

Engineering Services Committee Committee Room- 5/30/2006- 1:30 PM Meeting

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NG	SINEERING SERVICES	
1.	Motion to abandon a portion of Walker Street containing 0.05 acres beginning at the intersection of Beech Street.	Attachments
2.	Motion to approve a proposal from Lerch, Bates and Associates, Inc. for Elevator Modernization Consulting for the Municipal Building.	Attachments
3.	Presentation by Mr. Charles Utley regarding a proposal for a new Brownfield Grant.	Attachments
4.	Motion to approve and accept a Deed of Easement and Dedication from St. Andrews Augusta, LLC.	☐ <u>Attachments</u>
5.	Motion to approve Georgia Power Company Governmental Encroachment Agreement #30880 for Easement - Jefferson County EMC #5 (Bath) 46kv Transmission Line Right-of-Way.	Attachments
6.	Approve New Job Descriptions for Customer Service/Office Manager, Customer Service/Metering Manager and Customer Service/Branch Manager Positions	Attachments
7.	Approve Agreement and Scope of Work for the second phase of the MWH Constructors, Inc. (MWHC) Construction Manager at Risk contract to begin construction activities for the James B. Messerly WPCP Master Plan Implementation Project with a guaranteed maximum price (GMP) of \$3,543,096.00.	Attachments

8.	Consider a request from Mr. Reed Scott Hudson regarding the repainting of the Sherman tank located at Pendleton King Park.	Attachments
9.	Award a contract to Cascade Engineering for the purchase, delivery, public awareness, and asset management of carts for the Solid Waste Department.	☐ <u>Attachments</u>
10.	Discuss the various Solid Waste pickups. (Requested by Commissioner Smith)	Attachments
11.	Presentation by Mr. Tom Dozier regarding alternatives for the relocation of Silver Sheet Metal Company.	Attachments
12.	Approve Contract with Stafford Engineers for Roof and Waterproofing Consulting on the Augusta Richmond County Municipal Building	Attachments
13.	Approve Capital Project Budget 322-04-206822651 in the amount of \$407,000 for the proposed Winchester Subdivision Drainage Improvement Project. Funding to be used for Engineering in the amount of \$6,000, \$10,000 for Land Acquisition, \$338,000 for Construction, and \$53,000 for Project Contingency. Funds are available in Phase II SPLOST Contingency.	Attachments

www.augustaga.gov



Engineering Services Committee Meeting 5/30/2006 1:30 PM
Abandonment - Walker St.

Department: County Attorney - Stephen E. Shepard, Attorney

Caption: Motion to abandon a portion of Walker Street containing

0.05 acres beginning at the intersection of Beech Street.

Background: The Salvation Army plans to pave the back of its property

located on Beech Street in order to install a portable

classroom and to construct a playground for children staying at the shelter. In connection with the construction of such improvements a survey was preformed and it was discovered that the Salvation Army was utilizing a portion of Walker Street for its operations and had been doing so for over thirty years. The portion of Walker Street in question is unopened

and is not used as a public right of way.

Analysis: The property consists of .05 acres, more or less, as shown on

the complied map for The Salvation Army, Inc. The subject property has been in use by the Salvation Army for over 30 years under the assumption that it owned the property and is

needed for the proposed improvements.

Financial Impact: The property is appraised for \$1,000.00.

Alternatives: Either approve or deny the motion to abandon Walker Street.

Recommendation:

Approve the motion to abandon a portion of Walker Street, containing 0.05 acres (2,134 sq ft), beginning at its intersection with Beech Street and running east along the northern "old property line" of property now or formerly of The Salvation Army, Inc. a distance of 88.87 feet and running east along the southern "old property line" of now or formerly of The Salvation Army, Inc. a distance of 124.51 feet all as shown on a compiled man propered by Tools

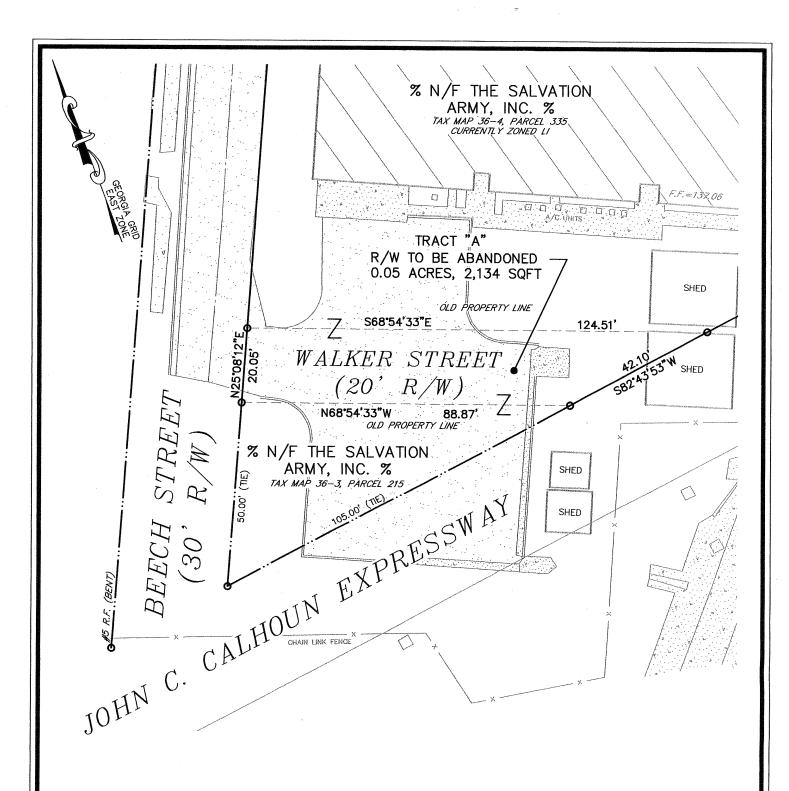
feet, all as shown on a compiled map prepared by Toole Surveying Company, Inc. for The Salvation Army, Inc. dated March 29, 2006.

Funds are Available in the Following Accounts:

N/A

REVIEWED AND APPROVED BY:

Administrator. Clerk of Commission



SPECIAL NOTE:

According to the Flood Insurance Rate maps for community Panel Number 130158 0080 E Dated March 13, 1999 this property does not lie within the 100 year flood plain.

NOTE: TRACT "A" AND TAX MAP 36-3, PARCEL 215 TO BECOME A PORTION OF TAX MAP 36-4, PARCEL 335.

PLAT CLOSURE 1 IN 35,979

COMPILED MAP FOR

THE SALVATION ARMY, INC.

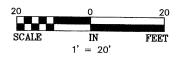
SHOWING THE RIGHT OF WAY OF WALKER STREET TO BE ABANDONED

RICHMOND

COUNTY,

GEORGIA





MARCH 29, 2006

-Prepared By-



08 4th Street----Phone (706) 722-4115----Augusta, Georgia 30901

Fax (706) 722-4118 ---- www.toolesurveying.com

JOB #06076P WRM



Engineering Services Committee Meeting
5/30/2006 1:30 PM
Approve Proposal from Lerch, Bates, & Assoc., Inc. for Elevator Consulting for Municipal Building

Department: Administration

Caption: Motion to approve a proposal from Lerch, Bates and

Associates, Inc. for Elevator Modernization Consulting for

the Municipal Building.

Background: A detailed survey of all of the existing, accessible equipment

associated with the Municipal Building's three main

elevators, to determine its condition, remaining service life

and potential for reuse, is proposed by the elevator consultant. Lerch, Bates was selected following a competitive, RFQ process. The service will include recommendations and production of bidding documents facilitating competitive bidding of needed modernization work. Much of the mechanical and electrical equipment utilized by the existing elevators dates from the building's

1950's construction. Reliabilty and acquisition of

replacement parts have become problematic. The consultant's work will facilitate a remedy to these problems, in a cost-effective manner. Statements of Qualifications were received from Lerch, Bates & Associates Inc. and Van Deusen & Associates (VDA), for the referenced consulting services. Following review and ranking of the two submissions by personnel from Facilities Maintenance, Procurement and Capital Improvements PM, in accordance with the published criteria and scoring system, Lerch Bates finished with a score

of 11.38, while VDS had a score of 6.60.

Analysis:

The modernization is much needed, as elevator reliabilty, speed/convenience, maintenance concerns can all be significantly improved. There is no significant benefit to delaying this work until larger renovations occur, since the elevator locations and basic operational characteristics are not expected to change. While both firms were similarly qualified, the references for Lerch Bates were very strong,

while VDA failed to provide any references. References were published in the RFQ as worth 20% of the scoring criteria. Lerch Bates also tailored their proposal to this specific project, indicating a good grasp of the scope of work needed. Both are Atlanta and firms have indicated their intent to self-perform the entire contract. There are no DBE or local participation differences

Financial Impact:

A fixed fee, including expenses, of \$18,000 is proposed. This fee should be more than offset by savings in the modernization work, facilitated by competitve bidding.

Alternatives:

1. Do not hire a consultant, and instead contract directly with an elevator company, in a design-build arrangement. 2. Do nothing at this time.

Recommendation:

Enter into a professional services contract with Lerch, Bates & Associates, Inc, for the referenced work, as soon as possible. Skipping the consultant and utilizing a design-build arrangement will likely result in higher overall costs and the purchase of expense proprietary equipment that may not be needed.

Funds are Available in the Following Accounts:

323; 296050050

REVIEWED AND APPROVED BY:

Administrator. Clerk of Commission

AUGUSTA RICHMOND COUNTY CAPITAL IMPROVEMENTS HEERY INTERNATIONAL, INC., PROGRAM MANAGER

May 5, 2006

Ms. Geri Sams Director of Procurement Augusta Richmond County 530 Greene Street, Room 605 Augusta, GA 30911

RE: RFQ #06-113; Elevator Modernization Consulting for the Municipal Building

Dear Ms. Sams:

I have reviewed the Statements of Qualifications from Lerch, Bates & Associates Inc. and Van Deusen & Associate (VDA), for the referenced consulting services.

Following review and ranking of the two submissions, in accordance with the published criteria and scoring system, Lerch Bates finished with a score of 11.38, while VDS had a score of 6.60.

While both firms were similarly qualified, the references for Lerch Bates were very strong, while VDA failed to provide any references. References were published in the RFQ as worth 20% of the scoring criteria. Lerch Bates also tailored their proposal to this specific project, indicating a good grasp of the scope of work needed.

Both are Atlanta and firms have indicated their intent to self-perform the entire contract. There are no DBE or local participation differences.

To summarize, it is my recommendation that Augusta Richmond County enter into a professional services contract with Lerch, Bates & Associates, Inc, for the referenced work, as soon as possible. Rick Acree concurs with this recommendation.

If there are any questions, please don't hesitate to contact me.

