12.7, 6.1.3

Review of Contractor's Submittals by Owner and
Architect

3.10.1, 3.10.2, 3.11, 3.12, 4.2, 5.2, 6.1.3, 9.2, 9.8.2

Review of Shop Drawings, Product Data and Samples
by Contractor

3.12

Rights and Remedies

1.1.2, 2.3, 2.4, 3.5, 3.7.4, 3.15.2, 4.2.6, 5.3, 5.4, 6.1,
6.3, 7.3.1, 8.3, 9.5.1, 9.7, 10.2.5, 10.3, 12.2.2, 12.2.4,
13.4, 14, 15.4

Royalties, Patents and Copyrights

3.17

Rules and Notices for Arbitration

15.4.1

Safety of Persons and Property

10.2, 10.4

Safety Precautions and Programs

3.3.1, 4.2.2, 4.2.7, 5.3.1, 10.1, 10.2, 10.4

Samples, Definition of

3.12.3

Samples, Shop Drawings, Product Data and

3.11, 3.12, 4.2.7

Samples at the Site, Documents and

3.11

Schedule of Values

9.2, 9.3.1

Schedules, Construction

3.10, 3.12.1, 3.12.2, 6.1.3, 15.1.5.2

Separate Contracts and Contractors

1.1.4, 3.12.5, 3.14.2, 4.2.4, 4.2.7, 6, 8.3.1, 12.1.2

Shop Drawings, Definition of

3.12.1

Shop Drawings, Product Data and Samples

3.11, 3.12, 4.2.7

Site, Use of

3.13, 6.1.1, 6.2.1

Site Inspections

3.2.2, 3.3.3, 3.7.1, 3.7.4, 4.2, 9.4.2, 9.10.1, 13.5

Site Visits, Architect's

3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.5.1, 9.9.2, 9.10.1, 13.5

Special Inspections and Testing

4.2.6, 12.2.1, 13.5

Specifications, Definition of

1.1.6

Specifications

1.1.1, 1.1.6, 1.2.2, 1.5, 3.11, 3.12.10, 3.17, 4.2.14

Statute of Limitations

13.7, 15.4.1.1

Stopping the Work

2.3, 9.7, 10.3, 14.1

Stored Materials

6.2.1, 9.3.2, 10.2.1.2, 10.2.4

Subcontractor, Definition of

5.1.1

SUBCONTRACTORS

5

Subcontractors, Work by

1.2.2, 3.3.2, 3.12.1, 4.2.3, 5.2.3, 5.3, 5.4, 9.3.1.2, 9.6.7

Subcontractual Relations

5.3, 5.4, 9.3.1.2, 9.6, 9.10, 10.2.1, 14.1, 14.2.1

Submittals

3.10, 3.11, 3.12, 4.2.7, 5.2.1, 5.2.3, 7.3.7, 9.2, 9.3, 9.8,
9.9.1, 9.10.2, 9.10.3, 11.1.3

Submittal Schedule

3.10.2, 3.12.5, 4.2.7

Subrogation, Waivers of

6.1.1, 11.3.7

Init.

Substantial Completion

4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, 9.8, 9.9.1, 9.10.3, 12.2, 13.7

Substantial Completion, Definition of
9.8.1

Substitution of Subcontractors

5.2.3, 5.2.4

Substitution of Architect

4.1.3

Substitutions of Materials

3.4.2, 3.5, 7.3.8

Sub-subcontractor, Definition of

5.1.2

Subsurface Conditions

3.7.4

Successors and Assigns

13.2

Superintendent

3.9, 10.2.6

Supervision and Construction Procedures

1.2.2, 3.3, 3.4, 3.12.10, 4.2.2, 4.2.7, 6.1.3, 6.2.4, 7.1.3, 7.3.7, 8.2, 8.3.1, 9.4.2, 10, 12, 14, 15.1.3

Surety

5.4.1.2, 9.8.5, 9.10.2, 9.10.3, 14.2.2, 15.2.7

Surety, Consent of

9.10.2, 9.10.3

Surveys

2.2.3

Suspension by the Owner for Convenience

14.3

Suspension of the Work

5.4.2, 14.3

Suspension or Termination of the Contract

5.4.1.1, 14

Taxes

3.6, 3.8.2.1, 7.3.7.4

Termination by the Contractor

14.1, 15.1.6

Termination by the Owner for Cause

5.4.1.1, 14.2, 15.1.6

Termination by the Owner for Convenience

14.4

Termination of the Architect

4.1.3

Termination of the Contractor

14.2.2

TERMINATION OR SUSPENSION OF THE CONTRACT

14

Tests and Inspections

3.1.3, 3.3.3, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 10.3.2, 11.4.1.1, 12.2.1, 13.5

TIME

8

Time, Delays and Extensions of

3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3.1, 7.4, 8.3, 9.5.1, 9.7, 10.3.2, 10.4.1, 14.3.2, 15.1.5, 15.2.5

Time Limits

2.1.2, 2.2, 2.4, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2, 5.2, 5.3, 5.4, 6.2.4, 7.3, 7.4, 8.2, 9.2, 9.3.1, 9.3.3, 9.4.1, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 11.1.3, 12.2, 13.5, 13.7, 14, 15.1.2, 15.4

Time Limits on Claims

3.7.4, 10.2.8, 13.7, 15.1.2

Title to Work

9.3.2, 9.3.3

Transmission of Data in Digital Form

1.6

UNCOVERING AND CORRECTION OF WORK
12

Uncovering of Work

12.1

Unforeseen Conditions, Concealed or Unknown

3.7.4, 8.3.1, 10.3

Unit Prices

7.3.3.2, 7.3.4

Use of Documents

1.1.1, 1.5, 2.2.5, 3.12.6, 5.3

Use of Site

3.13, 6.1.1, 6.2.1

Values, Schedule of

9.2, 9.3.1

Waiver of Claims by the Architect

13.4.2

Waiver of Claims by the Contractor

9.10.5, 13.4.2, 15.1.6

Waiver of Claims by the Owner

9.9.3, 9.10.3, 9.10.4, 12.2.2.1, 13.4.2, 14.2.4, 15.1.6

Waiver of Consequential Damages

14.2.4, 15.1.6

Waiver of Liens

9.10.2, 9.10.4

Waivers of Subrogation

6.1.1, 11.3.7

Warranty

3.5, 4.2.9, 9.3.3, 9.8.4, 9.9.1, 9.10.4, 12.2.2, 13.7

Weather Delays

15.1.5.2

Work, Definition of

1.1.3

Written Consent

1.5.2, 3.4.2, 3.7.4, 3.12.8, 3.14.2, 4.1.2, 9.3.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3, 11.4.1, 13.2, 13.4.2, 15.4.4.2

Written Interpretations

4.2.11, 4.2.12

Written Notice

2.3, 2.4, 3.3.1, 3.9, 3.12.9, 3.12.10, 5.2.1, 8.2.2, 9.7, 9.10, 10.2.2, 10.3, 11.1.3, 12.2.2, 12.2.4, 13.3, 14, 15.4.1

Written Orders

1.1.1, 2.3, 3.9, 7, 8.2.2, 12.1, 12.2, 13.5.2, 14.3.1, 15.1.2

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 BASIC DEFINITIONS

§ 1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding requirements.

§ 1.1.2 THE CONTRACT

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants or (4) between any persons or entities other than the Owner and the Contractor. The Architect and Contractor shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of their respective duties.

§ 1.1.3 THE WORK

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

§ 1.1.4 THE PROJECT

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by separate contractors.

§ 1.1.5 THE DRAWINGS

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

§ 1.1.6 THE SPECIFICATIONS

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§ 1.1.7 INSTRUMENTS OF SERVICE

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.1.8 INITIAL DECISION MAKER

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2 and certify termination of the Agreement under Section 14.2.2.

§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.3 CAPITALIZATION

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of Architects.

§ 1.4 INTERPRETATION

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 1.5 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE

§ 1.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and will retain all common law, statutory and other reserved rights, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce the Instruments of Service provided to them solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect's consultants.

§ 1.6 TRANSMISSION OF DATA IN DIGITAL FORM

If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, they shall establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents.

§ 1.7 ORDER OF PRECEDENCE

§ 1.7.1 In case of conflicts between the drawings and specifications, the specifications shall govern. In any case of omissions or errors in figures, drawings or specifications, the Contractor shall immediately submit the matter to the Owner for clarification. The Owner's clarifications are final and binding on all Parties, subject to an equitable adjustment in Contract Time or Price pursuant to Articles 7 and 8 or dispute resolution in accordance with Article 15.

§ 1.7.2 Where figures are given, they shall be preferred to scaled dimensions. No dimensions shall be scaled from drawings by anyone other than the architect of record. If no written dimensions are given, a clarification request must be sent to the architect.

§ 1.7.3 Any terms that have well-known technical or trade meanings, unless otherwise specifically defined in the Contract Documents, shall be interpreted in accordance with their well-known meanings.

§ 1.7.4 In case of any inconsistency, conflict or ambiguity among the Contract Documents, the documents shall govern in the following order: (a) Change Orders and written modifications to this Agreement; (b) this Agreement; (c) drawings (large scale governing over small scale), specifications and addenda issued prior to the execution of this Agreement; (d) information furnished by the Owner; (e) other documents listed in the Agreement. Among categories of documents having the same order of precedence, the term or provision that includes the latest date shall control. Information identified in one Contract Document and not identified in another shall not be considered a conflict or inconsistency.

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ARTICLE 2 OWNER

§ 2.1 GENERAL

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 2.1.2 The Owner shall furnish to the Contractor within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ 2.2.1 Prior to commencement of the Work and thereafter, the Contractor may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract.

§ 2.2.2 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.2.3 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 2.2.4 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

§ 2.2.5 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

§ 2.3 OWNER'S RIGHT TO STOP THE WORK

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

§ 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

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ARTICLE 3 CONTRACTOR

§ 3.1 GENERAL

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

§ 3.1.3 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Owner and Architect any errors, inconsistencies or omissions discovered by the Contractor. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect and Owner any discovered nonconformity in such form as the Owner may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall make Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

§ 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Architect. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any loss or damage arising from those Owner-required means, methods, techniques, sequences or procedures, unless Contractor is negligent.

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§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 3.4 LABOR AND MATERIALS

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 3.4.2 Except in the case of minor changes in the Work authorized by the Architect in accordance with Sections 3.12.8 or 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

§ 3.5 WARRANTY

The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.6 TAXES

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

§ 3.7 PERMITS, FEES, NOTICES AND COMPLIANCE WITH LAWS

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.4 **Concealed or Unknown Conditions.** If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable

Init.

adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor in writing, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may proceed as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor knowingly encounters and recognizes human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence or good faith belief of such remains or features may be made as provided in Article 15.

§ 3.8 ALLOWANCES

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1 Allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 Whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

§ 3.9 SUPERINTENDENT

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the name and qualifications of a proposed superintendent. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner has reasonable objection to the proposed superintendent. Failure of the Owner to reply within the 14 day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

§ 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

§ 3.10.2 The Contractor shall prepare a submittal schedule, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Architect's approval. The Architect's approval shall not unreasonably be delayed or withheld. The submittal schedule shall (1) be

Init.

coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.

§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE

The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. Their purpose is to demonstrate the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Architect.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such written notice, the Architect's approval of a resubmission shall not apply to such revisions.

Init.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

§ 3.13 USE OF SITE

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§ 3.14 CUTTING AND PATCHING

§ 3.14.1 The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting and patching shall be restored to the condition existing prior to the cutting, fitting and patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

§ 3.15 CLEANING UP

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials from and about the Project.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and Owner shall be entitled to reimbursement from the Contractor.

§ 3.16 ACCESS TO WORK

The Contractor shall provide the Owner and Architect access to the Work in preparation and progress wherever located.

§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Architect. However, if the Contractor has reason to

Init.

believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect.

§ 3.18 INDEMNIFICATION

§ 3.18.1 To the fullest extent permitted by law the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, 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), but only to the extent caused by the 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 claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 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.

ARTICLE 4 ARCHITECT

§ 4.1 GENERAL

§ 4.1.1 The Owner shall retain an architect lawfully licensed to practice architecture or an entity lawfully practicing architecture in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 4.1.2 Duties, responsibilities and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner, Contractor and Architect. Consent shall not be unreasonably withheld.

§ 4.1.3 If the employment of the Architect is terminated, the Owner shall employ a successor architect as to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

§ 4.2 ADMINISTRATION OF THE CONTRACT

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate for Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

Init.

§ 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION

The Owner and Contractor shall endeavor to communicate with each other directly about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.

§ 4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more project representatives to assist in carrying out the Architect's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

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

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either and will not be liable for results of interpretations or decisions rendered in good faith.

§ 4.2.13 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

Init.

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 DEFINITIONS

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

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

§ 5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to any such proposed person or entity or (2) that the Architect requires additional time for review. Failure of the Owner or Architect to reply within the 14-day period shall constitute notice of no reasonable objection.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person or entity previously selected if the Owner or Architect makes reasonable objection to such substitution.

§ 5.3 SUBCONTRACTUAL RELATIONS

By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

§ 5.4.3 Upon such assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

§ 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights that apply to the Contractor under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6 and Articles 10, 11 and 12.

§ 6.2 MUTUAL RESPONSIBILITY

§ 6.2.1 The Contractor shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a separate contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be

Init.

responsible to the Contractor for costs the Contractor incurs because of a separate contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

§ 6.2.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

§ 6.3 OWNER'S RIGHT TO CLEAN UP

If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 GENERAL

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor and Architect; a Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Architect alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work.

§ 7.2 CHANGE ORDERS

§ 7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor and Architect stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 7.3 CONSTRUCTION CHANGE DIRECTIVES

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.7.

§ 7.3.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that

application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 7.3.5 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.6 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following:

- .1 Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- .2 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- .5 Additional costs of supervision and field office personnel directly attributable to the change.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.4 MINOR CHANGES IN THE WORK

The Architect has authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order signed by the Architect and shall be binding on the Owner and Contractor.

ARTICLE 8 TIME

§ 8.1 DEFINITIONS

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

Init.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 8.2 PROGRESS AND COMPLETION

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.3 DELAYS AND EXTENSIONS OF TIME

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner; or by changes ordered in the Work; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control; or by delay authorized by the Owner pending mediation and arbitration; or by other causes that the Architect determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 CONTRACT SUM

The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 9.2 SCHEDULE OF VALUES

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit to the Architect, before the first Application for Payment, a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 9.3 APPLICATIONS FOR PAYMENT

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

Init.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

§ 9.4 CERTIFICATES FOR PAYMENT

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data comprising the Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.5 DECISIONS TO WITHHOLD CERTIFICATION

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor;

Init.

- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.

§ 9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.3 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Architect will reflect such payment on the next Certificate for Payment.

§ 9.6 PROGRESS PAYMENTS

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

§ 9.6.2 The Contractor shall pay each Subcontractor no later than seven days after receipt of payment from the Owner the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law.

§ 9.6.5 Contractor payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, shall create any fiduciary liability or tort liability on the part of the Contractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.7 FAILURE OF PAYMENT

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

Init.

§ 9.8 SUBSTANTIAL COMPLETION

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 9.9 PARTIAL OCCUPANCY OR USE

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.3.1.5 and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

§ 9.10 FINAL COMPLETION AND FINAL PAYMENT

§ 9.10.1 Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will

Init.

constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents; or
- .3 terms of special warranties required by the Contract Documents.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.2 SAFETY OF PERSONS AND PROPERTY

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

§ 10.2.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

Init.

§ 10.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 INJURY OR DAMAGE TO PERSON OR PROPERTY

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.3 HAZARDOUS MATERIALS

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing.

§ 10.3.2 Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up.

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or

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expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Contractor shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred.

§ 10.4 EMERGENCIES

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 CONTRACTOR'S LIABILITY INSURANCE

§ 11.1.1 The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- .1 Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;
- .2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- .3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- .4 Claims for damages insured by usual personal injury liability coverage;
- .5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- .7 Claims for bodily injury or property damage arising out of completed operations; and
- .8 Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.

§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents.

§ 11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall

Init.

be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness.

§ 11.1.4 The Contractor shall cause the commercial liability coverage required by the Contract Documents to include (1) the Owner as additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations.

§ 11.2 OWNER'S LIABILITY INSURANCE

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

§ 11.3 PROPERTY INSURANCE

§ 11.3.1 Unless otherwise provided, the Contractor shall purchase and maintain as a Cost of the Work, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. This insurance shall include interests as "named insureds", but not as "first-named insureds" of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.

§ 11.3.1.1 Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss.

§ 11.3.1.2 Not Used

§ 11.3.1.3 If the property insurance requires deductibles, the Contractor, as a Cost of the Work, shall pay costs not covered because of such deductibles.

§ 11.3.1.4 This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.

§ 11.3.1.5 Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

§ 11.3.2 BOILER AND MACHINERY INSURANCE

The Owner shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.

§ 11.3.3 LOSS OF USE INSURANCE

The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Contractor for loss of use of the Owner's property, including consequential losses due to fire or other hazards however caused.

Init.

§ 11.3.4 If the Contractor requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.

§ 11.3.5 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section 11.3.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

§ 11.3.6 Before an exposure to loss may occur, the Owner shall file with the Contractor a copy of each policy that includes insurance coverages required by this Section 11.3. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Contractor.

§ 11.3.7 WAIVERS OF SUBROGATION

The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 11.3 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

§ 11.3.8 A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.3.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

§ 11.3.9 If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Contractor. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.

§ 11.3.10 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power; if such objection is made, the dispute shall be resolved in the manner selected by the Owner and Contractor as the method of binding dispute resolution in the Agreement. If the Owner and Contractor have selected arbitration as the method of binding dispute resolution, the Owner as fiduciary shall make settlement with insurers or, in the case of a dispute over distribution of insurance proceeds, in accordance with the directions of the arbitrators.

§ 11.4 PERFORMANCE BOND AND PAYMENT BOND

§ 11.4.1 The Owner shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract.

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§ 11.4.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 UNCOVERING OF WORK

§ 12.1.1 If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

§ 12.2 CORRECTION OF WORK

§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

§ 12.2.2 AFTER SUBSTANTIAL COMPLETION

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.

§ 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be

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sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.3 ACCEPTANCE OF NONCONFORMING WORK

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 GOVERNING LAW

The Contract shall be governed by the law of the place where the Project is located except that, if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.

§ 13.2 SUCCESSORS AND ASSIGNS

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment.

§ 13.3 WRITTEN NOTICE

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice.

§ 13.4 RIGHTS AND REMEDIES

§ 13.4.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

§ 13.4.2 No action or failure to act by the Owner, Architect or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach there under, except as may be specifically agreed in writing.

§ 13.5 TESTS AND INSPECTIONS

§ 13.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Contractor.

§ 13.5.2 If the Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.5.3, shall be at the Owner's expense.

Init.

§ 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Architect's services and expenses shall be at the Contractor's expense.

§ 13.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

§ 13.5.5 If the Architect is to observe tests, inspections or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.5.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 13.6 INTEREST

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

§ 13.7 TIME LIMITS ON CLAIMS

The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 13.7.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 TERMINATION BY THE CONTRACTOR

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped;
- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 The Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Section 2.2.1.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 14.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

Init.

§ 14.2 TERMINATION BY THE OWNER FOR CAUSE

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the above reasons exist, the Owner, upon certification by the Initial Decision Maker that sufficient cause exists to justify such action, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

§ 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

- .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

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ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 CLAIMS

§ 15.1.1 DEFINITION

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ 15.1.2 NOTICE OF CLAIMS

Claims by either the Owner or Contractor must be initiated by written notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 15.1.3 CONTINUING CONTRACT PERFORMANCE

Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. The Architect will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the Initial Decision Maker.

§ 15.1.4 CLAIMS FOR ADDITIONAL COST

If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.5 CLAIMS FOR ADDITIONAL TIME

§ 15.1.5.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.5.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction.

§ 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2 INITIAL DECISION

§ 15.2.1 Claims, excluding those arising under Sections 10.3, 10.4, 11.3.9, and 11.3.10, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

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§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

§ 15.2.6.1 Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 15.3 MEDIATION

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.6 shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

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

§ 15.4 ARBITRATION

§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

§ 15.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

§ 15.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 15.4.3 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

§ 15.4.4 CONSOLIDATION OR JOINDER

§ 15.4.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 15.4.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Contractor under this Agreement.

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AIA[®] Document A133[™] – 2009

Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

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

BETWEEN the Owner:
(Name, legal status and address)

City of Cartersville
1 North Erwin Street
Cartersville, Georgia 30120

and the Construction Manager:
(Name, legal status and address)

The Potts Company
981 East Freeway Drive
Conyers Georgia 30094

for the following Project:
(Name and address or location)

Construction Management at-Risk Services for Public Safety Headquarters & Fire Station
No. 4
195 Cassville Road
Cartersville, Georgia 30120

The Architect:
(Name, legal status and address)

Croft & Associates
3400 Blue Springs Road Suite 200
Kennesaw, Georgia 30144

The Owner's Designated Representative:
(Name, address and other information)

Dan Porta, Asst City Manager
P.O. Box 1390
1 North Erwin Street
Cartersville, Georgia 30120

The Construction Manager's Designated Representative:
(Name, address and other information)

Dave Buser, President
The Potts Company
cell 770-294-1634

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

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

AIA Document A201[™]-2007, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

Init.

The Architect's Designated Representative:
(Name, address and other information)

The Owner and Construction Manager agree as follows.



Init.

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item # 5

TABLE OF ARTICLES

1 GENERAL PROVISIONS

2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

3 OWNER'S RESPONSIBILITIES

4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

6 COST OF THE WORK FOR CONSTRUCTION PHASE

7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

8 INSURANCE AND BONDS

9 DISPUTE RESOLUTION

10 TERMINATION OR SUSPENSION

11 MISCELLANEOUS PROVISIONS

12 SCOPE OF THE AGREEMENT

ARTICLE 1 GENERAL PROVISIONS

§ 1.1 The Contract Documents

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 2.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 2.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern.

§ 1.2 Relationship of the Parties

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Construction Manager's skill and judgment in furthering the interests of the Owner; to furnish efficient construction administration, management services and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents.

§ 1.3 General Conditions

For the Preconstruction Phase, AIA Document A201™–2007, General Conditions of the Contract for Construction, shall apply only as specifically provided in this Agreement. For the Construction Phase, the general conditions of the contract shall be as set forth in A201–2007, which document is incorporated herein by reference. The term "Contractor" as used in A201–2007 shall mean the Construction Manager.

ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 2.1 and 2.2. The Construction Manager's Construction Phase responsibilities are set forth in Section 2.3. The Owner and Construction

Init.

Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

§ 2.1 Preconstruction Phase

§ 2.1.1 The Construction Manager shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other.

§ 2.1.2 Consultation

The Construction Manager shall schedule and conduct meetings with the Architect and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work. The Construction Manager shall advise the Owner and the Architect on proposed site use and improvements, selection of materials, and building systems and equipment. The Construction Manager shall also provide recommendations consistent with the Project requirements to the Owner and Architect on constructability; availability of materials and labor; time requirements for procurement, installation and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

§ 2.1.3 When Project requirements in Section 3.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities and identify items that could affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered well in advance of construction; and the occupancy requirements of the Owner.

§ 2.1.4 Phased Construction

The Construction Manager shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, or phased construction. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities and procurement and construction scheduling issues.

§ 2.1.5 Preliminary Cost Estimates

§ 2.1.5.1 Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume or similar conceptual estimating techniques for the Architect's review and Owner's approval. If the Architect or Construction Manager suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

§ 2.1.5.2 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, estimates of the Cost of the Work of increasing detail and refinement and allowing for the further development of the design until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. Such estimates shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect when estimates of the Cost of the Work exceed the latest approved Project budget and make recommendations for corrective action.

§ 2.1.6 Subcontractors and Suppliers

The Construction Manager shall develop bidders' interest in the Project.

§ 2.1.7 The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered well in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered well in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

Init.

§ 2.1.8 Extent of Responsibility

The Construction Manager shall exercise reasonable care in preparing schedules and estimates. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require.

§ 2.1.9 Notices and Compliance with Laws

The Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi governmental authorities for inclusion in the Contract Documents.

§ 2.2 Guaranteed Maximum Price Proposal and Contract Time

§ 2.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager and in consultation with the Architect, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's review and acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, including contingencies described in Section 2.2.4, and the Construction Manager's Fee.

§ 2.2.2 To the extent that the Drawings and Specifications are anticipated to require further development by the Architect, the Construction Manager shall provide in the Guaranteed Maximum Price for such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

§ 2.2.3 The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include the following:

- .1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- .2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 2.2.2, to supplement the information provided by the Owner and contained in the Drawings and Specifications;
- .3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, allowances, contingency, and the Construction Manager's Fee;
- .4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; and
- .5 A date by which the Owner must accept the Guaranteed Maximum Price.

§ 2.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include its contingency for the Construction Manager's exclusive use to cover those costs considered reimbursable as the Cost of the Work but not included in a Change Order.

§ 2.2.5 The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal. In the event that the Owner and Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.

§ 2.2.6 If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the

Init.

information and assumptions upon which it is based. Should the Owner not accept the Guaranteed Maximum Price by the date as indicated in 2.2.3.5, the Guaranteed Maximum Price will not be effective without written acceptance by Construction Manager at the time of the Owner's acceptance.

§ 2.2.7 The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the commencement of the Construction Phase, unless the Owner provides prior written authorization for such costs.

§ 2.2.8 The Owner shall authorize the Architect to provide the revisions to the Drawings and Specifications to incorporate the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish those revised Drawings and Specifications to the Construction Manager as they are revised. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the Guaranteed Maximum Price Amendment and the revised Drawings and Specifications.

§ 2.2.9 The Construction Manager shall include in the Guaranteed Maximum Price all sales, consumer, use and similar taxes for the Work provided by the Construction Manager that are legally enacted, whether or not yet effective, at the time the Guaranteed Maximum Price Amendment is executed.

§ 2.3 Construction Phase

§ 2.3.1 General

§ 2.3.1.1 For purposes of Section 8.1.2 of A201–2007, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

§ 2.3.1.2 The Construction Phase shall commence upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal or the Owner's issuance of a Notice to Proceed, whichever occurs earlier. The Notice To Proceed shall not be issued until all pre-construction items are complete such that Construction Manager can commence work within 10 days of issuance.

§ 2.3.2 Administration

§ 2.3.2.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or by other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the Architect. The Construction Manager shall then determine, with the endorsement of the Owner and the Architect, which bids will be accepted. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

§ 2.3.2.2 If the Guaranteed Maximum Price has been established and when a specific bidder (1) is recommended to the Owner by the Construction Manager, (2) is qualified to perform that portion of the Work, and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Contract Time and the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount and time requirement of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 2.3.2.3 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If the Subcontract is awarded on a cost-plus a fee basis, the Construction Manager shall provide in the Subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Section 6.11 below.

§ 2.3.2.4 If the Construction Manager recommends a specific bidder that may be considered a "related party" according to Section 6.10, then the Construction Manager shall promptly notify the Owner in writing of such relationship and notify the Owner of the specific nature of the contemplated transaction, according to Section 6.10.2.

§ 2.3.2.5 The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes to the Owner and Architect.

§ 2.3.2.6 Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and submittal schedule in accordance with Section 3.10 of A201–2007.

§ 2.3.2.7 The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner. The Construction Manager shall also keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner.

§ 2.3.2.8 The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 2.3.2.7 above.

§ 2.4 Professional Services

Section 3.12.10 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

§ 2.5 Hazardous Materials

Section 10.3 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

ARTICLE 3 OWNER'S RESPONSIBILITIES

§ 3.1 Information and Services Required of the Owner

§ 3.1.1 The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems sustainability and site requirements.

§ 3.1.2 Prior to the execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Construction Manager may only request such evidence if (1) the Owner fails to make payments to the Construction Manager as the Contract Documents require, (2) a change in the Work materially changes the Contract Sum, or (3) the Construction Manager identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Construction Manager and Architect.

§ 3.1.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1.1, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 3.1.4 **Structural and Environmental Tests, Surveys and Reports.** During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. The Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

Init.

§ 3.1.4.1 The Owner shall furnish tests, inspections and reports required by law and as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

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

§ 3.1.4.3 The Owner, when such services are requested, shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 3.1.4.4 During the Construction Phase, the Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services.

§ 3.2 Owner's Designated Representative

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201-2007, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 3.2.1 **Legal Requirements.** The Owner shall furnish all legal, insurance and accounting services, including auditing services that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 3.3 Architect

The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B103™-2007, Standard Form of Agreement Between Owner and Architect, including any additional services requested by the Construction Manager that are necessary for the Preconstruction and Construction Phase services under this Agreement. The Owner shall provide the Construction Manager a copy of the executed agreement between the Owner and the Architect, and any further modifications to the agreement.

ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 4.1 Compensation

§ 4.1.1 For the Construction Manager's Preconstruction Phase services, the Owner shall compensate the Construction Manager as follows:

§ 4.1.2 For the Construction Manager's Preconstruction Phase services described in Sections 2.1 and 2.2:
(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)

| Amount not to exceed \$31,000.00 to include reimbursables

§ 4.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within six (6) months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.

§ 4.1.4 Compensation based on Direct Personnel Expense includes the direct salaries of the Construction Manager's personnel providing Preconstruction Phase services on the Project and the Construction Manager's costs for the mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, employee retirement plans and similar contributions.

Init.

§ 4.2 Payments

§ 4.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed.

§ 4.2.2 Payments are due and payable upon presentation of the Construction Manager’s invoice. Amounts unpaid thirty (30) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager.
(Insert rate of monthly or annual interest agreed upon.)

| Current prime rate plus 2 % per annum

ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 5.1 For the Construction Manager’s performance of the Work as described in Section 2.3, the Owner shall pay the Construction Manager the Contract Sum in current funds. The Contract Sum is the Cost of the Work as defined in Section 6.1.1 plus the Construction Manager’s Fee.

§ 5.1.1 The Construction Manager’s Fee:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Construction Manager’s Fee.)

| The Owner shall pay the Construction Manager a Fee of five point five percent (5.5%) of the Cost of Work. Said Cost of Work will include the cost of the General Conditions. General Conditions shall be paid to the Construction Manager a fixed monthly rate of \$51,907.25. Items to be included in monthly General Conditions are per the attached, Attachment CC-04 dated 7-1-2011.

§ 5.1.2 The method of adjustment of the Construction Manager’s Fee for changes in the Work:

| The Owner shall pay the Construction Manager a Fee of five point five percent (5.5%) of the Cost of Work for any changes in the Work after approval of the Guaranteed Maximum Price.

§ 5.1.3 Limitations, if any, on a Subcontractor’s overhead and profit for increases in the cost of its portion of the Work:

| 10% for Overhead and 10% for Profit

§ 5.1.4 Rental rates for Construction Manager-owned equipment shall not exceed eighty percent (80 %) of the standard rate paid at the place of the Project.

§ 5.1.5 Unit prices, if any:

(Identify and state the unit price; state the quantity limitations, if any, to which the unit price will be applicable.)

| Item | Units and Limitations | Price per Unit (\$0.00) |
|------|-----------------------|-------------------------|
|------|-----------------------|-------------------------|

§ 5.2 Guaranteed Maximum Price

§ 5.2.1 The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, as it is amended from time to time. To the extent the Cost of the Work exceeds the Guaranteed Maximum Price, the Construction Manager shall bear such costs in excess of the Guaranteed Maximum Price without reimbursement or additional compensation from the Owner.
(Insert specific provisions if the Construction Manager is to participate in any savings.)

| All savings will be returned to the Owner at the end of the project.

§ 5.2.2 The Guaranteed Maximum Price is subject to additions and deductions by Change Order as provided in the Contract Documents and the Date of Substantial Completion shall be subject to adjustment as provided in the Contract Documents.

Init.

§ 5.3 Changes in the Work

§ 5.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Architect may make minor changes in the Work as provided in Section 7.4 of AIA Document A201–2007, General Conditions of the Contract for Construction. The Construction Manager shall be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

§ 5.3.2 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Section 7.3.3 of AIA Document A201–2007, General Conditions of the Contract for Construction.

§ 5.3.3 In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Section 7.3.3.3 of AIA Document A201–2007 and the term "costs" as used in Section 7.3.7 of AIA Document A201–2007 shall have the meanings assigned to them in AIA Document A201–2007 and shall not be modified by Sections 5.1 and 5.2, Sections 6.1 through 6.7, and Section 6.8 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 5.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in the above-referenced provisions of AIA Document A201–2007 shall mean the Cost of the Work as defined in Sections 6.1 to 6.7 of this Agreement and the term "fee" shall mean the Construction Manager's Fee as defined in Section 5.1 of this Agreement.

§ 5.3.5 If no specific provision is made in Section 5.1.2 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 5.1.2 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 6.1 Costs to Be Reimbursed

§ 6.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in Sections 6.1 through 6.7.

§ 6.1.2 Where any cost is subject to the Owner's prior approval, the Construction Manager shall obtain this approval prior to incurring the cost. The parties shall endeavor to identify any such costs prior to executing Guaranteed Maximum Price Amendment.

§ 6.2 Labor Costs

§ 6.2.1 Wages of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops.

§ 6.2.2 Wages or salaries of the Construction Manager's supervisory and administrative personnel engaged in supervision and management of the Work on or off the site.

(If it is intended that the wages or salaries of certain personnel stationed at the Construction Manager's principal or other offices shall be included in the Cost of the Work, identify in Section 11.5, the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the Work.)

§ 6.2.3 Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

§ 6.2.4 Costs paid or incurred by the Construction Manager for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such

Init.

costs are based on wages and salaries included in the Cost of the Work under Sections 6.2.1 through 6.2.3. This cost shall be fixed at thirty six percent (36%).

§ 6.2.5 Bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, with the Owner's prior approval.

§ 6.3 Subcontract Costs

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts.

§ 6.4 Costs of Materials and Equipment Incorporated in the Completed Construction

§ 6.4.1 Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

§ 6.4.2 Costs of materials described in the preceding Section 6.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

§ 6.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items

§ 6.5.1 Costs of transportation, storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment and tools that are not fully consumed shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Construction Manager shall mean fair market value.

§ 6.5.2 Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Construction Manager-owned item may not exceed the purchase price of any comparable item. Rates of Construction Manager-owned equipment and quantities of equipment shall be subject to the Owner's prior approval.

§ 6.5.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.

§ 6.5.4 Costs of document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office.

§ 6.5.5 That portion of the reasonable expenses of the Construction Manager's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.

§ 6.5.6 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval.

§ 6.6 Miscellaneous Costs

§ 6.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract. Self-insurance for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval.

§ 6.6.2 Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the Construction Manager is liable.

§ 6.6.3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Construction Manager is required by the Contract Documents to pay.

§ 6.6.4 Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 13.5.3 of AIA Document A201–2007 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 6.7.3.

§ 6.6.5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims and payments of settlements made with the Owner’s consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Construction Manager’s Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the last sentence of Section 3.17 of AIA Document A201–2007 or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work.

§ 6.6.6 Costs for electronic equipment and software, directly related to the Work with the Owner’s prior approval.

§ 6.6.7 Deposits lost for causes other than the Construction Manager’s negligence or failure to fulfill a specific responsibility in the Contract Documents.

§ 6.6.8 Legal, mediation and arbitration costs, including attorneys’ fees, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work and with the Owner’s prior approval, which shall not be unreasonably withheld.

§ 6.6.9 Subject to the Owner’s prior approval, expenses incurred in accordance with the Construction Manager’s standard written personnel policy for relocation and temporary living allowances of the Construction Manager’s personnel required for the Work.

§ 6.7 Other Costs and Emergencies

§ 6.7.1 Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Owner.

§ 6.7.2 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section 10.4 of AIA Document A201–2007.

§ 6.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Construction Manager and only to the extent that the cost of repair or correction is not recovered by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others.

§ 6.7.4 The costs described in Sections 6.1 through 6.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201–2007 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 6.8.

§ 6.8 Costs Not To Be Reimbursed

§ 6.8.1 The Cost of the Work shall not include the items listed below:

- .1 Salaries and other compensation of the Construction Manager’s personnel stationed at the Construction Manager’s principal office or offices other than the site office, except as specifically provided in Section 6.2;
- .2 Expenses of the Construction Manager’s principal office and offices other than the site office;
- .3 Overhead and general expenses, except as may be expressly included in Sections 6.1 to 6.7;
- .4 The Construction Manager’s capital expenses, including interest on the Construction Manager’s capital employed for the Work;
- .5 Except as provided in Section 6.7.3 of this Agreement, costs due to the negligence or failure of the Construction Manager, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;
- .6 Any cost not specifically and expressly described in Sections 6.1 to 6.7;

Init.

- .7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and
- .8 Costs for services incurred during the Preconstruction Phase.

§ 6.9 Discounts, Rebates and Refunds

§ 6.9.1 Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included them in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained.

§ 6.9.2 Amounts that accrue to the Owner in accordance with the provisions of Section 6.9.1 shall be credited to the Owner as a deduction from the Cost of the Work.

§ 6.10 Related Party Transactions

§ 6.10.1 For purposes of Section 6.10, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Construction Manager; any entity in which any stockholder in, or management employee of, the Construction Manager owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Construction Manager. The term "related party" includes any member of the immediate family of any person identified above.

§ 6.10.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods or service from the related party, as a Subcontractor, according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3. If the Owner fails to authorize the transaction, the Construction Manager shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3.

§ 6.11 Accounting Records

The Construction Manager shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, purchase orders, vouchers, memoranda and other data relating to this Contract. The Construction Manager shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

ARTICLE 7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 7.1 Progress Payments

§ 7.1.1 Based upon Applications for Payment submitted to the Architect by the Construction Manager and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Construction Manager as provided below and elsewhere in the Contract Documents.

§ 7.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

§ 7.1.3 Provided that an Application for Payment is received by the Architect not later than the first day of a month, the Owner shall make payment of the certified amount to the Construction Manager not later than the 20th day of the same month. If an Application for Payment is received by the Architect after the application date fixed above,

Init.

payment shall be made by the Owner not later than twenty (20) days after the Architect receives the Application for Payment.

(Federal, state or local laws may require payment within a certain period of time.)

§ 7.1.4 With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that cash disbursements already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, less that portion of those payments attributable to the Construction Manager's Fee, plus payrolls for the period covered by the present Application for Payment.

§ 7.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Construction Manager's Fee shall be shown as a single separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

§ 7.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed, or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Construction Manager on account of that portion of the Work for which the Construction Manager has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

§ 7.1.7 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201-2007;
- .2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 Add the Construction Manager's Fee, less retainage of five percent (5 %). The Construction Manager's Fee shall be computed upon the Cost of the Work at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .4 Subtract retainage of five percent (5 %) from that portion of the Work that the Construction Manager self-performs;
- .5 Subtract the aggregate of previous payments made by the Owner;
- .6 Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 7.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .7 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201-2007.
- .8 Upon completion and approval of fifty percent (50%) of the Cost of Work, no further retainage shall be held. Owner will also reasonably consider reducing retainage held for subcontractors completing their Work early in the Project.

§ 7.1.8 The Owner and Construction Manager shall agree upon (1) a mutually acceptable procedure for review and approval of payments to Subcontractors and (2) the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements.

Init.

§ 7.1.9 Except with the Owner's prior approval, the Construction Manager shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ 7.1.10 In taking action on the Construction Manager's Applications for Payment, the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager and shall not be deemed to represent that the Architect has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 7.1.4 or other supporting data; that the Architect has made exhaustive or continuous on-site inspections; or that the Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ 7.1.11 Subject to the limitations of the GMP and provided all conditions precedent have been satisfied, within thirty (30) days after execution of Substantial Completion of the Project, Owner shall pay Construction Manager all sums due the Construction Manager including all retainage less two hundred (200%) percent of the reasonable cost for all incomplete Work, correcting and bringing into conformance all defective and nonconformance work, and handling all unsettled claims.

§ 7.2 Final Payment

§ 7.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Construction Manager when

- .1 the Construction Manager has fully performed the Contract except for the Construction Manager's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201-2007, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- .3 a final Certificate for Payment has been issued by the Architect.

The Owner's final payment to the Construction Manager shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

§ 7.2.2 The Owner's auditors will review and report in writing on the Construction Manager's final accounting within 30 days after delivery of the final accounting to the Architect by the Construction Manager. Based upon such Cost of the Work as the Owner's auditors report to be substantiated by the Construction Manager's final accounting, and provided the other conditions of Section 7.2.1 have been met, the Architect will, within seven days after receipt of the written report of the Owner's auditors, either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Section 9.5.1 of the AIA Document A201-2007. The time periods stated in this Section supersede those stated in Section 9.4.1 of the AIA Document A201-2007. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.

§ 7.2.3 If the Owner's auditors report the Cost of the Work as substantiated by the Construction Manager's final accounting to be less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Section 15.2 of A201-2007. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

§ 7.2.4 If, subsequent to final payment and at the Owner's request, the Construction Manager incurs costs described in Section 6.1.1 and not excluded by Section 6.8 to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager such costs and the Construction Manager's Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If the Construction Manager has participated in savings as provided in Section 5.2.1, the amount of such savings shall be

Init.

recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Construction Manager.

ARTICLE 8 INSURANCE AND BONDS

For all phases of the Project, the Construction Manager and the Owner shall purchase and maintain insurance, and the Construction Manager shall provide bonds as set forth in Article 11 of AIA Document A201–2007.

(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201–2007.) To be determined with development of the Guaranteed Maximum Price Amendment.

| Type of Insurance or Bond | Limit of Liability or Bond Amount (\$0.00) |
|---------------------------|--|
|---------------------------|--|

ARTICLE 9 DISPUTE RESOLUTION

§ 9.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 9 and Article 15 of A201–2007. However, for Claims arising from or relating to the Construction Manager’s Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution, and Section 9.3 of this Agreement shall not apply.

§ 9.2 For any Claim subject to, but not resolved by mediation pursuant to Section 15.3 of AIA Document A201–2007, the method of binding dispute resolution shall be as follows:

(Check the appropriate box. If the Owner and Construction Manager do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)

Arbitration pursuant to Section 15.4 of AIA Document A201–2007

Litigation in a court of competent jurisdiction

Other: *(Specify)*

§ 9.3 Initial Decision Maker

The Architect will serve as the Initial Decision Maker pursuant to Section 15.2 of AIA Document A201–2007 for Claims arising from or relating to the Construction Manager’s Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker.

(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

ARTICLE 10 TERMINATION OR SUSPENSION

§ 10.1 Termination Prior to Establishment of the Guaranteed Maximum Price

§ 10.1.1 Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days’ written notice to the Construction Manager for the Owner’s convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days’ written notice to the Owner, for the reasons set forth in Section 14.1.1 of A201–2007.

§ 10.1.2 In the event of termination of this Agreement pursuant to Section 10.1.1, the Construction Manager shall be equitably compensated for Preconstruction Phase services performed prior to receipt of a notice of termination. In no event shall the Construction Manager’s compensation under this Section exceed the compensation set forth in Section 4.1.

Init.

§ 10.1.3 If the Owner terminates the Contract pursuant to Section 10.1.1 after the commencement of the Construction Phase but prior to the execution of the Guaranteed Maximum Price Amendment, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 10.1.2:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
- .3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services.