Cordially,

Bob Munger, AIA, LEED^{AP} HEERY Program Manager ARC Capital Improvements

C: Fred Russell, Yvonne Gentry, Rick Acree, Phyllis Mills

Attachments: Technical Evaluation Form, Lerch, Bates Proposal

ATTACHMENT F

TECHNICAL CONSULTANT PROPOSAL EVALUATION FORM RFQ #06-113; Elevator Modernizations to the Augusta Municipal Building

Reviewer:	BM	_	Date:		3/22/2006	
Criteria Category	Evaluation Weight					
Qualifications	30%					
References	20%					
Fee Amount	30%			e references liste	-	
	10%			ding Project Mg		
Organization/Mangmt/Technical				A was vague ab	out who would	be working on
DBE Participation	10%	_	the project.			
Total	100%	,				
Evaluation Cı	riteria			Respondents	ı	,
		Lerch Bates	VDA			
Qualifications	(score ea. 1 to 30 pts)					
Years of Elevator Consulting Experience	ce	25	20			
Training		20	20			
Familiarity with Project Specifics		20	20			
Similar Elev. Modernization Experience	e	20	20			
Average Firm Qualification Scores		21.25	20.00	0.00	0.00	0.00
Reference Scores		20	0			
Fee Amount		30.0	29.7			
Organization/Mangmt/Technical	(1-10 pts. Ea.)			· ·	·	,
Understanding of project scope		10	8			<u> </u>
Technical Approach		10	5			
Organizational/Legal Approach		10	5			ļ
Ability to meet proposed schedule Average Org./Management Scores		n/a 10.00	n/a 6.00	0.00	0.00	0.00
Average Org./Management Scores		10.00	0.00	0.00	0.00	0.00
DBE Scores		0	0			
Summary of Scores						
Qualifications	30%	6.38	6.00	0.00	0.00	0.00
References	20%	4.00	0.00	0.00	0.00	0.00
Fee Amount	30%	9.00	8.90	0.00	0.00	0.00
Organization/Management	10%	1.00	0.60	0.00	0.00	0.00
DBE Participation	10%	0.00	0.00	0.00	0.00	0.00
						1

20.38

15.50

0.00

0.00

0.00

Notes:

Total Score

Both firms are from Atlanta and fees are very similar

MUNICIPAL BUILDING ELEVATOR CONSULTANT EVALUATION NOTES

#	Firm	Qualifications/Experience	References	Organization/ Approach		Submission Quality	Other Notes
1	VDA	Good	None provided	Good	None	acceptable	Atlanta based
2	LB	Better	Excellent	good	None	acceptable	Atlanta Based
Firm	n 1 Notes:						
Firm	m 2 Notes:						
Firm	n 3 Notes:						



Engineering Services Committee Meeting 5/30/2006 1:30 PM Brownfield Grant

Department: Clerk of Commission

Caption: Presentation by Mr. Charles Utley regarding a proposal for a new Brownfield Grant.

Background:
Analysis:
Financial Impact:
Alternatives:
Recommendation:
Funds are Available in the Following Accounts:

REVIEWED AND APPROVED BY:

Clerk of Commission

Lena Bonner

From: Charles N Utley [utleyc@mail.paine.edu]

Sent: Tuesday, May 16, 2006 11:04 AM

To: Lena Bonner

Subject: Augusta Brownfield Grant

Hi Mrs.Bonner,

Please accept this as my official request to appear before the Engineering Committee. I would like to present to them a proposal for a new grant HUD Brownfield Grand, that is due on June 16, 2006. This grant will allow the commission to continue it's work in cleaning up and developing clean space for economical redevelopment in our city.

Thank you for your consideration in the request.

Charles N. Utley Brownfield Chair Hi Mrs. Bonner,

The conditions in our blighted communities have not changed; therefore I am requesting approval to secure additional funds to move forward to eliminate this long over due dilemma.

The Augusta Brownfields Commission plans to seek support to submit an application to the United States Department of Housing and Urban Development for a Brownfields Economic Development Initiative (BEDI) grant.

BEDI is designed to assist cities with the redevelopment of abandoned, idled and underused industrial and commercial facilities where expansion and redevelopment is burdened by *real or potential* environmental contamination. BEDI funds are primarily targeted for the redevelopment of brownfields sites in economic development projects that increase economic opportunities for low-and moderate-income persons as part of the creation or retention of businesses, jobs and increases in the local tax base. BEDI grants must be used in conjunction with a new Section 108-guaranteed loan commitment.

Since the Brownfields Commission has insufficient resources to prepare the proposal and manage the project, it will form a partnership with John Rosenthall and the department of Energy's Massie Chairs of Excellence (Massie Chairs) to handle these matters. John has worked with the Commission continuously since 1999 and was the primary author of the initial Brownfields proposal. The Massie Chairs have provided support to the Commission over the years and provided support to our latest EPA Brownfields proposal. Other city departments will also be invited to work with securing this grant. While the City of Augusta will be the legal applicant, project manager and fiduciary, we will work with the legal staff to prepare a working relationship that meets City, state and federal requirements.

The application is due on June 14, 2006. We have discussed this matter with Fred Russell and Commissioner Marion Williams. They are aware of and supports this approach.

I have requested that this matter be placed on the docket for the Engineering Services meeting on May 30 however, if another committee is more approbate please make the change.

Thanks.

Charles Utley



Engineering Services Committee Meeting 5/30/2006 1:30 PM Deed of Easement and Dedication from St. Andrews Augusta

Department: Augusta Utilities Department, Max Hicks Director

Caption: Motion to approve and accept a Deed of Easement and

Dedication from St. Andrews Augusta, LLC.

Background: St. Andrews of Augusta, LLC, puchased property on

Perimeter Parkway. While conducting a boundary survey, it was discovered that a small portion of the sanitary sewer pipeline had been constructed within the property's Northern boundary line. St. Andrews of Augusta wishes to deed, to Augusta, an easement over this section of pipeline and to

dedicate the line.

Analysis: The pipeline was constructed outside of the right-of-way by

accident. Approving and accepting the easement and

dedication will correct this error.

Financial Impact: None.

Alternatives: Do no approve and accept.

Recommendation: Approve motion to approve and accept the Deed of Easement

and Dedication.

Funds are

Available in the

Following Accounts:

N/A.

REVIEWED AND APPROVED BY:

Finance. Administrator. Clerk of Commission Upon recording, return to: Jeanna A. Brannon, Esq. Morris, Manning & Martin, LLP 1600 Atlanta Financial Center 3343 Peachtree Road, N.E. Atlanta, Georgia 30326-1044

AUGUSTA, GEORGIA DEED OF EASEMENT AND DEDICATION

PARCEL IDENTIFICATION NUMBER: 023-0-003-04-0 ADDRESS: 3000 Perimeter Parkway

THIS INDENTURE made and entered into this _____ day of April 2006, between **St. Andrews Augusta, LLC**, a Georgia limited liability company, hereinafter referred to as OWNER, and **Augusta, Georgia**, a political subdivision under the laws of Georgia, hereinafter referred to as AUGUSTA:

WITNESSETH, that Owner, for and in consideration of the sum of ONE DOLLAR (\$1.00) in hand and truly paid by Augusta at and before the sealing and delivery of these presents, and other valuable consideration, the receipt whereof is hereby acknowledged, has granted, bargained, sold, conveyed and confirmed, and by these presents does grant, bargain, sell, convey and confirm unto Augusta, its successors and assigns, a non-exclusive easement in perpetuity under, across and through the hereinafter described parcel of land.

Said easement consists of the area shown as "Proposed Sanitary Sewer Easement 10' Off Center of Existing Sanitary Sewer Line 0.11 Acres (shaded)", on a plat entitled ALTA/ACSM Boundary Survey, prepared by Toole Surveying Company, Inc., dated November 10, 2005, attached hereto and made a part hereof, to which reference is made for a more accurate and complete description of the metes, bounds and courses, and being for the purpose of laying, relaying, installing, extending, operating, repairing and maintaining pipelines transporting and carrying sanitary sewage.

Owner does also grant, bargain, sell and convey unto Augusta, its successors and assigns, the right, but not the duty to clear, and keep clear, all trees, undergrowth and other obstructions from said permanent easement, along with the free right of ingress and egress on, over and across the drive areas of Owner's property as the same may exist from time to time to and from said permanent easement for this purpose.

Owner does also hereby dedicate and Augusta does hereby accept any sewer lines, manholes, pipes, valves, connections, and appurtenances located within the easement granted herein.

Owner does agree that no other utilities may be constructed within the easement in perpetuity granted herein, except by written permission of the Augusta Utilities Department, which permission shall not be unreasonably withheld or delayed.

Owner, its successors, heirs, assigns and legal representatives, shall have the right to use said parcel of land in any manner not inconsistent or interfering with the rights herein granted, <u>excluding</u>, however, the right to plant thereon any trees or other vegetation that may interfere with the laying, relaying, installing, extending, operating, repairing and maintaining of pipelines transporting and carrying sanitary sewage services and the right to erect, construct or maintain thereon any buildings, structures, or other permanent improvements.

TO HAVE AND TO HOLD the aforesaid rights, ways, easements, privileges and appurtenances unto Augusta, its successors and assigns, in perpetuity.

And Owner, its successors, heirs, assigns and legal representatives shall and will forever warrant and defend unto Augusta, its successors and assigns, the rights, ways, easements privileges and appurtenances conveyed herein, against the claim of any person or persons arising by, through or under Owner.

[Signatures Follow On Next Page]

IN WITNESS WHEREOF, Owner has caused its authorized representative to set his hand and seal, the day and year first above written.

Signed, Sealed and Delivered in the presence of:

PURCHASER:

ST. ANDREWS AUGUSTA, LLC, a Georgia limited liability company

By: W. Greg Howington II, LLC, a Georgia limited liability company, its Manager

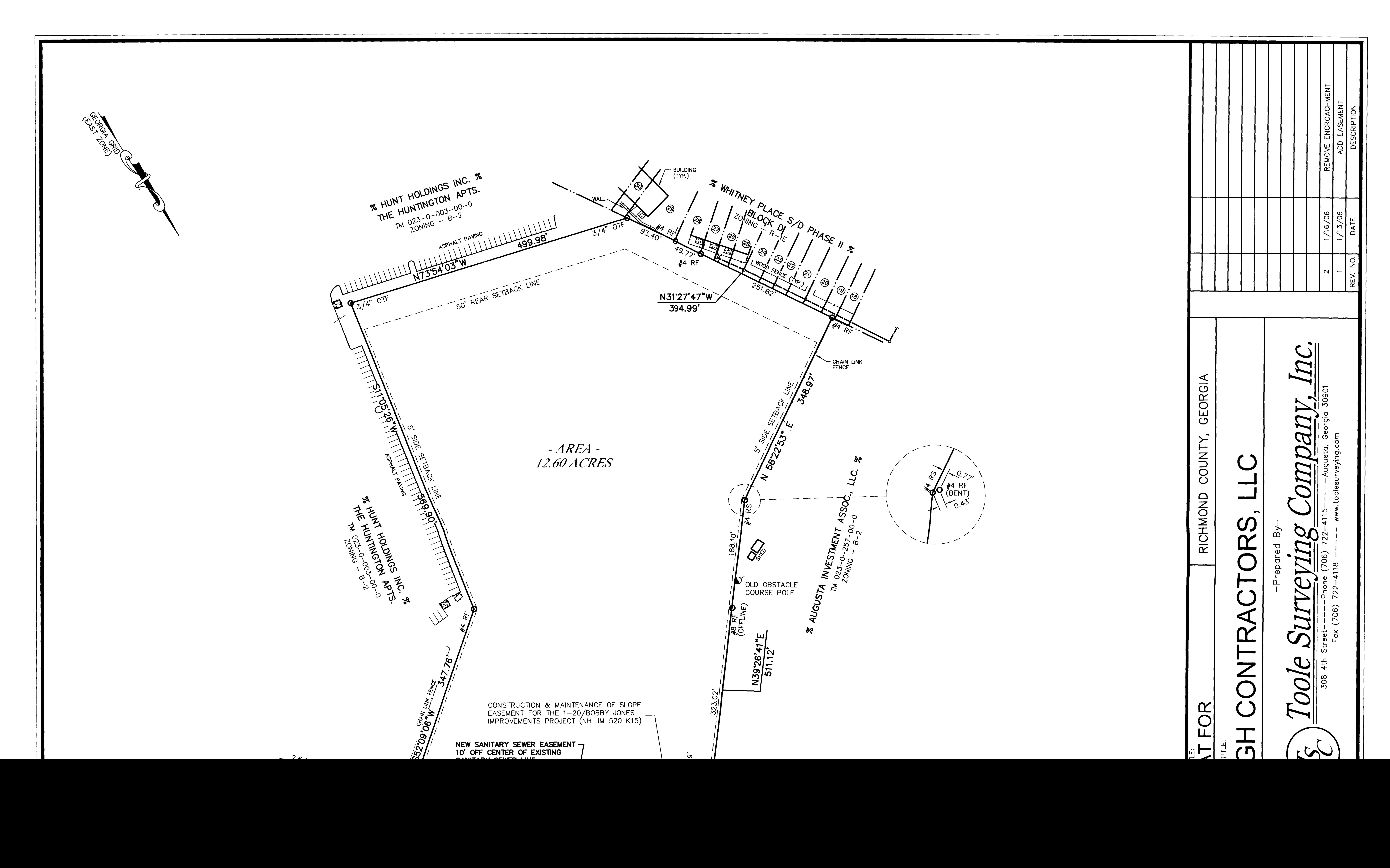
> By: Heritage Club, Inc., a Georgia corporation, its Manager

> > By:
> > Name: W. Greg Howington
> > Title: President

AUGUSTA, GEORGIA

ACCEPTED BY:

Deke S. Copenhaver, Mayor
Attest:
As Its:





Engineering Services Committee Meeting 5/30/2006 1:30 PM Georgia Power Company Encroachment Agreement

Department:	Clerk of Commission
Caption:	Motion to approve Georgia Power Company Governmental Encroachment Agreement #30880 for Easement - Jefferson County EMC #5 (Bath) 46kv Transmission Line Right-of-Way.
Background:	
Analysis:	
Financial Impact:	
Alternatives:	
Recommendation:	
Funds are Available in the Following Accounts:	
REVIEWED AND AP	PPROVED BY:
Clerk of Commission	

Forestry & Right-of-Way 2103 North Leg Road Augusta, GA 30909 Fax 706.667.5658 Tel 706.667.5654



May 16, 2006

Mr. Abie L. Ladson Augusta-Richmond County Engineering Department 1815 Marvin Griffin Road Augusta, GA 30906

RE: Georgia Power Company Governmental Encroachment Agreement #30880 for Easement Jefferson County EMC #5 (Bath) 46kv Transmission Line Right-of-Way

Dear Mr. Ladson:

Enclosed is Georgia Power's Governmental Encroachment Agreement for review and signature. Please have the agreement signed and return it to my office on or before **July 15, 2006**, or the Agreement will be considered null and void. The signer's name and title should be printed or typed below the signature and the document must be witnessed, notarized and dated before returning. Also, please initial the sketch marked Exhibit A. A copy will be returned to you once the agreement is approved by our local management.

Please make sure that your contractor notifies Georgia Power 3 business days prior to construction.

Kindest regards,

a.P. Kattegat
A. P. Kattegat

Transmission Specialist I

Enclosures

Xc: TMC Files

MAY 1 8 2006

PUBLIC WORKS
& ENGINEERING

GOVERNMENTAL ENCROACHMENT AGREEMENT FOR EASEMENT

L. F. # 6-1311

APPLICATION #

30880

SUBJECT: Jefferson County EMC #5 (Bath) 46kv Transmission Line RIGHT-OF-WAY

The Georgia Power Company, hereinafter called the "Power Company," hereby consents for Augusta-Richmond County, hereinafter called the "Undersigned," to use an area within the Power Company's subject electric transmission line right(s)-of-way described as follows:

Said right(s)-of-way being 100 feet in width and extending in part through, 1219th District/GMD, of Richmond County, Georgia, on which the Power Company has constructed and now maintains and operates said electric transmission lines by virtue of certain easements heretofore acquired by the Power Company. The said right(s)-of-way is shown on plat attached hereto and made a part hereof as Exhibit A.

The use of the area by the Undersigned within said right(s)-of-way, pursuant to this consent, shall be limited to the construction, operation and maintenance of 60' wide road at the location and to the extent as shown on said attached plat. It is specifically understood that no buildings or other obstructions of any type will be permitted within or on subject transmission line right(s)-of-way.

The plans and specifications as submitted by the Undersigned meet the Power Company's approval provided the Undersigned conforms to the following terms and conditions:

- 1. The Undersigned agrees to obtain all necessary rights from the owners of the lands crossed by the Power Company's right(s)-of-way.
- 2. The Undersigned agrees to use said area within the Power Company's right(s)-of-way in such a manner as will not interfere with the Power Company's activities and facilities as now, or hereafter, exist thereon (hereinafter Power Company's "activities" and "facilities".)
- 3. The Undersigned agrees that the use of Power Company's right(s)-of-way as herein provided shall in no way affect the validity of the Power Company's easement(s) and shall in no way modify or restrict the use or rights of the Power Company, its successors or assigns, in and to the area to be used. The Undersigned acknowledges the Power Company's right and title to said easement(s) and the priority of the Power Company's right of use and hereby agrees not to resist or assail said priority.
- 4. The use of said area within said right(s)-of-way by the Undersigned shall be at the sole risk and expense of the Undersigned, and the Power Company is specifically relieved of any responsibility for damage to the facilities and property of the Undersigned resulting or occurring from the use of said right(s)-of-way by the Power Company as provided herein. The Undersigned covenants not to sue Power Company in that instance.
- 5. The Undersigned hereby agrees and covenants not to use and will prohibit agents, employees and contractors of Undersigned from using any tools, equipment or machinery within ten (10) feet of the Power Company's overhead conductors. The Undersigned agrees to comply with Official Code of Georgia, Section 46-3-30 et seq., (HIGH-VOLTAGE SAFETY ACT) and any and all Rules and Regulations of the State of Georgia promulgated in connection therewith, all as now enacted or as hereinafter amended; and further agrees to notify any contractor(s) that may be employed by the Undersigned to perform any of the work referred to in this Agreement of the existence of said code sections and regulations by requiring said work to be performed in compliance with said code sections and regulations by including same as a requirement in its request for bids and including said requirements in any contract let as a result of said bid. The Undersigned further agrees and covenants to warn all persons whom the Undersigned knows or should reasonably anticipate for any reason may resort to the vicinity of such conductors of the fact that such conductors are (a) electrical conductors, (b) energized, (c) uninsulated and (d) dangerous.
- 6. Notwithstanding anything to the contrary contained herein, the Undersigned agrees to reimburse the Power Company for all cost and expense for any damage to the Power Company's facilities resulting from the use by the Undersigned of said area within said right(s)-of-way. Also, the Undersigned agrees that if in the opinion of the Power Company, it becomes necessary, as a result of the exercise of the permission herein granted, to relocate, rearrange, change or raise any of the Power Company's facilities, to promptly reimburse the Power Company for all cost and expense involved in such relocation, rearrangement or raising of said facilities.
- 7. The Undersigned agrees to notify or have the Undersigned's contractor notify the Power Company's Representative in Augusta, Georgia, Phone: 706-667-5654, at least three (3) business days prior to actual construction on the Power Company's right(s)-of-way.
- 8. The Undersigned agrees, to the extent it may lawfully do so, to indemnify and save harmless and defend the Power Company from the payment of any sum or sums of money to any persons whomsoever (including third persons, subcontractors, the Undersigned, the Power Company and agents and employees of them) on account of claims or suits growing out of injuries to persons (including death) or damage to property (including property of the Power Company) in any way attributable to or arising out of the use of the right(s)-of-way, by the Undersigned as herein

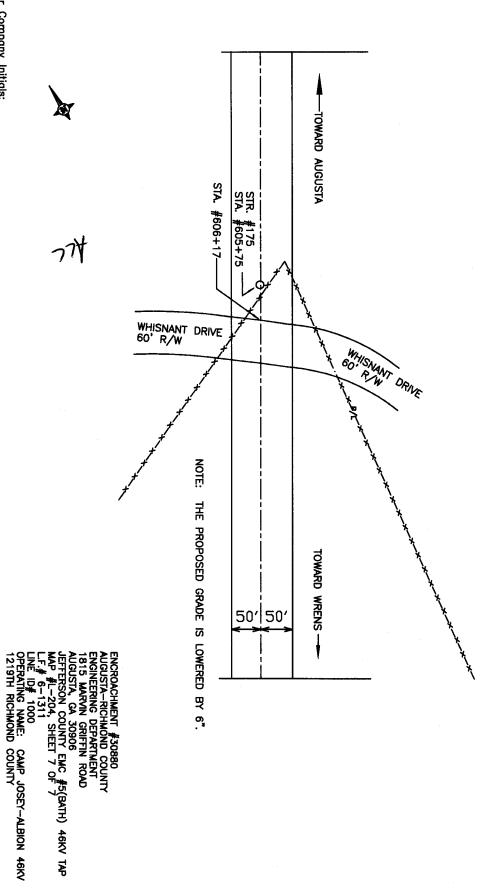
provided, including (but without limiting the generality of the foregoing) all liens, garnishments, attachments, claims, suits, judgments, costs, attorney's fees, cost of investigation and of defense, and excepting only those situations where the personal injury or property damage claimed have been caused by reason of the sole negligence on the part of the Power Company, its agents or employees.

- 9. The Undersigned hereby agrees to incorporate in any and all of its contracts and/or agreements, for any work or construction done on or to said described right(s)-of-way, with any and all third persons, contractors, or subcontractors, a provision requiring said third parties, contractors or subcontractors to indemnify and defend Power Company, its agents and employees as provided for above from payment of any sum or sums of money by reason of claims or suits resulting from injuries (including death) to any person or damage to any property which is in any manner attributable to or resulting from the construction, use or maintenance of the Undersigned's facilities, projects or programs conducted on Power Company's right(s)-of-way herein described, and excepting only those situations where the personal injury or property damage claimed have been caused by reason of the sole negligence on the part of the Power Company, its agents or employees.
- 10. The Undersigned further agrees to carry, if performing work or construction, and to require that any such third party, contractor or subcontractor doing or providing any such work or construction on said right(s)-of-way carry liability insurance which shall specifically cover such contractually assumed liability. A certificate of such insurance issued by the appropriate insurance company shall be furnished to the Power Company upon request, said amount of insurance to be not less than \$2,000,000 per occurrence for bodily injury and property damage which arise out of or result from the Undersigned's operations under this agreement. The Power Company shall be named as an additional insured on this liability insurance coverage.
- 11. The Power Company has the right to remove all trees and brush from the limits of the right(s)-of-way. However, Power Company will permit some planting of shrubbery and *low growing trees* provided these plants do not interfere with the access to and operation of Power Company's facilities and are planted at a distance greater than twenty-five (25) feet from any structure or attachment thereto. A planted low growing tree is defined as a tree which grows no more than 15 feet in height at maturity.
- 12. The Undersigned agrees that all construction activity shall be conducted at a distance greater than twenty-five feet (25') from any structure or attachment thereto.
 - 13. This Agreement shall inure to the benefit of and be binding upon the parties, their heirs, successors and/or assigns.