The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager which the Owner elects to retain and which is not otherwise included in the Cost of the Work under Section 10.1.3.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 10, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

If the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described above, the Owner will reimburse or indemnify the Construction Manager for all costs arising under the subcontract, purchase order or rental agreement, if those costs would have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner chooses not to accept assignment of any subcontract, purchase order or rental agreement that would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager will terminate the subcontract, purchase order or rental agreement and the Owner will pay the Construction Manager the costs necessarily incurred by the Construction Manager because of such termination.

§ 10.2 Termination Subsequent to Establishing Guaranteed Maximum Price

Following execution of the Guaranteed Maximum Price Amendment and subject to the provisions of Section 10.2.1 and 10.2.2 below, the Contract may be terminated as provided in Article 14 of AIA Document A201-2007.

§ 10.2.1 If the Owner terminates the Contract after execution of the Guaranteed Price Amendment, the amount payable to the Construction Manager pursuant to Sections 14.2 and 14.4 of A201-2007 shall not exceed the amount the Construction Manager would otherwise have received pursuant to Sections 10.1.2 and 10.1.3 of this Agreement.

§ 10.2.2 If the Construction Manager terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager under Section 14.1.3 of A201-2007 shall not exceed the amount the Construction Manager would otherwise have received under Sections 10.1.2 and 10.1.3 above, except that the Construction Manager's Fee shall be calculated as if the Work had been fully completed by the Construction Manager, utilizing as necessary a reasonable estimate of the Cost of the Work for Work not actually completed.

§ 10.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201-2007. In such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Section 14.3.2 of AIA Document A201-2007, except that the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 5.1 and 5.3.5 of this Agreement.

ARTICLE 11 MISCELLANEOUS PROVISIONS

§ 11.1 Terms in this Agreement shall have the same meaning as those in A201-2007.

§ 11.2 Ownership and Use of Documents

Section 1.5 of A201-2007 shall apply to both the Preconstruction and Construction Phases.

§ 11.3 Governing Law

Section 13.1 of A201-2007 shall apply to both the Preconstruction and Construction Phases.

Init.

§ 11.4 Assignment

The Owner and Construction Manager, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Construction Manager shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner’s rights and obligations under this Agreement. Except as provided in Section 13.2.2 of A201–2007, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 11.5 Other provisions:

ARTICLE 12 SCOPE OF THE AGREEMENT

§ 12.1 This Agreement represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Construction Manager.

§ 12.2 The following documents comprise the Agreement:

- .1 AIA Document A133–2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price
- .2 AIA Document A201–2007, General Conditions of the Contract for Construction
- .3 AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed, or the following:

- .4 AIA Document E202™–2008, Building Information Modeling Protocol Exhibit, if completed, or the following:

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

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

OWNER *(Signature)*

CONSTRUCTION MANAGER *(Signature)*

| _____
(Printed name and title)

David C. Buser President
(Printed name and title)

Init.

Additions and Deletions Report for **AIA[®] Document A133[™] – 2009**

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 14:14:17 on 07/01/2011.

PAGE 1

City of Cartersville
1 North Erwin Street
Cartersville, Georgia 30120

...

The Potts Company
981 East Freeway Drive
Conyers Georgia 30094

...

Construction Management at-Risk Services for Public Safety Headquarters & Fire Station No. 4
195 Cassville Road
Cartersville, Georgia 30120

...

Croft & Associates
3400 Blue Springs Road Suite 200
Kennesaw, Georgia 30144

...

Dan Porta, Asst City Manager
P.O. Box 1390
1 North Erwin Street
Cartersville, Georgia 30120

...

Dave Buser, President
The Potts Company
cell 770-294-1634

PAGE 5

§ 2.2.6 If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect. The

Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based. Should the Owner not accept the Guaranteed Maximum Price by the date as indicated in 2.2.3.5, the Guaranteed Maximum Price will not be effective without written acceptance by Construction Manager at the time of the Owner's acceptance.

PAGE 6

§ 2.3.1.2 The Construction Phase shall commence upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal or the Owner's issuance of a Notice to Proceed, whichever occurs earlier. The Notice To Proceed shall not be issued until all pre-construction items are complete such that Construction Manager can commence work within 10 days of issuance.

...

§ 2.3.2.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or by other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the Architect. ~~The Owner Construction Manager shall then determine, with the advice endorsement of the Construction Manager Owner~~ and the Architect, which bids will be accepted. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

PAGE 8

§ 3.2.1 **Legal Requirements.** The Owner shall furnish all legal, insurance and accounting services, including auditing ~~services,~~ services that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

...

Amount not to exceed \$31,000.00 to include reimbursables

§ 4.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within six (6) months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.

PAGE 9

§ 4.2.2 Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid thirty (30) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager.

...

Current prime rate plus 2 % per annum

...

The Owner shall pay the Construction Manager a Fee of five point five percent (5.5%) of the Cost of Work. Said Cost of Work will include the cost of the General Conditions. General Conditions shall be paid to the Construction Manager a fixed monthly rate of \$51,907.25. Items to be included in monthly General Conditions are per the attached, Attachment CC-04 dated 7-1-2011.

...

The Owner shall pay the Construction Manager a Fee of five point five percent (5.5%) of the Cost of Work for any changes in the Work after approval of the Guaranteed Maximum Price.

...

10% for Overhead and 10% for Profit

§ 5.1.4 Rental rates for Construction Manager-owned equipment shall not exceed eighty percent (80 %) of the standard rate paid at the place of the Project.

...

All savings will be returned to the Owner at the end of the project.

PAGE 10

§ 6.2.2 Wages or salaries of the Construction Manager's supervisory and administrative personnel ~~when stationed at the site with the Owner's prior approval~~ engaged in supervision and management of the Work on or off the site.

...

§ 6.2.4 Costs paid or incurred by the Construction Manager for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 6.2.1 through 6.2.3. This cost shall be fixed at thirty six percent (36%).

PAGE 12

- .1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section ~~6.2~~, or as may be provided in Article 11.6.2:

PAGE 13

§ 7.1.3 Provided that an Application for Payment is received by the Architect not later than the first day of a month, the Owner shall make payment of the certified amount to the Construction Manager not later than the 20th day of the same month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than twenty (20) days after the Architect receives the Application for Payment.

PAGE 14

- .3 Add the Construction Manager's Fee, less retainage of five percent (5 %). The Construction Manager's Fee shall be computed upon the Cost of the Work at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .4 Subtract retainage of five percent (5 %) from that portion of the Work that the Construction Manager self-performs;

- ...
- .8 Upon completion and approval of fifty percent (50%) of the Cost of Work, no further retainage shall be held. Owner will also reasonably consider reducing retainage held for subcontractors completing their Work early in the Project.

PAGE 15

§ 7.1.11 Subject to the limitations of the GMP and provided all conditions precedent have been satisfied, within thirty (30) days after execution of Substantial Completion of the Project, Owner shall pay Construction Manager all sums due the Construction Manager including all retainage less two hundred (200%) percent of the reasonable cost for all incomplete Work, correcting and bringing into conformance all defective and nonconformance work, and handling all unsettled claims.

PAGE 16

(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201–2007.) To be determined with development of the Guaranteed Maximum Price Amendment.

...

Arbitration pursuant to Section 15.4 of AIA Document A201–2007

PAGE 18

David C. Buser President

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, _____, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 14:14:17 on 07/01/2011 under Order No. 0079516232_1 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A133™ – 2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)

CC-04

City of Cartersville Public Safety Building & Fire Station # 4

Fee & General Conditions Estimate
Revised per Contract Negotiations

| | |
|----------------------|--|
| Project name | CC-04 Cartersville Ga |
| Estimator | SIWH/JCB |
| Job size | 60000 sqft |
| Bid date | 7/1/2011 4:00 PM |
| Report format | Sorted by 'Group phase/Phase' 'Detail' summary Allocate addons Print item notes |

CC-04

| Item | Description | Takeoff Qty | Unit Cost | Labor | Material | Subcontract | Name | Unit Cost | Total | Amount |
|-----------------------------|---|---|--|--|---------------------------------|-------------|------|----------------------------------|--|---------------------------------|
| GENERAL REQUIREMENTS | | | | | | | | | | |
| 01000.0 | Permits | | | | | | | | | |
| 01001.0 | Land Disturbance and Building Permit Fees / Cost <i>Not Included - To Be Cost of the Work</i> | 0.00 | 0.00 | 0 | 0.00 | 0 | | 0 | 0 | 0 |
| 01003.0 | Meter, Tap & Impact Fees / Cost <i>Not Included - To Be Cost of the Work</i> | | | | | | | | | |
| 01006.A | Legal/Consulting Fee Legal/Consulting Fee 60,000.00 sqft | 1.00 | 1,600.00 /squm | - | - | 1,600 | | 1,600.00 /squm 0.03 /sqft | 1,600 | 1,600 |
| 01008.0 | Dumpster/Trash Disposal Dumpster Pulls - PSB <i>To Be Included in Cost of Work</i> Dumpster Pulls - FS <i>To Be Included in Cost of Work</i> | 0.00 each 0.00 each | - | - | 0.00 | 0 | | 0.00 | 0 | 0 |
| 01011.0 | Supervision-Labor 01 Superintendent 1 03 Superintendent 2 Supervision-Labor 60,000.00 sqft 3,320.00 Labor hours | 52.00 week 31.00 week | 2,398.00 /week 2,398.00 /week 3.32 /sqft | 124,696 74,338 199,034 | - | - | | - | 2,398.00 /week 2,398.00 /week 3.32 /sqft | 124,696 74,338 199,034 |
| 01012.0 | Job Labor 01 Daily Onsite Cleanup - PSB <i>To Be Included in Cost of Work</i> 01 Daily Onsite Cleanup - FS <i>To Be Included in Cost of Work</i> | 0.00 hrs 0.00 hrs | - | - | 0.00 | 0 | | 0.00 | 0 | 0 |
| 01014.0 | OSHA - Safety 01 Safety Program OSHA - Safety 60,000.00 sqft | 12.00 mnth | - | - | 53.50 /mnth 0.011/sqft | 642 | | 53.50 /mnth 0.011/sqft | 642 | 642 |
| 01015.0 | Performance/Payment Bond / Sub Bonds Payment and Performance Bond <i>Not Included - To Be Cost of the Work</i> Sub Bonds <i>Not Included - To Be Cost of the Work</i> | 0.00 lsum 0.00 lsum | 0.00 0.00 | 0 0 | 0.00 0.00 | 0 | | 0 | 0 | 0 |
| 01016.0 | Project Sign/TPC Sign 01 Owner Project Sign - PSB 01 Owner Project Sign - FS 02 TPC Job Sign - PSB 02 TPC Job Sign - FS 03 TPC Project Directional Signs - PSB 03 TPC Project Directional Signs - FS Project Sign/TPC Sign 60,000.00 sqft | 1.00 each 1.00 each 1.00 each 5.00 each 5.00 each | - - - - - | 535.00 /each 535.00 /each 535.00 /each 117.70 /each 117.70 /each | 535 535 535 589 589 | - | - | - | 535.00 /each 535.00 /each 535.00 /each 117.70 /each 117.70 /each | 535 535 535 589 589 |
| 01017.0 | Insurance Builders Risk Insurance & Deductible <i>To Be Included in Cost of Work</i> OCP & Speciality Insurance <i>To Be Included in Cost of Work</i> | 0.00 lsum 0.00 lsum | 0.00 0.00 | 0 0 | 0.00 0.00 | 0 | | 0 | 0 | 0 |
| 01018.0 | Project Management 03 Project Management 05 Project Engineer | 52.00 week 31.00 week | 2,398.00 /week 1,723.00 /week | 124,696 53,413 | - | - | | 2,398.00 /week 1,723.00 /week | 124,696 53,413 | 124,696 53,413 |

Item # 5

CC-04

| Item | Description | Takeoff Qty | Labor | | Material | | Subcontract Amount | Name | Total | |
|---------|--|-------------|-------------|---------|---------------|--------|--------------------|------|---------------|---------|
| | | | Unit Cost | Amount | Unit Cost | Amount | | | Unit Cost | Amount |
| 01020.0 | Project Management 60,000.00 sqft 3,320.00 Labor hours | | 2.97 /sqft | 178,109 | | | | | 2.97 /sqft | 178,109 |
| 01020.A | Plans/Bidding Costs | | | | | | | | | |
| 01 | Pre-Con - Plans, Specifications and Solicitation Cost | 1.00 | | | 7,276.00 /sum | | | | 7,276.00 /sum | 7,276 |
| 02 | Pre-Con - Postage and Shipping | 1.00 | | | 727.60 /sum | | | | 727.60 /sum | 728 |
| 03 | Director of Preconstruction | 16.00 | 110.00 /hrs | 1,760 | | | | | 110.00 /hrs | 1,760 |
| 05 | Project Lead Estimator | 120.00 | 73.00 /hrs | 8,760 | | | | | 73.00 /hrs | 8,760 |
| 06 | Estimators | 240.00 | 49.00 /hrs | 11,760 | | | | | 49.00 /hrs | 11,760 |
| | Plans/Bidding Costs | | 0.3771/sqft | 22,280 | 0.133/sqft | 8,004 | | | 0.51 /sqft | 30,284 |
| 01025.0 | 60,000.00 sqft Courier Fed Ex UPS Mail Courier Fed Ex UPS Mail | | | | | | | | | |
| 01 | Postage, Courier and FedEx Fees | 60,000.00 | | | 0.043 /sqft | 2,568 | | | 0.043 /sqft | 2,568 |
| | 60,000.00 sqft | | | | 0.043/sqft | 2,568 | | | 0.043/sqft | 2,568 |
| 01050.0 | Field Engineering | | | | | | | | | |
| 01 | Field Engineering - PSB To Be Included in Cost of Work | 0.00 | | | | | 0.00 | | | 0 |
| 01 | Field Engineering - FS To Be Included in Cost of Work | 0.00 | | | | | 0.00 | | | 0 |
| 01300.0 | Submittals | | | | | | | | | |
| 01 | Submittals and Shop Drawings | 60,000.00 | | | 0.08 /sqft | 4,494 | | | 0.08 /sqft | 4,494 |
| 02 | As Built Documents | 60,000.00 | | | 0.011 /sqft | 642 | | | 0.011 /sqft | 642 |
| | Submittals | | | | 0.09 /sqft | 5,136 | | | 0.09 /sqft | 5,136 |
| 01350.0 | 60,000.00 sqft Data Processing Data Processing | | | | | | | | | |
| 01 | Data Processing | 416.00 | 37.00 /hrs | 15,392 | | | | | 37.00 /hrs | 15,392 |
| | Data Processing | | 0.26 /sqft | 15,392 | | | | | 0.26 /sqft | 15,392 |
| 01380.0 | 60,000.00 sqft Construction Photos | | | | | | | | | |
| 01 | Project Aerial Photographs - PSB | 12.00 | | | 125.00 /month | 1,500 | | | 125.00 /month | 1,500 |
| 01 | Project Aerial Photographs - FS | 12.00 | | | 125.00 /month | 1,500 | | | 125.00 /month | 1,500 |
| 02 | Project Progress Photographs | 12.00 | | | 85.00 /month | 1,020 | | | 85.00 /month | 1,020 |
| | Construction Photos | | | | 0.07 /sqft | 4,020 | | | 0.07 /sqft | 4,020 |
| 01385.0 | 60,000.00 sqft Notice of Commencement | | | | | | | | | |
| 01 | Notice of Commencement - PSB | 1.00 | | | | | | | | |
| 01 | Notice of Commencement - FS | 1.00 | | | | | | | | |
| | Notice of Commencement | | | | | | | | | |
| 01420.0 | 60,000.00 sqft Inspection Services | | | | | | | | | |
| 01 | Material Testing and Inspections By Owner / Others | 0.00 | | | | | | | | |
| 01500.0 | 60,000.00 sqft Small Tools & Misc. | | | | | | | | | |
| 01 | Small Tools and Miscellaneous | 12.00 | | | 609.90 /month | 7,319 | | | 609.90 /month | 7,319 |
| | Small Tools & Misc. | | | | 0.1222/sqft | 7,319 | | | 0.1222/sqft | 7,319 |
| 01510.0 | 60,000.00 sqft Computers/Software/Email | | | | | | | | | |
| 01 | Project Constructware Licenses | 12.00 | | | 240.75 /month | 2,889 | | | 240.75 /month | 2,889 |
| 02 | Field Office Computers No Cost - Use TPC Existing | 0.00 | | | 0.00 | 0 | | | 0.00 | 0 |
| 03 | Field Office Software No Cost - Use TPC Existing | 0.00 | | | 0.00 | 0 | | | 0.00 | 0 |
| 04 | Field Office Email Accounts | 12.00 | | | 19.26 /month | 231 | | | 19.26 /month | 231 |