The Undersigned hereby accepts the foregoing consent, and has by Resolution of the Commissioners, or by other legal and proper authorization, duly adopted (a copy of which will be furnished to Power Company on request), authorized the execution and acceptance of this authorization, duly adopted (a copy of which will be furnished to Power Company on request), authorized the execution and acceptance of this Agreement subject to the terms and conditions set forth above and in the event the Undersigned fails to perform as herein provided and shall not have executed and returned this Agreement on or before the 15 of July 2006, this Agreement shall become void and no use of the Power Company's right(s)-of-way as herein provided for shall be made.

IN WITNESS WHEREOF, this	Agreement has been duly executed,	1-/	y of, 20 ERSIGNED	
WITNESS:	//	BY:		
		NAME:		_
NOTARY PUBLIC:		TITLE:		
The Power Company has by its duly a	authorized agent executed this Agree	ment, this the _	day of, 20	
		GEO	RGIA POWER COMPANY	
WITNESS:		BY:		
		NAME: TITLE:	P. Chris Caldwell Area Transmission Maintenance Supe	ervisor
NOTARY PUBLIC:		11166		

GOVERNMENTAL ENCROACHMENT AGREEMENT FOR EASEMENT **EXHIBIT**



Middle Georgia Augusta

TMC

GEORGIA POWER COMPANY

SCALE TO

Power Company Initials: Undersigned Initials:



Engineering Services Committee Meeting 5/30/2006 1:30 PM Job Description Changes for Utilities Customer Service

Department: Utilities - N. Max Hicks, Director

Caption: Approve New Job Descriptions for Customer Service/Office

Manager, Customer Service/Metering Manager and

Customer Service/Branch Manager Positions

Background: On June 7, 2005 the Commission approved two new

positions for the Utilities Department with the Approved Titles of Facility Manager with a job grade 52. The working titles for these two positions are Customer Service Office Manager and Metering Manager. After further review of the job descriptions, AUD has decided that the job descriptions

should focus more on job experience and supervisory

experience. This is also true for the Branch Manager position that reports directly to the Office Manager. AUD brings forward this recommendation to change the job descriptions for all positions noted in the caption above by allowing an Associates degree and/or significant years of related work experience. Attached is a new job description for each position. These positions require working knowledge of water utility customer service, metering, supervisory skills

and the ability to work with the public.

Analysis: The most important quality applicants for these positions

should have is an ability to work within our system, well-rounded technical experience in utility customer service and

metering, supervisory experience and people skills. Approving this request would give all employees the opportunity to advance within the system based on work experiences related to the job responsibilities for the position

being sought.

Financial Impact: There is no financial impact as these positions have already

been approved and are funded in the 2006 budget.

Alternatives: Do not approve this item: This action would leave Utilities'

Customer Service job descriptions as they currently exist and

would limit the applicant pool for the positions.

Recommendation: We recommend the Commission approve new job

descriptions for Customer Service/Office Manager, Customer Service/Metering Manager and Customer Service/Branch

Manager positions.

Funds are

Available in the

Following Accounts:

N/A - There is no financial impact as these positions have already been approved and are funded in the 2006 budget.

REVIEWED AND APPROVED BY:

Clerk of Commission

Augusta-Richmond County Job Description

Approved Title: Operations Manager Job Code:

Title: Branch Manager Overtime: Exempt
Department: Utilities Date Prepared: May 17, 2006

Reports to: Customer Service Office Manager Job Grade: 47

GENERAL SUMMARY: Manages and directs the operations of the branch office within the guidelines of ordinances of the water and sewer system, Augusta-Richmond County policies and procedures, and accepted departmental practices. Reports to the Customer Service Office Manager or other designated person and works with employees, vendors, and the public to provide administrative support.

PRINCIPAL DUTIES AND RESPONSIBILITIES

- 1. Trains, supervises, evaluates, and schedules branch employees.
- 2. Conducts orientation of new employees and/or new job assignments.
- 3. Makes adjustments on accounts and supervises maintenance of accounts.
- 4. Presents reports, makes recommendations, and receives and reviews correspondence.
- 5. Assists in preparation of annual budget.

REQUIREMENTS

Education: Associates degree in related occupational field of study and/or High School diploma, trade school, or equivalent level of education and 10+ years experience.

Experience: 10+ years in similar position or sufficient experience to perform principal duties and responsibilities, usually associated with completion of apprenticeship/internship. Experience must include extensive supervisory experience.

Knowledge/Skills/Abilities:

- Considerable knowledge of management and supervision procedures.
- Familiarity with departmental policies and procedures.
- Proficiency in problem solving, interpersonal communications, and establishing and maintaining effective working relationships.
- Mastery of basic mathematics and check recording machine.
- Good communication skills, both oral and written.
- Demonstrated ability to work independently.

PHYSICAL DEMANDS

Intermittent sitting, standing, stooping, crouching, walking, and occasional lifting of light objects. Work is performed in an office and occasionally at other locations.

DISCLAIMER

The preceding job description has been designed to indicate the general nature and level of work performed by employees within this classification. It is not designed to contain or be interpreted as a comprehensive inventory of all duties, responsibilities, and qualifications required of employees to this job.

REVIEW/APPROVALS	
Human Resources	Date
Line or Staff Management	 Date

Augusta-Richmond County Job Description

Approved Title: Metering Manager Job Code:

Title: Metering Manager Overtime: Exempt
Department: Utilities Date Prepared: May 17, 2006

Reports to: Superintendent I Job Grade: 52

GENERAL SUMMARY: Manages and directs the operations of the meter shop and metering program within the guidelines of ordinances of the water and sewer system, Augusta-Richmond County policies and procedures, and accepted departmental practices. Reports to the Superintendent I or other designated person and works with employees, vendors, and the public to provide administrative support.

PRINCIPAL DUTIES AND RESPONSIBILITIES

- 1. Trains, supervises, evaluates, and schedules metering services employees.
- 2. Develops and maintains meter maintenance, repair and testing program.
- 3. Plan and monitor meter shop operations
- 4. Presents reports, makes recommendations, and receives and reviews correspondence.
- 5. Assists in preparation of annual budget.
- 6. Responsible for the purchase of supplies and materials needed for all operations within the facility.
- 7. Summarizes and approves all division payroll within the facility.
- 8. Updates and monitors meter activity in the CIS and Work Order software systems.
- 9. Oversees handling of meter maintenance requests.
- 10. Coordinates special projects as AUD customer service contact.

REQUIREMENTS

Education: Associates degree in related occupational field of study and/or High School diploma, trade school, or equivalent level of education and 13+ years experience.

Experience: 13+ years in similar position or sufficient experience to perform principal duties and responsibilities, usually associated with completion of apprenticeship/internship. Experience must include extensive supervisory experience.

Knowledge/Skills/Abilities:

- Considerable knowledge of management and supervision procedures.
- Familiarity with departmental policies and procedures.
- Proficiency in problem solving, interpersonal communications, and establishing and maintaining effective working relationships.
- Mastery of basic mathematics and CIS and Microsoft Office software.
- Good communication skills, both oral and written.
- Demonstrated ability to work independently.

PHYSICAL DEMANDS

Intermittent sitting, standing, stooping, crouching, walking, and occasional lifting of light objects. Work is performed in an office and occasionally at other locations.

DISCLAIMER

The preceding job description has been designed to indicate the general nature and level of work performed by employees within this classification. It is not designed to contain or be interpreted as a comprehensive inventory of all duties, responsibilities, and qualifications required of employees to this job.

REVIEW/APPROVALS	
Human Resources	Date
Line or Staff Management	Date

Augusta-Richmond County Job Description

Approved Title: Customer Service Office Manager Job Code:

Title: Customer Service Office Manager Overtime: Exempt
Department: Utilities Date Prepared: May 17, 2006

Reports to: Superintendent I Job Grade: 52

GENERAL SUMMARY: Manages and directs the operations of the customer service office within the guidelines of ordinances of the water and sewer system, Augusta-Richmond County policies and procedures, and accepted departmental practices. Reports to the Superintendent I or other designated person and works with employees, vendors, and the public to provide administrative support.

PRINCIPAL DUTIES AND RESPONSIBILITIES

- 1. Trains, supervises, evaluates, and schedules customer service office employees.
- 2. Conducts orientation of new employees and/or new job assignments.
- 3. Makes adjustments on accounts and supervises maintenance of accounts.
- 4. Presents reports, makes recommendations, and receives and reviews correspondence.
- 5. Assists in preparation of annual budget.
- 6. Responsible for the purchase of supplies and materials needed for all operations within the facility.
- 7. Summarizes and approves all division payroll within the facility.
- 8. Updates and monitors customer activity in the CIS and Work Order software systems.
- 9. Coordinates special projects as AUD customer service contact.

REQUIREMENTS

Education: Associates degree in related occupational field of study and/or High School diploma, trade school, or equivalent level of education and 13+ years experience.

Experience: 13+ years in similar position or sufficient experience to perform principal duties and responsibilities, usually associated with completion of apprenticeship/internship. Experience must include extensive supervisory experience.

Knowledge/Skills/Abilities:

- Considerable knowledge of management and supervision procedures.
- Familiarity with departmental policies and procedures.
- Proficiency in problem solving, interpersonal communications, and establishing and maintaining effective working relationships.
- Mastery of basic mathematics and CIS and Microsoft Office software.
- Good communication skills, both oral and written.
- Demonstrated ability to work independently.

PHYSICAL DEMANDS

Intermittent sitting, standing, stooping, crouching, walking, and occasional lifting of light objects. Work is performed in an office and occasionally at other locations.

DISCLAIMER

The preceding job description has been designed to indicate the general nature and level of work performed by employees within this classification. It is not designed to contain or be interpreted as a comprehensive inventory of all duties, responsibilities, and qualifications required of employees to this job.

REVIEW/APPROVALS		
Human Resources	Date	
Line or Staff Management	Date	



Engineering Services Committee Meeting 5/30/2006 1:30 PM

Messerly WPCP CM at Risk Construction Services Agreement and Task Order #1

Department: Utilities

Caption: Approve Agreement and Scope of Work for the second phase

of the MWH Constructors, Inc. (MWHC) Construction Manager at Risk contract to begin construction activities for the James B. Messerly WPCP Master Plan Implementation

Project with a guaranteed maximum price (GMP) of

\$3,543,096.00.