CC-04

| Item | Description | Takeoff Qty | Labor | | Material | | Subcontract | | Total | |
|---------|---|--|-----------|------------------------------|--|------------------|--|------------------|--|---------------------------------------|
| | | | Unit Cost | Amount | Unit Cost | Amount | Unit Cost | Amount | Unit Cost | Amount |
| 01501.0 | Computers/Software/Email 05 Field Office Sprint Cards Computers/Software/Email 60,000.00 sqft | 12.00 mnth | - | 4,199 | 349.89 /mnth 0.1222/sqft | - | - | - | 349.89 /mnth 0.1222/sqft | 4,199 7,319 |
| 01502.0 | Mobile Phones-Field 01 Mobile Phone - Superintendent 1 03 Mobile Phone - Superintendent 2 06 Mobile Phone - Project Management 08 Mobile Phone - Project Engineer Mobile Phones-Field 60,000.00 sqft | 52.00 week 31.00 week 52.00 week 31.00 week | - | 1,447 862 1,447 862 | 27.82 /week 27.82 /week 27.82 /week 27.82 /week 0.08 /sqft | - | - | - | 27.82 /week 27.82 /week 27.82 /week 27.82 /week 0.08 /sqft | 1,447 862 1,447 862 4,618 |
| 01510.0 | Temporary Electricity 01 Temporary Power - PSB 01 Temporary Power - FS Temporary Electricity 60,000.00 sqft | 12.00 mnth 12.00 mnth | - | 5,393 4,045 | 449.40 /mnth 337.05 /mnth 0.16 /sqft | - | - | - | 449.40 /mnth 337.05 /mnth 0.16 /sqft | 5,393 4,045 9,437 |
| 01511.0 | Temporary HVAC 01 Temporary Heating / Cooling Units - PSB 01 Temporary Heating / Cooling Units - FS Temporary HVAC 60,000.00 sqft | 3.00 mnth 3.00 mnth | - | - | - | 15,600 10,500 | 5,200.00 /mnth 3,500.00 /mnth 0.44 /sqft | - | 5,200.00 /mnth 3,500.00 /mnth 0.44 /sqft | 15,600 10,500 26,100 |
| 01512.0 | Temporary Telephone 01 Temporary Field Office Phone / Fax Line / DSL - PSB 01 Temporary Field Office Phone / Fax Line / DSL - FS Temporary Telephone 60,000.00 sqft | 12.00 mnth 12.00 mnth | - | 3,403 | 283.55 /mnth | - | - | - | 283.55 /mnth | 3,403 |
| 01513.0 | Temporary Water 01 Temporary Water - PSB To Be Included in Cost of Work 01 Temporary Water - FS To Be Included in Cost of Work 60,000.00 sqft | 0.00 mnth 0.00 mnth | - | 0 | 0.00 | - | - | - | 0 | 0 |
| 01514.0 | Temporary Sanitary Fac. 01 Temporary Field Toilets - PSB 02 Temporary Field Toilets - FS Temporary Toilet Basin for Field Office - PSB 02 Temporary Toilet Basin for Field Office - FS Temporary Sanitary Fac. 60,000.00 sqft | 12.00 mnth 12.00 mnth 12.00 mnth 12.00 mnth | - | 3,403 2,311 863 953 | 283.55 /mnth 182.60 /mnth 80.25 /mnth 80.25 /mnth 0.13 /sqft | - | - | - | 283.55 /mnth 182.60 /mnth 80.25 /mnth 80.25 /mnth 0.13 /sqft | 3,403 2,311 863 953 7,640 |
| 01515.0 | Permanent Power/Transform 01 Permanent Power Service - PSB To Be Included in Cost of Work 01 Permanent Power Service - FS To Be Included in Cost of Work 02 Permanent Gas Service - PSB To Be Included in Cost of Work 02 Permanent Gas Service - FS To Be Included in Cost of Work Security 01 Temporary Fencing - PSB To Be Included in Cost of Work 01 Temporary Fencing - FS To Be Included in Cost of Work Field Office Equip. & Furn 01 Field Office Furniture - PSB No Cost - Use TPC Existing 02 Field Office Furniture - FS | 0.00 mnth 0.00 mnth 0.00 mnth 0.00 mnth 0.00 lnft 0.00 lnft 0.00 each 0.00 each | - | 0 0 0 0 | 0.00 0.00 0.00 0.00 | - | - | 0 0 0 0 | 0.00 0.00 0.00 0.00 | 0 0 0 0 |

CC-04

| Item | Description | Takeoff Qty | Labor | | Material | | Subcontract | | Total | |
|---------|---|----------------|------------|---------|----------------|--------|-------------|---------|----------------|--------|
| | | | Unit Cost | Amount | Unit Cost | Amount | Unit Cost | Amount | Unit Cost | Amount |
| 01599.0 | Field Office Equip & Furn No Cost - Use TPC Existing | | | | | | | | | |
| | 20 Field Office Equipment - PSB | 12.00 mth | - | - | 197.95 /mth | 2,375 | - | - | 197.95 /mth | 2,375 |
| | 21 Field Office Equipment - FS | 12.00 mth | - | - | 197.95 /mth | 2,375 | - | - | 197.95 /mth | 2,375 |
| | 22 Field Office (Fax/Copier/Computer Supplies) - PSB | 12.00 mth | - | - | 160.50 /mth | 1,926 | - | - | 160.50 /mth | 1,926 |
| | 22 Field Office (Fax/Copier/Computer Supplies) - FS | 12.00 mth | - | - | 160.50 /mth | 1,926 | - | - | 160.50 /mth | 1,926 |
| | Field Office Equip & Furn | | | | 0.143/sqft | 8,603 | | | 0.143/sqft | 8,603 |
| 01599.0 | 60,000.00 sqft | | | | | | | | | |
| | Field Offices & Sheds | | | | | | | | | |
| | 01 Office Trailer - Delivery (12x56) - PSB | 1.00 each | - | - | 310.30 /each | 310 | - | - | 310.30 /each | 310 |
| | 02 Office Trailer - Set Up (12x56) - PSB | 1.00 each | - | - | 232.19 /each | 232 | - | - | 232.19 /each | 232 |
| | 03 Office Trailer - Tie Downs (12x56) - PSB | 1.00 isum | - | - | 243.96 /isum | 244 | - | - | 243.96 /isum | 244 |
| | 04 Office Trailer - Knockdown (12x56) - PSB | 1.00 each | - | - | 178.69 /each | 179 | - | - | 178.69 /each | 179 |
| | 05 Office Trailer - Return Freight (12x56) - PSB | 1.00 each | - | - | 310.30 /each | 310 | - | - | 310.30 /each | 310 |
| | 06 Office Trailer - Monthly Rent (12x56) - PSB | 12.00 mth | - | - | 304.95 /mth | 3,659 | - | - | 304.95 /mth | 3,659 |
| | 07 Office Trailer - Rental Steps (12x56) - PSB | 12.00 mth | - | - | 74.90 /mth | 899 | - | - | 74.90 /mth | 899 |
| | 08 Office Trailer - Delivery (8x24) - FS | 1.00 each | - | - | 178.69 /each | 179 | - | - | 178.69 /each | 179 |
| | 09 Office Trailer - Set Up (8x24) - FS | 1.00 isum | - | - | 143.38 /isum | 143 | - | - | 143.38 /isum | 143 |
| | 10 Office Trailer - Tie Downs (8x24) - FS | 1.00 isum | - | - | 162.64 /isum | 163 | - | - | 162.64 /isum | 163 |
| | 11 Office Trailer - Knockdown (8x24) - FS | 1.00 each | - | - | 85.60 /each | 86 | - | - | 85.60 /each | 86 |
| | 12 Office Trailer - Return Freight (8x24) - FS | 1.00 each | - | - | 178.69 /each | 179 | - | - | 178.69 /each | 179 |
| | 13 Office Trailer - Monthly Rent (8x24) - FS | 12.00 mth | - | - | 133.75 /mth | 1,605 | - | - | 133.75 /mth | 1,605 |
| | 14 Office Trailer - Rental Steps (8x24) - FS | 12.00 mth | - | - | 37.45 /mth | 449 | - | - | 37.45 /mth | 449 |
| | Field Offices & Sheds | | | | 0.144/sqft | 8,637 | | | 0.144/sqft | 8,637 |
| 01599.0 | 60,000.00 sqft | | | | | | | | | |
| | Trucks & Fuel | | | | | | | | | |
| | 02 Supervision 1 - Truck, Fuel & Maintenance | 52.00 week | - | - | 411.95 /week | 21,421 | - | - | 411.95 /week | 21,421 |
| | 03 Supervision 2 - Truck, Fuel & Maintenance | 31.00 week | - | - | 411.95 /week | 12,770 | - | - | 411.95 /week | 12,770 |
| | 17 Project Management - Truck, Fuel & Maintenance | 52.00 week | - | - | 411.95 /week | 21,421 | - | - | 411.95 /week | 21,421 |
| | 17 Project Engineer - Truck, Fuel & Maintenance | 31.00 week | - | - | 411.95 /week | 12,770 | - | - | 411.95 /week | 12,770 |
| | Trucks & Fuel | | | | 1.14 /sqft | 68,384 | | | 1.14 /sqft | 68,384 |
| 01710.0 | 60,000.00 sqft | | | | | | | | | |
| | Final Cleaning | | | | | | | | | |
| | 01 Pre-Punch Building Cleaning - PSB | 51,000.00 sqft | - | - | 0.18 /sqft | 9,180 | - | - | 0.18 /sqft | 9,180 |
| | 01 Pre-Punch Building Cleaning - FS | 9,000.00 sqft | - | - | 0.18 /sqft | 1,620 | - | - | 0.18 /sqft | 1,620 |
| | 02 Final Cleaning - PSB | 51,000.00 sqft | - | - | 0.26 /sqft | 13,260 | - | - | 0.26 /sqft | 13,260 |
| | 02 Final Cleaning - FS | 9,000.00 sqft | - | - | 0.26 /sqft | 2,340 | - | - | 0.26 /sqft | 2,340 |
| | Final Cleaning | | | | 0.44 /sqft | 26,400 | | | 0.44 /sqft | 26,400 |
| 01750.0 | 60,000.00 sqft | | | | | | | | | |
| | Ceremony Expenses | | | | | | | | | |
| | 01 Ceremony Expenses | 1.00 isum | - | - | 1,500.00 /isum | 1,500 | - | - | 1,500.00 /isum | 1,500 |
| | Ceremony Expenses | | | | 0.03 /sqft | 1,500 | | | 0.03 /sqft | 1,500 |
| 01750.0 | 60,000.00 sqft | | | | | | | | | |
| | GENERAL REQUIREMENTS | | | | | | | | | |
| | 60,000.00 sqft | | | | | | | | | |
| | 6,640.00 Labor hours | | | | | | | | | |
| | 6.914/sqft | 414,815 | 2.474/sqft | 148,428 | 0.994/sqft | 59,644 | 10.381/sqft | 622,887 | | |

CC-04

Estimate Totals

| Description | Amount | Totals | Rate | Cost Basis | Cost per Unit |
|--------------|---------|----------------|------|------------|---------------------|
| Labor | 414,815 | | | | 6,914 /sqft |
| Material | 148,428 | | | | 2,474 /sqft |
| Subcontract | 59,644 | | | | 0,994 /sqft |
| Equipment | | | | | |
| Other | 622,887 | 622,887 | | | 10,381 /sqft |
| Total | | 622,887 | | | 10,381 /sqft |



City of Cartersville

**City Council Meeting
7/7/2011 7:00:00 PM
USA Software for Police Department**

| | |
|---|---|
| SubCategory: | Bid Award/Purchases |
| Department Name: | Police Department |
| Department Summary Recommendation: | <p>To : Sam Grove, City Manager FROM : Thomas N. Culpepper, Chief of Police DATE: June 21, 2011 SUBJECT : Software Support Agreement – USA Software</p> <p>The attached is the annual agreement for USA Software Support. This is support for our internal data/information system, in-car computers and reporting system. E-Verify and SAVE documents are on file. This company has been providing this service for a number of years.</p> <p>I am requesting approval of this agreement.</p> <p>The current agreement expires 08/09/2011 and is in the amount of \$28,399.20 and is a budgeted item. (Account 100.2100. 52.2330).</p> |
| City Manager's Remarks: | Your approval of this software support agreement is recommended. |
| Financial/Budget Certification: | This is a budgeted item. |
| Legal: | |
| Associated Information: | Current E-verify and SAVE documents are attached |



June 03, 2011

CARTERSVILLE POLICE DEPARTMENT
PO BOX 1390
CARTERSVILLE, GA 30120

Computer System Manager:

This letter is to inform you that your USA Software, Inc. Annual Software Support & Maintenance Agreement will expire 08/09/2011. Please plan accordingly as you prepare your new budget.

Annual Support & Maintenance Agreements are available from USA Software, Inc. and are for one-year periods. Your Agreement is \$ 28,399.20 per year (price subject to change).

SUPPORT & MAINTENANCE AGREEMENT FEATURES

- * Unlimited telephone technical support on products listed in the USA Software Software Support & Maintenance Agreement, Schedule A.
- * Customers who upgrade to, or purchase, Version 6 or higher of USA Software products and who keep their Annual Software Support & Maintenance Agreement active and current, will receive future version releases of, as well as upgrades and bug fixes to, USA Software products of the same database type at no cost for the software. There may, however, be some costs associated with these version releases, upgrades, etc., that are beyond USA Software, Inc. control, such as third party user licensing fees, etc., which are passed on to the customer. Upgrades to other databases, such as Microsoft SQL Server, Oracle, etc., will be chargeable upgrades.

Referral Policy - if another agency (Police/Fire/EMS) purchases a USA Software, Inc. system as a result of a qualified sales lead furnished by your agency, we will give you a standard USA Software, Inc. module free of charge.

If you would like additional information on the USA Software, Inc. Annual Software Support & Maintenance Agreement, please feel free to call us at 954-436-3911.

To renew your agreement, please send a check or purchase order to USA Software, Inc. in the amount listed above.

Please mail remittance to: USA Software, Inc.
9900 Stirling Road
Suite 302
Cooper City, FL 33024





INVOICE

June 21, 2011

Invoice Number:

302507

CARTERSVILLE POLICE DEPARTMENT
PO BOX 1390
CARTERSVILLE GA 30120

| <u>Order Date</u> | <u>Terms</u> | <u>Ordered By</u> | <u>Purchase Order#</u> |
|-------------------|--------------|-------------------|------------------------|
| 06/21/2011 | NET 30 | T.Culpepper | Verbal |

| <u>DETAIL#</u> | <u>MODULE_ID</u> | <u>MODULE</u> | <u>QUANTITY</u> | <u>PRICE</u> | <u>EXTENSION</u> |
|----------------|------------------|--|-----------------|--------------|------------------|
| 1 | 53 | Support Contract – Renewal Support dates will run from 8/10/2011 - 8/9/2012 | 1 | 28,399.20 | 28,399.20 |
| | | | | Total | 28,399.20 |

Please refer to the above Invoice Number to receive proper credit for payment. Remit all payments to:
USA Software, Inc.
9900 Stirling Road, Suite 302
Cooper City, Florida 33024
(954) 436-3911

**AFFIDAVIT VERIFYING STATUS FOR
CITY OF CARTERSVILLE BENEFIT APPLICATION**

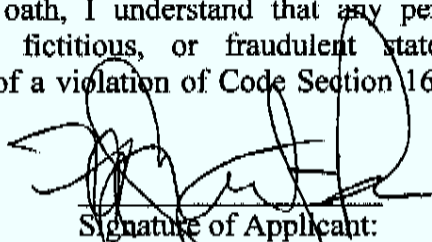
By executing this affidavit under oath, as an applicant for a City of Cartersville, Georgia Occupation Tax Certificate, Alcohol License or Other public benefits as referenced in O.C.G.A. Section 50-36-1, I am stating the following with respect to my application for a City of Cartersville, Georgia Occupational Tax Certificate, Alcohol License or Other public benefit (circle one) for

F. A. Spencer, JR. President
[Name of natural person applying on behalf of individual, business, corporation, partnership, or other private entity]

USA Software, Inc.
[Name of business, corporation, partnership]

- 1) I am a United States citizen
- 2) I am a legal permanent resident 18 years of age or older or I am an otherwise qualified alien or non-immigrant under the Federal Immigration and Nationality Act 18 years of age or older and lawfully present in the United States.*

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

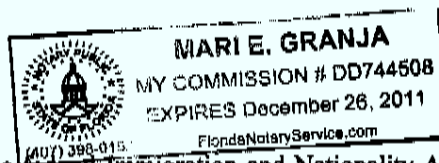

Signature of Applicant: _____ Date: 6/21/2011

F. A. Spencer, Jr.
Printed Name: _____

SUBSCRIBED AND SWORN
BEFORE ME ON THIS THE
21 DAY OF June, 2011

* N/A
Alien Registration number for non-citizens

Col. L. C.
Notary Public
My Commission Expires: Dec. 26, 2011



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

PRIME CONTRACTOR'S WORK AUTHORIZATION CERTIFICATION

Pursuant to O.C.G.A. §13-10-91, all qualifying contractors and sub-contractors performing work within the State of Georgia on a contract with a public employer must register and participate in a federal work authorization program. Prime contractors may participate in any of the electronic verification of work authorization programs operated by the United States Department of Homeland Security or any equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, pursuant to the Immigration Reform and Control Act of 1986 ("IRCA").

The date by which a prime contractor must register and participate in a qualifying federal work authorization program depends on the number of employees in the prime contractor's company. If the prime contractor's company has 500 or more employees, it is required to register and participate in a qualifying federal work authorization program by July 1, 2007. If the prime contractor's company has 100 or more employees, it is required to register for and participate in a qualifying federal work authorization program by July 1, 2008. If the prime contractor's company has 99 employees or fewer, it is required to register for and participate in a qualifying federal work authorization program by July 1, 2009.

Certify compliance with O.C.G.A. § 13-10-91 by checking the appropriate line below:

X

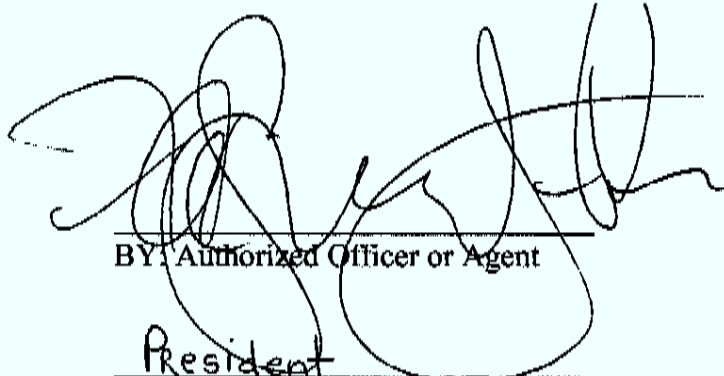
The undersigned has registered for and is participating in a qualifying federal work authorization program;

or,

The undersigned is not required to register for or participate in a qualifying federal work authorization program at this time. But, if the undersigned becomes a qualifying prime contractor in the future, the undersigned agrees to register for and participate in a qualifying federal work authorization program.

The undersigned further agrees that, should it employ or contract with any subcontractor(s) in connection with the physical performance of services within this state pursuant to this contract with a public employer, the undersigned will secure from such subcontractor(s) a verification of compliance with O.C.G.A. §13-10-91 using the form "Subcontractor's Work Authorization Certification" or a substantially similar form. The undersigned will maintain records of compliance and provide a copy of each sub-contractor's verification to the public employer at the time the sub-contractor is retained to perform such service.

[SIGNATURE ON NEXT PAGE]



BY: Authorized Officer or Agent

6/21/2011
Date

President
Title of Authorized Officer or Agent

302356
Basic Pilot User Identification Number
(if applicable)

F. A. Spencer, Jr.
Printed Name of Authorized Officer
or Agent

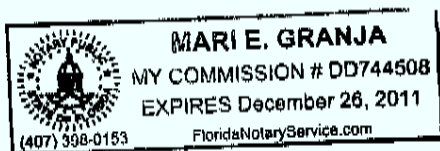
With express authority on behalf of:

USA Software, Inc.
Printed Name of Prime Contractor

SUBSCRIBED AND SWORN
BEFORE ME ON THIS THE
21 DAY OF June, 2011.


Notary Public

My Commission Expires: Dec 26, 2011





City of Cartersville

**City Council Meeting
7/7/2011 7:00:00 PM
Electric Line Reclosers**

| | |
|---|--|
| SubCategory: | Bid Award/Purchases |
| Department Name: | Electric |
| Department Summary Recommendation: | <p>The City of Cartersville Electric System requests approval to purchase two three-phase electronic reclosers. Reclosers are breakers placed on a line which during trouble allow only a section of line to be disrupted instead of the entire line. This increases reliability and minimizes the number of customers affected by storms, downed trees, etc. We currently have seven reclosers in operation on the system.</p> <p>The units we use are no longer manufactured and new comparable units cost \$25,000 each. We have located two units that match our units currently in use that have been refurbished and carry the same warranty as new units. These units are preferred because they are interchangeable and we already have the necessary hardware/software. Since refurbished units are not available from other vendors, there are no comparable bids. New pricing from past purchases is given below:</p> <p>Unit purchased new in 1999 from Cooper Power Systems - \$16,327.14 Unit purchased new in 1998 from Cooper Power Systems - \$16,893.75 Unit bid new (but not purchased) in 1998 from ABB - \$19,685.00</p> <p>I recommend purchasing the refurbished units from Florida Transformer for \$11,376.52 each. Florida Transformer is also a Cooper Power Systems authorized service center.</p> |
| City Manager's Remarks: | Your approval of buying the reclosers from Florida Transformer is recommended. |
| Financial/Budget Certification: | These units are budgeted. |
| Legal: | Not applicable. |
| Associated Information: | Employment verification documentation is on file. |

FLORIDA TRANSFORMER, INC.
P.O. BOX 507
4509 STATE HWY 83
DEFUNIAK SPRGS, FL 32435
(850)892-2711 Fax (850)892-6428

Mail Quotation To:
DAVID MYERS
PH# 770-387-5631
FAX# 770-387-5630

Quote: 014899 Department: 03 Job Desc: |560|VWE|14.4|FTI||CARTER
RECLOSER Type: 53 3 PHASE RECLOSER
Cust #: 000674 Ship To #: Quote Date
CITY OF CARTERSVILLE CITY OF CARTERSVILLE 06/22/11
320 SOUTH ERWIN STREET 320 SOUTH ERWIN STREET
PO BOX 1390 PO BOX 1390
CARTERSVILLE, GA 30120 CARTERSVILLE, GA 30120

Nameplate Data:

AMPS:560, TYPE:VWE, VOLTAGE:14.4, MFGR:FTI, PK-UP SITE:CARTERSVILLE

Special Instructions:

DEL:6-8 WEEKS ARO EQUIP WITH POLE MOUNT BRACKET
EQUIP WITH EXTERNAL SOURCE AND EQUIP WITH 4C CONTROL IN LONG
LOAD SIDE ARRESTER BRACKETS. CABINET W/35' CABLES

| Description | Units | Unit Price | Ext Price |
|---|-------|------------|-----------|
| 560 AMP VWE 3 PHASE RECLOSER | 1.00 | 7,891.62 | 7,891.62 |
| SIDE MOUNTED POLE BRACKET | 1.00 | 250.00 | 250.00 |
| KALME35S CONTROL CABLE RECLOSER | 1.00 | 669.29 | 669.29 |
| CABLE ACY; CONTROL 35' 12/C #18 MOULDED | 1.00 | 265.61 | 265.61 |
| 4C CONTROL PANEL WITH ADDED COMPONETS | 1.00 | 2,300.00 | 2,300.00 |

560 AMP VWE DELIVERED WITH,
* 4C CONTROL PANEL ENCLOSED IN A LARGE
CABINET, WITH ADDED FEATURES.
GROUND TRIP BLOCK/NORMAL, SWITCH/RECLOSER
MODE, NON RECLOSING, NORMAL RECLOSING,
SWITCH MODE INDICATOR, LAMP TEST BUTTON,
HOT LINE TAG INDICATOR, SUPERVISORY
ON/OFF, HOT LINE TAG ON/NORMAL, ALTERNATE
MINIMUM TRIP/NORMAL, CLOSE CIRCUIT
DISCONNECT.
* 35' CONTROL CABLES.
* LOW VOLTAGE CLOSING COIL.
* 12000 AMP INTERRUPTING CURRENT.
* SOURCE AND LOAD SIDE ARRESTER BRACKET.
* SIDE MOUNTED HANGER BRACKET.
* FILLED WITH ALL NEW NO PCB MINERAL OIL
1 YEAR WARRANTY PLUS 6 MONTHS DOCK LIFE.

THANKS FOR ALLOWING US TO SERVE YOU!

Plus Sales Taxes,
Continued

FLORIDA TRANSFORMER, INC.
P.O. BOX 507
4509 STATE HWY 83
DEFUNIAK SPRGS, FL 32435
(850)892-2711 Fax (850)892-6428

Mail Quotation To:
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320 SOUTH ERWIN STREET 320 SOUTH ERWIN STREET
PO BOX 1390 PO BOX 1390
CARTERSVILLE, GA 30120 CARTERSVILLE, GA 30120

Sample Date:
AMP:560, TYPE:VWE, VOLTAGE:14.4, MFG:FTI, PR-OF SITE:CARTERSVILLE

Special Instructions:
DELIVER WITH POLE MOUNT BRACKET
EQUIP WITH INTERNAL SOURCE AND LOAD SIDE ARRESTER BRACKET.
EQUIP WITH 4C CONTROL IN LARGE CABINET W/35' CABLES

| Description | Units | Unit Price | Est Price |
|--|-------|------------|-----------|
| 560 AMP VWE 3 PHASE RECLOSER | 1.00 | 7,251.52 | 7,251.52 |
| SIDE MOUNTED POLE BRACKET | 1.00 | 250.00 | 250.00 |
| FRAMELESS CONTROL CABLE RECLOSER | 1.00 | 689.25 | 689.25 |
| CABLE 35' CONTROL 35' 17/0 #18 BUNDLE | 1.00 | 265.51 | 265.51 |
| 4C CONTROL PANEL WITH ADDED COMPONENTS | 1.00 | 2,390.00 | 2,390.00 |

560 AMP VWE DELIVERED WITH:
* 4C CONTROL PANEL ENCLOSED IN A LARGE CABINET, WITH ADDED FEATURES.
GROUND TRIP BLOCK/NORMAL, SWITCH/RECLOSER
MOTOR, SWP RECLOSING, NORMAL RECLOSING,
SWITCH WIDE INDICATOR, LAMP TEST BUTTON,
HOT LINE TAG INDICATOR, SUPERVISORY
ON/OFF, HOT LINE TAG ON/NORMAL, ALTERNATE
MINIMUM TRIP/NORMAL, CLOSE CIRCUIT
DISCONNECT.
* 35' CONTROL CABLES.
* LOW VOLTAGE CLOSING COIL.
* 12000 AMP INTERRUPTING CURRENT.
* SOURCE AND LOAD SIDE ARRESTER BRACKET.
* SIDE MOUNTED HANGER BRACKET.
* FILLED WITH ALL NEW NO PCB MINERAL OIL
3 YEAR WARRANTY PLUS 6 MONTHS FREE LIFE.