Background: The Augusta Utilities Department entered into a contract

with MWHC as Construction Manager at Risk for

Preconstruction Services related to this project in November of 2005. MWHC has reviewed the project documents and conducted a value engineering workshop to help refine the project and reduce overall project cost. One of the tasks included in the current preconstruction agreement with MWHC is to negotiate an appropriate contract document to facilitate the construction activities portion of this project. Attached for approval and execution is the document that has

been negotiated between Augusta and MWHC for

Construction Manager at Risk Construction Services. This agreement was negotiated with the involvement of several parties including the Augusta Procurement Department, the Disadvantaged Business Enterprise Director, the City

Attorney's Office and the Augusta Utilities Department. The project team has identified several items of work that could help accelerate the project schedule, complete a time sensitive portion of the project and prepare the site for the major construction activities that will take place during the

next phase. We are referring to this early construction package as Construction Task Order #1. We anticipate that this work will be completed in the early fall before major construction activities begin. The scope of work and negotiated GMP of \$3,543,096.00 for Construction Task

Order #1 are also attached for approval.

Analysis:

There are two main benefits of proceeding with Construction Task Order #1 at this time. The first is that a portion of this work is to complete the final connection of the Spirit Creek Pump Station and Force Main to the Messerly facility. The pump station and force main project is a condition of an active consent order designed to reduce the excess flow entering the Spirit Creek Water Pollution Control Plant and must be completed by September 30, 2006 to comply with the EPD Consent Order. The second benefit is that completing these site preparation activities while we are negotiating the pricing for the major work activities will shorten the overall project schedule and save associated overhead cost. An additional benefit is that the nature of these work activities is such that there is a significant opportunity to use small, local, minority-owned and womenowned businesses for much of the work. In fact MWHC has presented a GMP for this work that has 100% of the subcontracting packages going to such businesses.

Financial Impact:

\$3,543,096.00 from the 2004 bond funds from account 511043420-5425210 80280130/5425210

Alternatives:

1. Approve the Agreement and Construction Task Order #1 GMP. 2. Disapprove the agreement and Task Order #1 GMP and perform this work along with the major construction activities. This course of action would result in additional project time and cost and the need to use another approach to complete the Spirit Creek Pump Station and Force Main project within the consent order schedule.

Recommendation:

We recommend approval and execution of the attached Agreement and Scope of Work for the second phase of the MWH Constructors, Inc. Construction Management at Risk contract with a Construction Task Order #1 Guaranteed Maximum Price of \$3,543,096.00.

Funds are Available in the Following Accounts:

511043420-5425210 80280130/5425210

REVIEWED AND APPROVED BY:

Finance.
Procurement.
Disadvantaged Business Enterprise.
Administrator.
Clerk of Commission

Agreement Between OWNER and Construction Manager At Risk

AGREEMENT Made this	day of	in the year of Two Thousand and
BETWEEN The	OWNER: Augu	sta, Georgia
And the Constru	uction Manager ((hereinafter referred to as the "CM"): MWH Constructors, Inc.
	•	At Risk Services pursuant to a Guaranteed Maximum Price in connection with Messerly WPCP 2003 Master Plan Implementation – Phase I (80130)
As further descri	ribed in Article 3	
The OWNER a	nd CM, in consid	eration of their mutual covenants herein, agree as set forth below:

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ARTICLE 1 RELATIONSHIP OF THE PARTIES

1.1 OWNER and Construction Manager

The CM and the OWNER shall perform as stated in this Agreement and each accepts the relationship between them that is established by this Agreement.

1.1.1 Standard of Care

The CM covenants with the OWNER to furnish its skill and judgment in constructing this Project with due care in accordance with applicable federal, state, and local laws and regulations that are in effect on the date of this Agreement first written above.

1.1.2 OWNER, Program Manager and Designer

The OWNER has contracted separately with CH2M HILL, Inc. for Program Management services and Messerly Design Group to provide engineering design for the Project. The Project is defined in Article 2 of this Agreement.

1.1.3 OWNER and Subcontractors

The CM is to contract directly with such Subcontractors as may be necessary for construction or supply of the Project. All such contracts shall be issued consistent with the applicable provisions of this Agreement.

- 1.2 Relationship of the CM to the Designer and Other Project Participants In providing construction management services described in this Agreement, the CM shall endeavor to maintain a working relationship with the Designer. The Designer is solely responsible for the Project design and shall perform in accordance with the Designer agreement with the OWNER and nothing in this Agreement shall be construed to mean that the CM is responsible for the design of the Project or that the CM assumes any of the contractual or customary duties of the Designer or any other persons or parties not specified by this Agreement.
- 1.5 <u>Plant Operations</u> CM's services will be coordinated in a manner which will not adversely affect the OWNER's ability to maintain ongoing operations and to minimize interference throughout the course of this Agreement. OWNER will assist CM in identifying specific operational needs, permitting restraints, Applicable Law requirements, site conditions, and providing other information applicable to plant operations, and will cooperate with CM in the implementation of the plans for the sequencing of construction. In the event operations will be changed in a manner that will interfere with CM's planned performance, the OWNER will give the CM advanced notice of the change and will work with the CM to minimize the effect on the construction.

1.6 Equal Opportunity Employer. CM warrants that it is an Equal Opportunity Employer and shall comply with applicable regulations governing equal employment opportunity. Neither CM nor any of its contractors shall discriminate in the employment of any person because of race, color, national origin, ancestry, physical handicap, medical condition, marital status, sex, or age, unless based upon a bona fide occupational qualification pursuant to State or Federal law.

ARTICLE 2 PROJECT DEFINITIONS

2.1 Terms used in this Agreement and Contract Documents shall have the meaning as set forth in this Section, which are applicable to both the singular and plural thereof:

Addenda - Any changes, revisions or clarifications of the Contract Documents which have been duly issued by OWNER or CM to prospective Bidders prior to the time of opening of Bids.

Agreement – This written instrument between OWNER and CM covering the Work to be performed. Along with the Exhibits, General Conditions, Supplemental General Conditions and other Contract Documents, they represent the entire and integrated agreement between the Parties and supersedes prior negotiations, representation or agreements, either written or oral.

Amendment – A written amendment of the Contract Documents, signed by OWNER and CM on or after the Effective Date of the Agreement.

Application for Payment-The form accepted by PROGRAM MANAGER which is to be used by CM in requesting progress or final payments and which is to include such supporting documentation as reasonably required by OWNER and/or PROGRAM MANAGER.

AUD – The Augusta Utilities Department acting for and in behalf of the OWNER.

Bid – The offer or proposal of the bidder submitted on the prescribed form setting forth the price(s) for the Work to be performed.

Bonds – Bid, performance and payment bonds and other instruments of security furnished by CM and its Surety in accordance with the Contract Documents.

CM or CONSTRUCTION MANAGER - Construction Manager furnishing Construction Management At Risk

Services, MWH Constructors

Change Order – A document recommended for approval by ENGINEER and PROGRAM MANAGER and then approved by CM and OWNER that authorizes an addition, deletion or revision in the Work, or an adjustment in the Contract Price or the Contract Time, issued after the Effective Date of the Agreement.

Contract Documents – The Agreement and all Drawings, Specifications, Plans, addenda, amendments, other contract modifications, or other documentation incorporated into any of them, the Cost Estimate used to develop the GMP; all bid packages (including documentation accompanying the Bid and any post-Bid documentation submitted prior to the Notice to Proceed); the Schedule; other documents listed in this Amendment; Certificates of Insurance; Notice to Proceed; modifications and Change Orders issued after execution of this Amendment. The terms and conditions of the Preconstruction Services agreement between the OWNER and CM are incorporated to the extent necessary to reflect the understanding and intentions of the parties. The order of precedence of the Contract Documents shall be as follows: the Agreement shall govern over the General Conditions and the Supplemental Conditions shall govern over the General Conditions.

CONTRACTOR - Contractor when used in the General Conditions, the Construction Manager (CM) and refers to MWH Constructors, Inc.

Contract Price – The monies payable by OWNER to CM as stated in the Agreement; the Guaranteed Maximum Price (GMP).

Contract Time – The number of days or the date stated in the Agreement and any extension provided for under the Agreement for the completion of the Work.

Cost of the Work – The cost of performing the Work as defined in section 7.1.12 of this Agreement, but not the items expressly excluded under section 7.1.13 of this Agreement.

County - Richmond County, Georgia, political subdivision of the State of Georgia, the Augusta-Richmond County Commission, and its authorized designees, agents, or employees.

Day - Either a working day or calendar day as specified in the Agreement. If a calendar day falls on a legal holiday, that day will be omitted from the computation. Legal Holidays include: New Year's Day, Martin Luther King Day, Memorial Day, 4th of July, Labor Day, Veterans Day, Thanksgiving Day and the following Friday, and Christmas Day.

Defective – An adjective which, when modifying the word "Work", refers to Work that is unsatisfactory, faulty, deficient, does not conform to the Contract Documents, or does not meet the requirements of OWNERS'/PROGRAM MANAGERS' inspection, referenced standard, test or approval required by the Contract Documents, or which has been damaged prior to PROGRAM MANAGER'S recommendation of final payment by the CM or any Subcontractor or Supplier for whom the CM is responsible, unless responsibility for the protection thereof has been previously assumed by OWNER upon Substantial Completion.

ENGINEER or Designer – The design engineer, Messerly Design Group also referred to as PROFESSIONAL.

Drawings – The drawings which show the character and scope of the Work to be performed and which have been prepared by ENGINEER and are referred to in the Contract Documents.

Effective Date of the Agreement – The date indicated in the Agreement on which it becomes effective, but if no such date is indicated it means the date on which the Agreement is signed by the Mayor of Augusta, Georgia and notice is given to the CM that the Agreement has been signed.

Field Order-A written order issued by PROGRAM MANAGER that modifies Drawings and Specifications, but which does not involve a change in the GMP or the Contract Time.

General Conditions - Refers to the Augusta General Conditions attached as Exhibit A.

General Requirements – Refers to Division I of the Construction Specifications.

Guaranteed Maximum Price ("GMP") – GMP means the total sum of the Cost of Work including the Fixed Fee, the Fixed Amount for Specified General Conditions work, and any applicable Georgia State Sales Tax.

Laws or Regulations – Laws, rules, regulations, ordinances, codes and/or orders of governmental instrumentalities having jurisdiction over the Project.

L/M/WBE — Means locally owned, minority owner, and Women owned Businesses. Contractors, subcontractors, material vendors and other construction service providers which are local, minority owned, or women owned. A local contractor, sub-contractor, material vendor or service provider is defined as one having an office in Augusta-Richmond County, Georgia or any county contiguous to Augusta-Richmond County. Also means disadvantaged/minority business enterprises. Also, SL/M/WBE indicates Small Local, Minority Owned and Women Owned Business.

Notice of Award – The written notice by OWNER to the CM that upon compliance with the conditions precedent enumerated therein, within the time specified, OWNER will sign and deliver the Agreement.

Notice to Proceed – A written notice given by OWNER to CM (with a copy to PROGRAM MANAGER) fixing the date on which the Contract Time will commence to run and on which CM shall start to perform its obligations under the Contract Documents and Amendments thereto. The OWNER shall issue the Notice to proceed within 30 days of the Effective Date of this Agreement.

OWNER - Augusta, Georgia

Partial Utilization - Placing a portion of the Work in service for the purpose for which it is intended or for a related purpose before reaching Substantial Completion for all the Work.

Professional - The Engineering firm designated to perform the design services for the Work, Messerly Design Group, also referred to as PROFESSIONAL, ENGINEER or Design Professional.

PROGRAM MANAGER – CH2M HILL, Inc., representative of the OWNER as PROGRAM MANAGER for the Benchmark 2010 Program and who is authorized to make decisions under this Agreement on behalf of the OWNER and act as liaison between OWNER and both the ENGINEER and CM for this Work.

Project - The James B. Messerly WPCP 2003 Master Plan Implementation – Phase I (80130).

Project Area – The area within the specified Contract Limits as defined on the Drawings and Contract Documents where the improvements contemplated herein are to be constructed in whole or in part under this Agreement.

Project Management Team (PMT) – duly authorized representatives from the OWNER, the ENGINEER, the PROGRAM MANAGER and the CM.

Resident Project Representative – The authorized representative of PROGRAM MANAGER who is assigned to the site or any part thereof.

Shop Drawings - All drawings, diagrams, illustrations, schedules and other data which are specifically prepared by or for CM to illustrate some portion of the Work and all illustrations, brochures, standard schedules, performance charts, instructions, diagrams and other information prepared by a Supplier and submitted by CM to illustrate material or equipment for some portion of the Work.

Specifications – Those portions of the Contract Documents consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the Work and certain administrative details applicable thereto.

Subcontractor – An individual, firm or corporation having a direct contract with CM for the performance of a part of the Work.

Substantial Completion-The Work (or a specified part thereof) has progressed to the point where, in the opinion of PROFESSIONAL as evidenced by PROFESSIONAL's definitive certificate of Substantial Completion, it is sufficiently complete, in accordance with the Contract Documents, so that the Work (or specified part) can be used for the purposes for which it is intended, or if there be no such certificate issued, when final payment is due in accordance with paragraph 14.13 of the General Conditions. The terms "substantially complete" and "substantially completed" as applied to any Work refer to Substantial Completion thereof.

Supplemental General Conditions- Part of the Contract Documents amending and supplementing the General Conditions.

Supplier – A manufacturer, fabricator, supplier, distributor, material man or vendor furnishing materials, equipment or supplies to be incorporated into the Work.

Task Order - An addendum to the contract establishing a GMP, contract time and other conditions for a specific scope of work.

Underground Facilities- All pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels or other such facilities or attachments, and any encasement containing such facilities which have been installed underground to furnish any of the following services or materials: electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, sewage and drainage removal, traffic or other control systems, or water.

Unit Price Work - Work to be paid for on the basis of unit prices.

Work-The entire completed construction or the various separately identifiable parts thereof required to be furnished under the Agreement. Work is the result of performing services, furnishing labor and furnishing and incorporating materials and equipment into the construction, and furnishing documents, all as required by the Contract Documents.

Work Change Directive- A written directive to CM, issued by the PROGRAM MANAGER on or after the Effective Date of the Agreement and signed by OWNER and recommended by PROFESSIONAL, ordering an addition, deletion or revision in the Work, or responding to differing or unforeseen physical conditions under which the Work is to be performed as provided in paragraph 4.2 or 4.3 of the General Conditions or to emergencies under paragraph 6.22 of the General Conditions. A Work Change Directive may or may not change the Contract Price or the Contract Time, but is evidence that the OWNER has required the CM to incorporate the Change into the Work and the parties expect that the change directed or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Time as provided in Article 10 of the General Conditions.

Written Amendment- A written amendment of the Contract Documents, signed by OWNER and CM on or after the Effective Date of the Agreement and normally dealing with the non-engineering or non-technical rather than strictly Work-related aspects of the Contract Documents. The term "Project" when used in the Agreement shall mean the total construction of which the Work may be a whole or part of the Project. The term "Work" required for the "Project" used in this Agreement shall mean the various parts of total construction to be performed under this Agreement.

ARTICLE 3 CONSTRUCTION MANAGER'S BASIC SERVICES

3.1 CM Basic Services

The CM shall perform the Basic Services described herein. It is not required that the Basic Services be performed in the sequence in which they are described.

3.2 Pre-Construction Phase

The CM is currently performing the pre-construction services set forth in the Pre-Construction Services

Agreement dated November 15, 2005, between the OWNER and the CM which is incorporated by reference solely to show the context and previous relationship between the Parties.

3.3 Construction Phase

3.3.1 Project Management

3.3.1.1 Pre-Construction Conference

In connection with the PMT, the CM shall conduct a Pre-Construction Conference during which the CM shall

review the reporting procedures, site operations and other contractual requirements.

3.3.1.2 Onsite Management and Construction Phase Communication Procedures

The CM shall provide and maintain a management team on the Project site to provide contract administration and the CM shall assist the PROGRAM MANAGER in establishing and implementing coordination and communication procedures among the CM, OWNER, Designer, and Subcontractors.

3.3.1.3 Contract Administration Procedures

The CM shall establish and implement procedures for expediting and processing requests for information, shop drawings, material and equipment sample submittals, Contractor schedule adjustments, change orders, substitutes, payment requests and the maintenance of logs. The CM shall maintain daily job reports.

3.3.1.4 Project Site Meetings

Periodically the CM shall conduct meetings at the Project site with each Subcontractor and the CM shall conduct coordination meetings with major Subcontractors and PMT. The CM shall record, transcribe and distribute minutes to subcontractors and PMT.

3.3.1.5 Coordination of OWNER Provided Testing and Inspection

Technical inspection and testing provided by OWNER under the direction of PROGRAM MANAGER shall be coordinated with the CM. The CM shall be provided with a copy of all inspection and testing reports on the day of the inspection or test or when issued. The CM is not responsible for providing, nor does the CM control, the actual performance of OWNER provided technical inspection and testing. The CM is performing a coordination function and is not acting in a manner so as to assume responsibility, in part or in whole, for all or any part of such inspection and testing.

3.3.1.6 Review of Requests for Changes to the Contract Time and Price

The CM shall review the contents of a request for changes to the construction contract time or price submitted by a Subcontractor, assemble information concerning the request and endeavor to determine the cause of the requests. In instances where the CM's analysis reveals that the request is valid, the CM shall prepare a detailed report and submit such report to the PROGRAM MANAGER for review. The PROGRAM MANAGER will make a recommendation to the OWNER regarding the disposition of the request. If the change might modify this Agreement immediately or in the future the CM shall prepare the necessary change order documents for signing by the CM and OWNER.

3.3.1.7 Quality Review

The CM shall establish and implement a program to monitor the quality of construction (a "Quality Management Plan") that includes pre-construction, construction and start-up/commissioning. This plan will be reviewed by the OWNER and PROGRAM MANAGER, modified if necessary, and approved by OWNER before any work begins. The Quality Management Plan will provide an onsite Quality Assurance/Quality

Control (QA/QC) Manager and staff that is independent of the project staff and is fully empowered to enforce the objectives of the Quality Management Program. The Plan will utilize the Three-Phase Quality Control System:

Preparatory Phase: QA/AC onsite Manager will train all subcontractors and site personnel to ensure that the QC system is fully implemented, understood and in place prior to the beginning of construction.

Initial Phase: QA/QC onsite Manager and subcontractors will meet during the construction phase and at the start of each definable work item to verify that the controls agreed to during the Preparatory Phase have been implemented. PROGRAM MANAGER will be notified before conducting the Initial Phase training session(s) or field inspection(s) to allow scheduling representative(s) of the PMT to be present. This phase will be repeated for each new work crew or when it is suspect that specified quality standards are not being met.

<u>Follow-up Phase</u>: QA/QC onsite Manager will perform daily inspections (scheduled & unscheduled) to ensure daily onsite clean-up control tests are completed and that all work complies with established standard & contract and task requirements. The inspections will be recorded on the Daily QC Report form.

The purpose of the program shall be to guard the OWNER against defects and deficiency in the work of the Subcontractors. The CM shall transmit to the Subcontractors a notice of nonconforming work and may reject work when it is the opinion of the CM that the work does not conform to the requirements of the Contract Documents. The CM shall also provide written response to PMT comments and observations regarding quality issues within five (5) working days of CM's receipt of such comments. Except for minor variations as stated herein, the CM is not authorized as part of this service to change, evoke, enlarge, relax, alter, or to release any requirement of the Contract Documents or to approve or accept any portion of the Work not performed in accordance with the Contract Documents.

3.3.1.8 Operation and Maintenance Materials

The CM shall receive from the Subcontractors and suppliers of OWNER provided equipment operation and maintenance manuals, warranties and guarantees for materials and equipment installed in the Project, in accordance with the Contract Documents.

3.3.1.9 Substantial Completion

In consultation with the CM, PROGRAM MANAGER and Designer, the OWNER shall determine when the Project is substantially complete. In consultation with the PMT, the PROGRAM MANAGER and CM shall, prior to Certificate of Substantial Completion being issued, prepare a list of work ("Punch List") that does not conform to the Contract Documents. This list shall be attached to the Certificate of Substantial Completion.

3.3.1.10 Final Completion

In consultation with the CM, PROGRAM MANAGER and Designer, the OWNER shall determine when each

Task Order is finally completed and, following completion of the Punch List for each Task Order, a Certificate of Final Completion shall be issued from the OWNER. Following the receipt of payment from the OWNER, the CM shall make all payments due to Subcontractors. Receipt of payment from the OWNER is a condition precedent to payment of the Subcontractors.

3.3.2 Time Management

3.3.2.1 Master Schedule

The CM shall monthly adjust and update the Master Schedule in conjunction with each Task Order schedule and distribute copies to the OWNER and PROGRAM MANAGER. All adjustments to the Master Schedule shall be made for the benefit of the Project.

3.3.2.2 Contractor's Construction Schedule

The CM shall review each Subcontractor's Construction Schedule for each Task Order and shall verify that the schedule is prepared in accordance with the requirements of the Contract Documents and that it establishes completion dates that comply with the requirements of the task Order and Master Schedules. The CM will manage the project schedule through a continuous schedule review at each weekly construction meeting where the progress of tasks are reviewed, verified and action plans developed to correct deviations from the schedule.

3.3.2.3 Construction Schedule Report

The CM shall review the progress of construction of each Subcontractor on a monthly basis, shall evaluate the percentage complete of each construction activity as indicated in the Construction Schedule for each Task Order and shall review such percentages with the Subcontractor. This evaluation shall serve as data for input to the monthly Construction Schedule report that shall be prepared and distributed to the OWNER and PROGRAM MANAGER. The report shall indicate the actual progress compared to scheduled progress and shall be submitted with monthly Application for Payment. The CM shall determine and implement alternative courses of action that may be necessary to achieve contract compliance.

3.3.2.4 CM Review of Time Extension Requests

The CM shall, prior to requesting a change order, determine the effect on the Task Order and Master Schedules of time extensions requested by the Subcontractors.

3.3.2.5 Recovery Schedules

The CM shall require the Subcontractors to prepare and submit a recovery schedule as specified in the Contract Documents.