Total: 11,376.52

Quote valid for 30 calendar days from the above date.

Plus Sales Taxes, If Applicable.

By: Thomas Corbett
Based Upon Our Standard Terms And Conditions.

Date: 6.22.2011



City of Cartersville

City Council Meeting
7/7/2011 7:00:00 PM
FY 2011-2012 Audit Services

| | |
|---|--|
| SubCategory: | Bid Award/Purchases |
| Department Name: | Finance |
| Department Summary Recommendation: | The city engages an audit firm to perform its annual audit. The city's current audit firm was asked to extend the current contract for an additional year. The audit firm has agreed to the extension and has submitted a price to perform the audit not to exceed \$36,200. This is an increase of \$4,000 over the current contract, due to not engaging in a multi-year contract. The finance department will be sending a request for proposal to audit firms in FY 2012 to ensure that the city is getting the best firm for the money being spent on this service. |
| City Manager's Remarks: | Your approval of the agreement with Williamson & Co. is recommended. |
| Financial/Budget Certification: | |
| Legal: | |
| Associated Information: | E-verify and SAVE documents are on file |

P.O. BOX 473
CARTERSVILLE, GA 30120
(770) 382-3361
FAX (770) 386-8382



EARL WILLIAMSON
LLOYD WILLIAMSON

City of Cartersville
Box 1390
Cartersville, GA 30120

We are pleased to confirm our understanding of the services we are to provide the City of Cartersville for the period ended June 30, 2011. We will audit the financial statements of the governmental activities, the business-type activities, the aggregate discretely presented component units, each major fund, and the aggregate remaining fund information, which collectively comprise the basic financial statements of City of Cartersville as of and for the period ended June 30, 2011. Accounting standards generally accepted in the United States provide for certain required supplementary information (RSI), such as management's discussion and analysis (MD&A), to supplement City of Cartersville's basic financial statements. Such information, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. As part of our engagement, we will apply certain limited procedures to City of Cartersville's RSI in accordance with auditing standards generally accepted in the United States of America. These limited procedures will consist of inquiries of management regarding the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We will not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance. The following RSI is required by generally accepted accounting principles and will be subjected to certain limited procedures, but will not be audited:

- 1) Management's Discussion and Analysis.
- 2) Budgetary Comparison Schedules
- 3) GASB required supplementary pension
- 4) OPEB

Supplementary information other than RSI also accompanies City of Cartersville's financial statements. We will subject the following supplementary information to the auditing procedures applied in our audit of the financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the financial statements or to the financial statements themselves, and other additional procedures in accordance with auditing standards generally accepted in the United States of America and will provide an opinion on it in relation to the financial statements as a whole:

- 1) Statistical data

Audit Objective

The objective of our audit is the expression of opinions as to whether your basic financial statements are fairly presented, in all material respects, in conformity with generally accepted accounting principles and to report on the fairness of the supplementary information referred to in the second paragraph when considered in relation to the financial statements as a whole. Our audit will be conducted in accordance with auditing standards generally accepted in the United States of America and will include tests of the accounting records and other procedures we consider necessary to enable us to express such opinions. If our opinions on the financial statements are other than unqualified, we will fully discuss the reasons with you in advance. If, for any reason, we are unable to

complete the audit or are unable to form or have not formed opinions, we may decline to express opinions or to issue a report as a result of this engagement.

Management Responsibilities

Management is responsible for the basic financial statements and all accompanying information as well as all representations contained therein. You are also responsible for making all management decisions and performing all management functions; for designating an individual with suitable skill, knowledge, or experience to oversee our assistance with the preparation of your financial statements and related notes and any other nonattest services we provide; and for evaluating the adequacy and results of those services and accepting responsibility for them.

Management is responsible for establishing and maintaining effective internal controls, including monitoring ongoing activities; for the selection and application of accounting principles; and for the fair presentation in the financial statements of the respective financial position of the governmental activities, the business-type activities, the aggregate discretely presented component units, each major fund, and the aggregate remaining fund information of the City of Cartersville and the respective changes in financial position and where applicable, cash flows, in conformity with U.S. generally accepted accounting principles.

Management is also responsible for making all financial records and related information available to us and for the accuracy and completeness of that information. Your responsibilities include adjusting the financial statements to correct material misstatements and confirming to us in the representation letter that the effects of any uncorrected misstatements aggregated by us during the current engagement and pertaining to the latest period presented are immaterial, both individually and in the aggregate, to the financial statements taken as a whole.

You are responsible for the design and implementation of programs and controls to prevent and detect fraud, and for informing us about all known or suspected fraud or illegal acts affecting the government involving (1) management, (2) employees who have significant roles in internal control, and (3) others where the fraud or illegal acts could have a material effect on the financial statements. Your responsibilities include informing us of your knowledge of any allegations of fraud or suspected fraud affecting the government received in communications from employees, former employees, regulators, or others. In addition, you are responsible for identifying and ensuring that the entity complies with applicable laws and regulations. You are responsible for the preparation of the supplementary information in conformity with U.S. generally accepted accounting principles. You agree to include our report on the supplementary information in any document that contains and indicates that we have reported on the supplementary information. With regard to using the auditor's report, you understand that you must obtain our prior written consent to reproduce or use our report in bond offering official statements or other documents.

Audit Procedures—General

An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements; therefore, our audit will involve judgment about the number of transactions to be examined and the areas to be tested. We will plan and perform the audit to obtain reasonable rather than absolute assurance about whether the financial statements are free of material misstatement, whether from (1) errors, (2) fraudulent financial reporting, (3) misappropriation of assets, or (4) violations of laws or governmental regulations that are attributable to the entity or to acts by management or employees acting on behalf of the entity.

Because an audit is designed to provide reasonable, but not absolute, assurance and because we will not perform a detailed examination of all transactions, there is a risk that material misstatements may exist and not be detected by us. In addition, an audit is not designed to detect immaterial misstatements, or violations of laws or governmental regulations that do not have a direct and material effect on the financial statements. However, we will inform you of any material errors and any fraudulent financial reporting or misappropriation of assets that come to our attention. We will also inform you of any violations of laws or governmental regulations that come to our attention, unless clearly inconsequential. Our responsibility as auditors is limited to the period covered by our audit and does not extend to any later periods for which we are not engaged as auditors.

Our procedures will include tests of documentary evidence supporting the transactions recorded in the accounts, and may include tests of the physical existence of inventories, and direct confirmation of receivables and certain other assets and liabilities by correspondence with selected individuals, funding sources, creditors, and financial institutions. We will request written representations from your attorneys as part of the engagement, and they may bill you for responding to this inquiry. At the conclusion of our audit, we will require certain written representations from you about the financial statements and related matters.

Audit Procedures—Internal Control

Our audit will include obtaining an understanding of the entity and its environment, including internal control, sufficient to assess the risks of material misstatement of the financial statements and to design the nature, timing, and extent of further audit procedures. An audit is not designed to provide assurance on internal control or to identify deficiencies in internal control. However, during the audit, we will communicate to management and those charged with governance internal control related matters that are required to be communicated under AICPA professional standards.

Audit Procedures—Compliance

As part of obtaining reasonable assurance about whether the financial statements are free of material misstatement, we will perform tests of City of Cartersville's compliance with applicable laws and regulations and the provisions of contracts and agreements. However, the objective of our audit will not be to provide an opinion on overall compliance and we will not express such an opinion.

Engagement Administration, Fees, and Other

We may from time to time, and depending on the circumstances, use third-party service providers in serving your account. We may share confidential information about you with these service providers, but remain committed to maintaining the confidentiality and security of your information. Accordingly, we maintain internal policies, procedures, and safeguards to protect the confidentiality of your personal information. In addition, we will secure confidentiality agreements with all service providers to maintain the confidentiality of your information and we will take reasonable precautions to determine that they have appropriate procedures in place to prevent the unauthorized release of your confidential information to others. In the event that we are unable to secure an appropriate confidentiality agreement, you will be asked to provide your consent prior to the sharing of your confidential information with the third-party service provider. Furthermore, we will remain responsible for the work provided by any such third-party service providers.

We understand that your employees will locate any documents selected by us for testing.

We expect to begin our audit on approximately (this date will depend upon your closing but we anticipate your closing to be no later than the first week of September) and to issue our reports no later than December 1 (provided the Cartersville School Board has completed the June 30, 2011 audit and the City is able to provide a copy by November 15, 2011).

Lloyd Williamson is the engagement partner and is responsible for supervising the engagement and signing the report or authorizing another individual to sign it. Our fee for these services will be as disclosed on the attached exhibit #1. Our invoices for these fees will be rendered each month as work progresses and are payable on presentation. The fee presented on exhibit #1 is based on anticipated cooperation from your personnel and the assumption that unexpected circumstances will not be encountered during the audit. If significant additional time is necessary, we will discuss it with you and arrive at a new fee estimate before we incur the additional costs.

We appreciate the opportunity to be of service to City of Cartersville and believe this letter accurately summarizes the significant terms of our engagement. If you have any questions, please let us know. If you agree with the terms of our engagement as described in this letter, please sign the enclosed copy and return it to us.

 6/22/11
Lloyd Williamson, CPA

Williamson and Company, CPAs

RESPONSE:

This letter correctly sets forth the understanding of the City of Cartersville

Sam Grove
City Manager

Tom Rhinehart
Finance Officer

Date _____

Date _____

**City of Cartersville
Cost Schedule
Exhibit #1**

| | TOTAL HOURS | HOURLY RATE | | | TOTAL | | |
|--|-------------|-------------|------|------|---------|---------|---------|
| | | 2011 | 2012 | 2013 | 2011 | 2012 | 2013 |
| PARTNERS | 75 | 150 | 150 | 150 | 11,250 | 11,250 | 11,250 |
| MANAGERS | 215 | 95 | 95 | 95 | 20,425 | 20,425 | 20,425 |
| SUPERVISORY STAFF | 105 | 65 | 65 | 65 | 6,825 | 6,825 | 6,825 |
| OTHER (SPECIFY) TOTAL HOURS** | 395 | | | | | | |
| TOTAL FOR SERVICES DESCRIBED IN RFP | | | | | 38,500 | 38,500 | 38,500 |
| LESS MULTI-YEAR CONTRACT DISCOUNT | | | | | (4,000) | (4,000) | (4,000) |
| LESS LOCAL CLIENT DISCOUNT | | | | | (4,000) | (4,000) | (4,000) |
| <u>OUT OF POCKET EXPENSE*:</u> | | | | | | | |
| MEALS AND LODGING | | | | | - | - | - |
| TRANSPORTATION | | | | | - | - | - |
| OTHER (SPECIFY) | | | | | - | - | - |
| TOTAL ALL INCLUSIVE PRICE | | | | | 30,500 | 30,500 | 30,500 |
| For only a 1 year contract add back the Multi discount | | | | | 4,000 | - | - |
| Total "all inclusive" if no Single Audit | | | | | 34,500 | 30,500 | 30,500 |
| ADDITIONAL FEE IF SINGLE AUDIT IS REQUIRED | | | | | 1,700 | 1,700 | 1,700 |
| TOTAL WITH SINGLE AUDIT | | | | | 36,200 | 32,200 | 32,200 |

Should the City decide to use the 3 year option? We will be glad to send a revised engagement letter. This will enable the City to save \$12,000 over a 3 year period!

* Due to proximity of Williamson & Company's office to the City's offices, there will be no out of pocket expenses charged to the City.



City of Cartersville

City Council Meeting
7/7/2011 7:00:00 PM

Rebuild Water Recycle Pumps at Water Pollution Control Plant

| | |
|---|--|
| SubCategory: | Bid Award/Purchases |
| Department Name: | Water Department |
| Department Summary Recommendation: | <p>Memo To: Sam Grove From: Jim Stafford Date: 6-23-11 Subject: Rebuild two water recycle pumps at WPCP</p> <p>We have two recycle water pumps at the wastewater plant that need to be replaced or rebuilt. These pumps supply water to the entire plant for wash down, operation of presses, polymer feed, chlorination feed etc. The use of this recycled water saves about \$5000.00 per month of potable water. The bids were as follows:</p> <ul style="list-style-type: none">• Rome Electric Motors Works \$11,604.00• Pumping Machinery LLC \$18,823.24 <p>I recommend approval of the bid from Rome Electric Motors Works to rebuild these two pumps. We presently have one other unit being repaired by Rome Electric and the E-Save information is on file. This will be paid out of budget.</p> |
| City Manager's Remarks: | Your approval of this bid is recommended. |
| Financial/Budget Certification: | Paid for from the budget |
| Legal: | |
| Associated Information: | E-verify and SAVE on file |



City of Cartersville

City Council Meeting
7/7/2011 7:00:00 PM
Water Main Crossing Sugar Valley Road

| | |
|---|--|
| SubCategory: | Engineering Services |
| Department Name: | Water Department |
| Department Summary Recommendation: | <p>MEMO TO: Sam Grove FROM: Jim Stafford DATE: June 29, 2011 SUBJECT: Proposal for Engineering Services for drawings and specifications for segment of 36-inch diameter water main crossing Sugar Valley Road</p> <p>The City Cartersville currently has a SPLOST project under design for the widening of the bridge at Nancy Creek on Sugar Valley Road. This project involves construction in the area of the Water Department's proposed West Feeder Main – 36inch Water Main Project. Installation of the proposed water main by open cut during the bridge construction project will save over \$50,000.00 as opposed to installing the water main by jack and bore method after the new bridge is in place. The Water Department has requested Jacobs Engineering Group to provide a proposal for Engineering Services for the preparation of design drawings and specifications for a segment of 36-inch diameter main crossing Sugar Valley Road. These documents will be incorporated into the bridge project contract. The proposal from Jacobs Engineering is for an amount not to exceed \$9,813.00. This price is considered reasonable. The cost is to be paid from SPLOST funds. I recommend approval of this contract. Proper E-verify and SAVE documentation is in hand for this consultant.</p> |
| City Manager's Remarks: | The approval of the proposal from Jacobs is recommended for your approval. |
| Financial/Budget Certification: | Paid from SPLOST funds |
| Legal: | |
| Associated Information: | Everify and SAVE documentation are on file |



Jacobs Engineering Group Inc.
745 South Milledge Avenue
Athens, Georgia 30605 USA 706.353.2868

June 29, 2011

Mr. James R. Stafford, Director
City of Cartersville Water Department
P.O. Box 1390
Cartersville, GA 30120

Subject: 36" Feeder Main Crossing at Sugar Valley Road
Proposal for Engineering Services

Dear Jim:

At your request, we have prepared this proposal to provide engineering services to the City of Cartersville (City) for design services for a portion of the 36" West Side Feeder Main which is located near Petit Creek and will cross Sugar Valley Road. These services will be provided in accordance with our General Services Agreement, entitled "Agreement with Jordan, Jones and Goulding, Inc. for Engineering Services", dated October 3, 1980. In addition, we will comply with the following as required by the City of Cartersville:

Immigration Reform Compliance Requirement. During the entire duration of this contract, Contractor and all sub-contractors must remain in compliance with Georgia Security and Immigration Compliance Act of 2007 and Georgia code §13-10-91 and §50-36-1.