3.3.3 <u>Cost Management</u> The CM will submit a monthly Financial Report detailing the status of Project costs for subcontracts, purchase orders, general condition, fees, contingency usage and allowances spent. This Financial Report will then compare these costs with baseline estimate of GMP.

3.3.3.1 Schedule of Values (Each Contract)

The CM shall, in participation with the Subcontractors, determine a Schedule of Values for each of the major construction contracts. The Schedule of Values shall be the basis for the allocation of the Contract Price for each Task Order to the construction activities. The CM shall review the contract price allocations and verify that such allocations are made in accordance with the requirements of the Contract Documents. Progress Payments to the CM shall be based on the percentage of completion of the scheduled activities in accordance with the Contract Documents.

3.3.3.2 Change Order Control

The CM shall establish and implement a change order control system.

3.3.3.2.1 All proposed OWNER and PROGRAM MANAGER-initiated change orders shall first be described in detail in writing by the OWNER or PROGRAM MANAGER to the CM in a request for proposal to the CM, accompanied by technical drawings and specifications prepared by the Designer. In response to the request for a proposal, the CM shall submit to the PROGRAM MANAGER and OWNER for evaluation detailed information concerning the costs and time adjustments, if any, necessary to perform the proposed change order work. The CM shall discuss the proposed change order with the OWNER and PROGRAM MANAGER and the effect, if any, on the Guaranteed Maximum Price. The CM shall prepare the change order documents for signature by the CM and OWNER. Upon execution of the change order documents between the CM and OWNER, the CM shall prepare change order documents for signature by the affected Subcontractors. The CM shall verify that the Work and any adjustment of time required by approved change orders has been incorporated into the Construction Schedule for the appropriate Task Order.

3.3.3.2.2 The CM shall review the contents of all Subcontractor requested changes to the contract time or price, endeavor to determine the effect, if any, on the Guaranteed Maximum Price. The CM shall provide the PROGRAM MANAGER a copy of each change request, and the CM shall, in its evaluations of the Subcontractor's request, consider the PROGRAM MANAGERS comments regarding the proposed changes. The CM shall present its findings to the OWNER regarding the proposed changes and at the OWNER's direction, shall prepare the change order documents for signature by the CM and OWNER. Upon execution of the change order documents between the CM and OWNER, the CM shall prepare change order documents for signature by the affected Subcontractor.

3.3.3.3 Cost Records

In instances where a lump sum or unit price is not determined prior to performing Work described in a request for proposal as provided in Paragraph 3.3.3.2,1 the CM shall prepare and request from the Subcontractors records of the cost of payroll, materials and equipment and the amount of payments to subcontractors incurred by the CM and Subcontractor in performing the Work.

3.3.3.4 Progress Payments

In consultation with the PROGRAM MANAGER, the CM shall review the payment applications submitted by each Subcontractor and determine whether the amount requested reflects the progress of the Subcontractor's Work. The CM shall make appropriate adjustments to each payment application and shall prepare and forward to the PROGRAM MANAGER a progress payment application. The application shall state the total contract price, payments to date, current payment requested, retainage and actual amounts owed for the current period. Included in this application shall be a certificate of payment that shall be signed by the CM and delivered to the OWNER. The CM shall make payments that are due to all Subcontractors, suppliers, and material men within ten (10) days following the receipt of payment for the work from the OWNER. Receipt by the CM of payment from the OWNER is a condition precedent to payment to a Subcontractor. In addition, the CM shall keep the Project and the site on which Work is performed free and clear of all liens and claims from Subcontractors, or suppliers.

3.3.4 <u>Management Information System (MIS)</u> The CM will provide Integrated Project Tracking by providing a web-based tool that gives the PMT and project management with access to all project documents.

3.3.4.1 Schedule Maintenance Reports

The CM shall prepare and distribute schedule maintenance reports during the Construction Phase. The reports shall compare the actual construction dates to scheduled construction dates of each separate construction contract, Task Order and to the Master Schedule for the Project. These reports will be submitted with the Progress Payment Application each month of the Construction Phase.

3.3.4.2 Project Cost Reports

The CM shall prepare and distribute Project cost reports during the Construction Phase. The reports shall specify actual Project and construction costs compared to the Project and Construction Budget for each Task Order. The L/M/WBE participation will be clearly defined in a format acceptable to the OWNER. These reports will be submitted with the Progress Payment Applications each month of the Construction Phase.

3.3.4.3 Project and Construction Budget Revisions

The CM shall make recommendations to the OWNER concerning construction changes that may result in revisions to the Project and Construction Budget or Guaranteed Maximum Prices.

3.3.4.4 Cash Flow Reports

The CM shall prepare and distribute cash flow reports during the Construction Phase. The reports shall specify actual cash flow as compared to projected cash flow. These reports will be submitted with the Progress Payment Application each month during the Construction Phase.

3.3.4.5 Progress Payment Applications

The CM shall prepare and distribute the progress payment application. The application shall state the total construction contract price, payment to date, current payment requested, retainage and actual amounts owed this period. A portion of this application shall be a certificate of payment that shall be signed by the CM and delivered to the PROGRAM MANAGER for use by the OWNER in making payments to the CM.

3.3.4.6 Change Order Reports

The CM shall periodically prepare and distribute change order reports during the Construction Phase. The report shall list all OWNER-approved change orders by number, a brief description of the change order work, the cost established in the change order and percent of completion of the change order work. The report shall also include similar information for potential change orders of which the CM may be aware.

3.3.4.7 Contractor's Safety Program

The CM shall review the safety programs of each Subcontractor and confirm that each Subcontractor has established safety programs as required by the Contract Documents.

3.3.5 Community Participation

3.3.5.1 The CM will develop a comprehensive community initiative of CM sponsorship & services for important local community environmental concerns including the Phinizy Swamp Nature Park. CM will provide construction resources to replace various educational stations throughout Phinizy Swamp Nature Park.

3.3.5.2 The CM will establish a local, small business and disadvantaged business enterprise program with the goal of obtaining between 35% and 50% participation including equipment (except process and owner purchased equipment) and material purchases.

3.3.6 The CM shall coordinate and expedite submittals of information from the Subcontractors throughout the Project to be used for preparation of record drawings and specifications by the Designer during the Post Construction Phase. The CM shall maintain a record of the submittals the PROGRAM MANAGER can review as needed.

3.4 Post Construction Phase

3.4.1 Project Management

3.4.1.1 Record Documents

The CM shall coordinate and expedite the final submittals of information from the Subcontractors for preparation of record drawings and specifications by the Designer, and shall coordinate and expedite the

transmittal of such record documents to the OWNER.

3.4.1.2 Organize and Index Operations and Maintenance Materials

Prior to final completion of each Task Order, the CM shall compile manufacturers' operations and maintenance manuals, warranties and guarantees and bind such documents in an organized manner. This information shall then be provided to the OWNER.

3.4.2 Time Management

3.4.2.1 <u>Start-up and Commissioning</u> The CM shall assist the Designer, who shall prepare a Plant Process Start-up and Commissioning Plan for the Project. The CM shall assist the PMT and the OWNER's plant operators with the start-up and commissioning of the Project, based on the sequence and completion of the Task Orders. The CM is not responsible for Plant Process Start-up, Project Commissioning or Performance Guaranties, but is responsible for individual component Start-up or Commissioning in coordination with the Plant Start-up and Commissioning Plan scheduling equipment installs, equipment checkout, functional testing, performance testing, manufacturer training, warranties and confirmation of proper maintenance procedures. The duties of the CM during Start-up and Commissioning will be set forth in greater detail in the Project Management Plan to be agreed to by the parties.

3.4.3 Cost Management

3.4.3.1 Change Orders

The CM shall continue to provide services related to change orders as specified in Paragraph 3.3.3.3.

3.4.4 Management Information System (MIS)

3.4.4.1 Closeout Reports

At the conclusion of the Project, the CM shall prepare final project accounting and closeout reports.

3.4.4.2 MIS Reports for Start-up and Commissioning

The CM shall prepare and distribute reports associated with the Start-up and Commissioning. CM shall also turn over to the OWNER all software and associated licenses purchased by Project funds.

3.5 Additional Services

3.5.1 If requested by the OWNER, the CM may perform Additional Services that are not included in the Work described in the Contract Documents and shall be compensated based upon the hourly rates listed in Exhibit E. The CM shall perform Additional Services only after the OWNER and CM have executed a written amendment to this Agreement providing for such services.

ARTICLE 4

DURATION OF THE CONSTRUCTION MANAGER'S SERVICES

- 4.1 The duration of the CM's Basic services under this Agreement shall correspond to the Project Master Schedule and the schedule of services to be performed under each Task Order.
- 4.1.1 The commencement date for the CM's Basic Services under each Task Order shall be the date on which the OWNER issues to the CM a written instruction to proceed with such Task Order Services.
- 4.1.2 The CM's Basic Services shall be performed for the periods of time indicated in this Agreement. If portions of design and construction or different Task Orders occur simultaneously, some of the phase durations may overlap.

ARTICLE 5 (Intentionally Deleted)

ARTICLE 6 OWNER'S RESPONSIBILITIES

- 6.1 The PROGRAM MANAGER shall provide to the CM complete information regarding the OWNER's requirements for the Project.
- 6.2 The OWNER, PROGRAM MANAGER and DESIGNER shall examine information submitted by the CM and shall render decisions thereto promptly.
- 6.3 If the OWNER, PROGRAM MANAGER or DESIGNER observes or otherwise becomes aware of any fault or defect in the Project or nonconformity with the Contract Documents, the PROGRAM MANAGER shall give prompt written notice thereof to the CM.
- 6.4 The OWNER, PROGRAM MANAGER and DESIGNER shall furnish required information and approvals and perform their responsibilities and activities in a timely manner to facilitate orderly progress of the Work in cooperation with the CM, consistent with this Agreement, and in accordance with the planning and scheduling requirements and budgetary restraints of the respective Task Orders or requirements of the Project as determined by the PMT.
- 6.5 Intentionally Deleted
- 6.6 The OWNER shall review and if acceptable approve the Project and Construction Budget and any subsequent revisions as provided in the Pre-Construction Agreement.
- 6.7 If the OWNER contracts separately with any other parties that will directly impact the CM's Services, the

Owner shall cause all such agreements to be compatible and consistent with this Agreement. Each of the agreements shall include waiver of subrogation as required herein.

- 6.8 At the request of the CM, a copy of interim and final drawings, specifications and Contract Documents in electronic format shall be furnished to the CM by the OWNER at the OWNER's expense.
- 6.9 The OWNER shall in a timely manner secure, submit and pay for necessary approvals, easements, assessments, permits and charges required for the Project construction. The CM shall secure, submit and pay for the Building Permit and any other necessary construction permits.
- 6.10 The OWNER shall furnish evidence satisfactory to the CM that sufficient funds are available and committed for the entire cost of the approved Project. Unless such reasonable evidence is furnished, the CM is not required to commence its services and may, if such evidence is not presented within a reasonable time, suspend the services specified in this Agreement upon fifteen (15) days written notice to the OWNER and in such event, the CM shall be compensated in the manner provided in Article 9.2.
- 6.11 The OWNER, its representatives and consultants, including Designers, shall communicate with the CM through the PROGRAM MANAGER. The OWNER and PROGRAM MANAGER will only communicate with Subcontractors through the CM.
- 6.12 Intentionally Deleted
- 6.13 The OWNER shall designate, in writing, an officer, employee or other authorized representatives to act in the OWNER's behalf with respect to the Project. This representative shall be available during working hours and as often as may be required to render decisions and furnish information in a timely manner.
- 6.14 The OWNER shall make payments to the CM on the basis of the CM's payment applications that are certified by the CM and on the basis of the CM's invoices for its services performed and have been approved by the PROGRAM MANAGER.