Project Understanding

The City currently has a contract for engineering services with Jordan, Jones & Goulding, Inc. (JJG) for the design of the 36" West Side Feeder Main, a transmission main over 5 miles in length that when constructed, will complete the system loop of large diameter water mains which encircle the City. This feeder main, as the final piece of the main system transmission loop, will provide improved service to the western side of Bartow County and numerous other benefits to the system and water customers. Most of the design effort was paused in 2007 to begin easement acquisition along the water main route, but the project has since been put on hold due to funding issues.

However, the City's Public Works Department has a need to replace the bridge on Sugar Valley Road over Nancy Creek. Their plan includes closing the road for approximately nine months while the bridge is being reconstructed. While the road is closed and the area is disturbed for construction, we understand the Water Department wishes to have a short portion of the feeder main constructed via open-cut construction in conjunction with the bridge project in order to avoid constructing the water main by a jack and bore installation when the rest of the feeder main is constructed in the future. The open-cut construction will be considerably less expensive than the jack and bore installation and will therefore cut overall construction costs of the feeder main for the Water Department.

Scope of Services

JJG proposes to perform the tasks shown below for the project for Engineering Services.

- Design 130 LF of the 36" feeder main across Sugar Valley Road based on the survey and base files received from Public Works' bridge project engineer, Southland Engineering (Southland). In routing this segment, the future alignment of the remaining feeder main will be taken into consideration.
- Provide a plan and profile drawing including necessary details for Southland to include in the bridge project bid package. A maximum of two plan sheets is anticipated.
- Provide up to five written technical specification sections to include in the bridge project bid package, a listing of quantities of water main bid items to be included in the bid form, and corresponding measurement and payment language.
- Include language in the technical specification requiring the pipeline subcontractor to have previous experience with large-diameter pipeline installation.
- Submit plan sheets and specifications to Cartersville for review at the 95% complete stage.
- Respond to written inquiries for information from Public Works as received from plan holders prior to bidding.
- Conform bid documents if necessary to address addenda items.
- Eight hours of time will be reserved for miscellaneous tasks as needed during the construction phase to include review and processing of shop drawings and/or material submittals and requests for information from the contractor.

Assumptions and Exclusions:

- Field survey is not included.
- No site visits for design purposes or coordination meetings with Public Works are anticipated.
- With the water main work occurring completely within the limits of construction for the bridge project, water main plan sheets will not include erosion control design, details, or specifications.
- No EPD, GDOT, USACE, or railroad permitting is included.
- The funding source is SPLOST funding. Therefore, special funding requirements and permitting are not anticipated.
- No prequalification of contractors is included.
- Bidding services such as pre-bid meeting attendance, preparation and distribution of addenda, inclusion of the project details on the JIG construction bidding website, and bid opening attendance are not included.
- It is assumed the City of Cartersville will provide construction inspection and the majority of construction administration services including coordination with Public Works and the contractor as needed. Site visits during the construction phase are not included.
- Record drawings are not included. Scans of any construction plan mark-ups will be stored electronically for use in the design of the feeder main in the future.

Schedule

JIG will submit 95% drawings and specification sections to the City for review within three weeks from Notice to Proceed. JIG will incorporate comments and submit final drawings and specifications within one week of receipt of the City's review comments.

Compensation

Compensation for these professional services listed above will be based on hourly billing rates for the staff involved, plus direct expenses in accordance with our General Services Agreement referenced above. Charges will not exceed \$9,813.00 without written authorization from the City.

If you concur with the proposal, please sign the space provided below and return a copy to us. Thank you for allowing us to continue serving the City of Cartersville.

Sincerely,
JORDAN, JONES AND GOULDING, INC.



B. Wayne Haynie, P.E.
Vice President



Harold T. Jones, P.E.
Project Manager

cc: Ed Mullinax, P.E.
Melody Melton, P.E.
Ray Thomson, P.E.
Dan Guill, P.E.

Approved by City of Cartersville

Mayor

Date

City Clerk

Date

**AFFIDAVIT VERIFYING STATUS FOR
CITY OF CARTERSVILLE BENEFIT APPLICATION**

By executing this affidavit under oath, as an applicant for a City of Cartersville, Georgia Occupation Tax Certificate, Alcohol License or other public benefits as referenced in O.C.G.A. Section 50-36-1, I am stating the following with respect to my application for a City of Cartersville, Georgia Occupational Tax Certificate, Alcohol License or other public benefit (circle one) for

B. Wayne Haynie

[Name of natural person applying on behalf of individual, business, corporation, partnership, or other private entity]

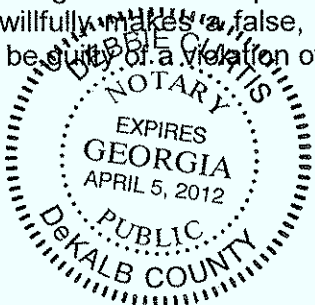
Jordan Doves and Building, Inc.

[Name of business, corporation, partnership]

1) I am a United States citizen

2) I am a legal permanent resident 18 years of age or older or I am an otherwise qualified alien or non-immigrant under the Federal Immigration and Nationality Act 18 years of age or older and lawfully present in the United States.*

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



B Wayne Haynie 6-29-11
Signature of Applicant: Date

B WAYNE HAYNE 6-29-11
Printed Name: Date

SUBSCRIBED AND SWORN
BEFORE ME ON THIS THE
29th DAY OF JUNE, 2011

[Signature]

Notary Public
My Commission Expires:

* _____
Alien Registration number for non-citizens

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

CONTRACTOR AFFIDAVIT AND AGREEMENT

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

The undersigned further agrees that, should it employ or contract with any subcontractor(s) in connection with the physical performance of services pursuant to this contract with City of Cartersville, contractor will secure from such subcontractor(s) similar verification of compliance with O.C.G.A. 13-10-91 on the Subcontractor Affidavit provided in Rule 300-10-01-.08 or substantially similar form. Contractor further agrees to maintain records of such compliance and provide a copy of each such verification to the City of Cartersville at the time the subcontractor(s) is retained to perform such service.

The undersigned Contractor is using and will continue to use the federal work authorization program throughout the contract period.

212531
EEV/Basic Pilot Program* User Identification Number

B Wayne Haynie
BY: Authorized Officer or Agent
(Contractor Name)

6.29.11
Date

Vice President
Title of Authorized Officer or Agent of Contractor

B. Wayne Haynie
Printed Name of Authorized Officer or Agent

SUBSCRIBED AND SWORN
BEFORE ME ON THIS THE
29th DAY OF JUNE, 2011

Debbie Curtis
Notary Public
My Commission Expires:



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



City of Cartersville

City Council Meeting
7/7/2011 7:00:00 PM

C & L Contractors for Water Pollution Control Plant Pipe Replacement

| | |
|---|---|
| SubCategory: | Change Order |
| Department Name: | Water Department |
| Department Summary Recommendation: | <p>Memo To: Sam Grove From: Jim Stafford Date: 6-20-11 Subject: Contract Change Order For WPCP Pipe Replacement</p> <p>During the project at the wastewater plant putting in a new return activated sludge line the contractor discovered two electrical duct banks that were not located before the project started. This changed the scope of the project and the contractor had to add about 28 hours of work with his four man crew and equipment to install four extra 24" angles of 45 degrees. Threading the pipe thru this obstruction was very time consuming. This will require a change order on our contract of \$10,845.00. This brings the contract price to \$26,795.00. I recommend approval of this increase on the contract with C & L Contractors of Dallas, Ga.</p> |
| City Manager's Remarks: | Your approval of this change order is needed and recommended. |
| Financial/Budget Certification: | Paid from capacity fees. |
| Legal: | |
| Associated Information: | E-verify and SAVE documents are current |



City of Cartersville

**City Council Meeting
7/7/2011 7:00:00 PM
Reroofing Distribution and Collections Building**

| | |
|---|---|
| SubCategory: | Change Order |
| Department Name: | Water Department |
| Department Summary Recommendation: | <p>Memo To: Sam Grove From: Jim Stafford Date: 6-27-11 Subject: Change Order for Reroofing D&C Bldg</p> <p>The roof replacement on the Distribution and Collection Building is almost complete and it was observed during this work that there are about 15 panels on the outer wall that are rusted thru at the bottom. These damaged panels will allow rain to get into the building and it will allow animals to come through also. This was an area that had some dirt against the building on the outside and shelving and inventory on the inside.</p> <p>The roofer has done a very good job and we would like for him to replace these outside panels and paint the end of the building to match up the panel. This would be a \$6,640.00 increase in the contract. This would make the project total \$30,040.00. I recommend approval of this change order.</p> <p>E-verify and SAVE are still good since the schedule for completing the project is still within the original agreement.</p> |
| City Manager's Remarks: | Your approval of this change is recommended. |
| Financial/Budget Certification: | Paid for from the budget |
| Legal: | |
| Associated Information: | Everify and Save documentation are on file |

Hampson Construction

Customer: Terry Jordan

City of [Cartersville](#)

Job Description: Discovered rusted sidewall panels and rusted base plates on rear of building, Structural repair is needed, due to this, electric panel, gas meter base, and lines that run from the exterior to the interior need to be removed while work is performed and replaced afterward.

Bid #1245

Replace approx. 70 ft. of rusted and damaged base plate.

Replace approx. 25-10x3 stormproof A panels

Paint to match existing

Remove and replace, power service, gas line @ point of entry, ground wires, and electrical cutoffs.

\$6,640.00



City of Cartersville

**City Council Meeting
7/7/2011 7:00:00 PM
Citizen Survey Results**

| | |
|---|--|
| SubCategory: | Presentations |
| Department Name: | City Manager's Office |
| Department Summary Recommendation: | Staff will be presenting a portion of the results from the recently completed Citizen Survey. Today's presentation will address Overall Community Quality, Environmental Quality, and Social and Civic Engagement. |
| City Manager's Remarks: | There is no formal action from Council required on this item. |
| Financial/Budget Certification: | |
| Legal: | |
| Associated Information: | |

Presentation 1

| Questions | 2003 | 2005 | 2007 | 2009 | 2011 | 2011 National Southern | |
|---|------|------|------|------|------|------------------------|------------|
| | | | | | | Comp | Comp |
| Overall Community Quality | | | | | | | |
| The overall quality of life in Cartersville | 82% | 83% | 76% | 79% | 80% | Similar | Similar |
| Cartersville as a place to live | 86% | 90% | 83% | 87% | 85% | Similar | Above |
| Cartersville as a place to raise children | 81% | 83% | 77% | 81% | 81% | Above | Much Above |
| Cartersville as a place to retire | 64% | 61% | 60% | 71% | 69% | Above | Similar |
| Overall image or reputation of Cartersville | #N/A | #N/A | 70% | 72% | 7% | Similar | Similar |
| Remain in Cartersville for the next five years | #N/A | #N/A | #N/A | 85% | 86% | Above | Above |
| Recommend living in Cartersville to someone who asks | #N/A | #N/A | #N/A | 90% | 88% | Similar | Above |
| Overall appearance of Cartersville | 76% | 71% | 71% | 78% | 73% | Above | Above |
| Environmental Quality | | | | | | | |
| Cleanliness of Cartersville | #N/A | #N/A | #N/A | 70% | 69% | Similar | Similar |
| Quality of overall natural environment in Cartersville | #N/A | #N/A | #N/A | 67% | 69% | Similar | Similar |
| Preservation of natural areas such as open space, farmlands and greenbelts | #N/A | #N/A | #N/A | 52% | 66% | Much Above | Much Above |
| Air quality | 55% | 46% | 54% | 49% | 55% | Much Below | Below |
| Social and Civic Engagement | | | | | | | |
| Sense of community | 72% | 74% | 70% | 74% | 76% | Much Above | Much Above |
| Openness and acceptance of the community towards people of diverse backgrounds | 56% | 54% | 58% | 59% | 58% | Similar | Similar |
| About how often, if at all, do you talk to or visit with your immediate neighbors | #N/A | #N/A | #N/A | 48% | 56% | Much Above | Similar |
| Provided help to a friend or neighbor | #N/A | #N/A | #N/A | 94% | 96% | Similar | Similar |
| Opportunities to participate in social events and activities | #N/A | #N/A | #N/A | 68% | 67% | Similar | Above |
| Opportunities to attend cultural activities | 58% | 59% | 60% | 58% | 61% | Above | Above |
| Opportunities to participate in religious or spiritual events and activities | #N/A | #N/A | #N/A | 83% | 82% | Above | Above |

| | | | | | | | |
|---|------|------|------|-----|-----|------------|------------|
| Participated in religious or spiritual activities in Cartersville | #N/A | #N/A | #N/A | 69% | 71% | Much Above | Much Above |
| Opportunities to volunteer | #N/A | #N/A | #N/A | 73% | 78% | Above | Above |
| Volunteered your time to some group or activity in Cartersville | 47% | 46% | 41% | 54% | 47% | Similar | Above |
| Participated in a club or civic group in Cartersville | #N/A | #N/A | #N/A | 39% | 35% | Above | Above |
| Opportunities to participate in community matters | #N/A | #N/A | #N/A | 62% | 66% | Similar | Similar |
| Attended a meeting of local elected officials or other local public meeting | 34% | 35% | 29% | 35% | 23% | Below | Below |
| Watched a meeting of local elected officials or other public meeting on cable television, the Internet or other media | 62% | 56% | 46% | 38% | 31% | Much Below | Much Below |
| Registered to vote | 79% | 83% | 77% | 85% | 82% | Similar | Similar |
| Voted in the last general election | 58% | 76% | 61% | 76% | 73% | Similar | Similar |