ARTICLE 7 COMPENSATION FOR CM SERVICES AND PAYMENT

7.1 Guaranteed Maximum Price

- 7.1.1 In accordance with the Pre-Construction Services Agreement the CM shall propose a Guaranteed Maximum Price for each Task Order. The Guaranteed Maximum Prices shall be documented by the CM as defined in Article 12 and, once established, the Guaranteed Maximum Prices shall be subject to modification only as defined in this Agreement.
- 7.1.2 A proposed Guaranteed Maximum Price for each Task Order (a "GMP Proposal"), which shall be the

sum of CM's Fee, plus the Cost of the Work as defined in Section 7.1.12 hereof shall be submitted on the form attached hereto as Exhibit C and shall include:

- 7.1.2.1 A list of the drawings and specifications, including all addenda, used as the basis for the Task Order GMP Proposal;
- 7.1.2.2 A list of the assumptions and clarifications made by CM in the preparation of the Task Order GMP Proposal, which list is intended to supplement the information contained in the drawings and specifications;
- 7.1.2.3 A tabular summary of subcontract and equipment costs used as a basis for the GMP.
- 7.1.2.3 The Scheduled Substantial Completion Date upon which the GMP Proposal is based, to the extent such date has not already been established, and a schedule upon which the Scheduled Substantial Completion Date is based;
- 7.1.2.4 If applicable, a list of Allowances and a statement of their basis, along with, as applicable, a schedule of Alternate Prices, Unit Prices, and
- 7.1.2.5 The time limits for acceptance of the GMP Proposal.
- 7.1.3 Review and Adjustment to Task Order GMP Proposal. After submission of the Task Order GMP Proposal, CM OWNER and PROGRAM MANAGER shall meet to discuss and review the Proposal. If OWNER or PROGRAM MANAGER has any comments regarding the Task Order GMP Proposal, or finds any inconsistencies or inaccuracies in the information presented, it shall promptly give written notice to CM of such comments or findings. If appropriate, CM shall, upon receipt of OWNER 's notice, make appropriate adjustments to the Task Order GMP Proposal.
- 7.1.4 <u>Acceptance of Task Order GMP Proposal</u>. If OWNER accepts the GMP Proposal, as may be amended by CM, the Guaranteed Maximum Price and its basis shall be set forth in a Task Order to this Agreement. Notice-To-Proceed for the GMP Proposal shall be an executed Task Order (see Attachment C: Sample Task Order).
- 7.1.5 <u>Failure to Accept the Task Order GMP Proposal</u>. If OWNER rejects the GMP Proposal, or fails to notify CM in writing within 60 days of approval of the GMP Proposal, the GMP Proposal shall be deemed withdrawn and of no effect and the CM may suspend all Work. In such event, OWNER and CM shall meet and confer as to how the Project will proceed, with OWNER having the following options:

7.1.5.1 OWNER may suggest modifications to the GMP Proposal, whereupon, if such modifications are accepted in writing by CM, the GMP Proposal shall be resubmitted and the parties shall proceed in accordance with Section 7.1.4, above;

7.1.5.2 Intentionally Deleted

- 7.1.5.3 OWNER may terminate this Agreement for convenience in accordance with section 9.1.1 and 9.1.3, herein.
- 7.1.5.4 If OWNER fails to exercise any of the above options, CM shall have the right to suspend performance of Work.
- 7.1.6 If a Task Order is issued and signed the CM shall become responsible for the means, methods, sequences, and procedures used in the construction of the Project and shall proceed with the CM's Basic Services.
- 7.1.7 Construction subcontracts for the Work required for the Project shall be between the CM and Subcontractors. The CM in cooperation with the OWNER and PROGRAM MANAGER shall request and receive bids for each contract and shall review in detail with the OWNER and PROGRAM MANAGER before making an award. Once a consensus is reached the CM will advise the OWNER with respect to award of a contract to the lowest responsive and responsible bidder.
- 7.1.8 The CM shall be eligible to perform work on the Project with OWNER's consent.
- 7.1.9 The Guaranteed Maximum Price is equal to the Cost of the Work and the CM's fee to complete the project. The cost data shall be directly correlated to the specific design drawings and specifications in existence at the time the Guaranteed Maximum Price is prepared. The assumptions used in the preparation of the Guaranteed Maximum Price shall be identified by the CM as part of the Guaranteed Maximum Price documentation.
- 7.1.10 The Guaranteed Maximum Price shall include those taxes applicable to the Project that are legally enacted at the time the Guaranteed Maximum Price is established. Any increase or decrease in taxes that affect the Guaranteed Maximum Price and that are enacted after the Guaranteed Maximum Price is submitted shall be incorporated into that price by change order.
- 7.1.11 The OWNER may change the scope of the Project or a part thereof and the Guaranteed Maximum Price shall then be adjusted as provided in Paragraph 7.1.3.

7.1.12 Cost of the Work

The term "Cost of the Work" shall include all amounts paid by the OWNER to the CM for payment to all Subcontractors, suppliers and equipment lessors; for all general conditions, site services, work, material, labor and equipment supplied to the Project including, but not limited to the following:

7.1.12.1 <u>Labor Costs</u>.

- a. Wages of construction and other workers directly employed by Construction Manager to perform the construction of the Work at the Project site or, with OWNER's written agreement, at off-site workshops.
- b. Wages or salaries of Construction Manager's supervisory and administrative personnel who are stationed at the Project site full time or are temporarily assigned to the Project, with OWNER's written agreement.
- c. Wages and salaries of Construction Manager's supervisory and 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 and only with OWNER's written agreement.
- d. The parties hereby agree that the hourly labor and service rates agreed to in Exhibit E attached hereto, shall be used to determine the labor rates to be applied to the Cost of the Work which shall include the wages or salaries and all labor burden, including all taxes, insurance, contributions, assessments and benefits required by law and 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 markup is to apply only upon those wages and salaries included in the Cost of the Work under subsections 7.1.2.(1) a through 7.1.2.(1) c, above. These rates shall be increased annually by the annual percentage increase of the most recent Consumer Price Index for the Southeast region (the "CPI")
- 7.1.12.2 <u>Subcontract Costs.</u> Payments owed by Construction Manager to subcontractors in accordance with the requirements of the applicable written subcontracts, including any insurance and bond premiums incurred by subcontractors, independent consultants, vendors, and subconsultants.

7.1.12.3 Cost of Materials and Equipment Incorporated into the Completed Construction.

- a. Costs, including transportation, of materials and equipment incorporated or to be incorporated in the completed construction.
- b. Costs of materials described in subsection 7.1.12.3 a, above, in excess of those actually installed but required to provide reasonable allowance for waste and for spoilage. Unused excess materials, if any, shall be handed over to OWNER at the completion of the Work or, at OWNER's option, shall be sold by Construction Manager; amounts realized, if any, from such sales, shall be credited to OWNER as a deduction from the Costs of the Work.

7.1.12.4 Costs of other materials and equipment, temporary facilities and related items.

- a. Costs, including transportation, installation, maintenance, dismantling and removal, of materials, supplies, temporary facilities (including project field offices, furniture and fixtures), temporary utilities, machinery, equipment, office and computer equipment, office supplies, software and hand tools not customarily owned by the construction workers, which are provided by Construction Manager at the Project site and fully consumed in the performance of the Work; and costs less salvage value on such items if not fully consumed, whether sold to others or retained by Construction Manager.
 - b. Costs of all fuel and utility costs incurred in the performance of the Project.
- c. Rental charges, at the actual rates charged for temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by Construction Manager at the Project site, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof.
- d. Cost of all safety supplies, including personal protection equipment not customarily owned by the construction workers, supervisory or administrative personnel, provided by Construction Manager at the Project site necessary in the performance of the Work. Cost of site security and emergency services.
- e. Cost of removal and proper disposal of debris from the Project site and cost for maintenance of common roadways, storage areas and idle portions of the Project site, including services of a site maintenance contractor. Cost of all on-site and off-site vehicles for Construction Manager's supervisory personnel, including fuel and maintenance.
- f. Costs of telegrams, long distance telephone calls, postage and parcel delivery charges, high speed internet service, websites and telephone service at the Project site and reasonable petty cash expenses of the Project site office.
- g. That portion of the reasonable travel and subsistence expenses of Construction Manager's personnel, assigned to the Project site, incurred while traveling outside of Augusta, Georgia in discharge of duties connected with the Work, provided all of such expenses and charges shall be subject to the prior written approval of OWNER.
 - h. Relocation costs for two senior level staff to be relocated from out of state to the Project.
 - i. Per Diem expenses for staff assigned to the Project for less than one year.

7.1.12.5 Miscellaneous Costs.

- a. Any insurance premium allocations including deductibles for claims that were beyond the reasonable control of CM. The insurance to be acquired and bonds required by the Agreement or the performance of the Work is set forth in Exhibit D.
- b. Sales, use or similar taxes imposed by a governmental authority which are related to the Work and for which Construction Manager is liable.

- c. Fees and assessments for the building permit and for other permits, licenses and inspections for which the CM is required by the Contract Documents to pay.
- d. Fees of testing laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded pursuant to the terms of this Contract.
- e. Royalties and license fees paid for the use of a particular design, process or product used in construction of the Project.
 - f. Deposits lost for causes other than Construction Manager's fault or negligence.
- g. Costs reasonably incurred in repairing or correcting damage or nonconforming Work executed by Construction Manager, or its subcontractors or suppliers, provided that such damage or nonconforming Work was beyond the reasonable control of Construction Manager and not caused by (i) the negligence or failure to fulfill a specific responsibility of Construction Manager to OWNER set forth in the Contract Documents, or (ii) Construction Manager's foremen, engineers, superintendents or other supervisory, administrative or managerial personnel, or (iii) the failure of Construction Manager's personnel to supervise adequately those portions of the Work to be performed by Construction Manager's subcontractors or suppliers, and only to the extent not recoverable by Construction Manager from (i) insurance or bonds, (ii) any of the subcontractors or suppliers, or (iii) some other appropriate source.
- 7.1.12.6 Other Costs. Other costs incurred in performance of the Work if and to the extent approved in advance in writing by OWNER.
- 7.1.13 The Cost of the Work shall not include the following:
- 7.1.13.1 The CM's fee for Basic Services;
- 7.1.13.2 All professional fees paid by the OWNER to the PROGRAM MANAGER, Designer or other consultants retained directly by the OWNER;
- 7.1.13.3 All costs paid directly by the OWNER to contractors or suppliers retained directly by the OWNER and outside the scope of the Guaranteed Maximum Price;
- 7.1.13.4 All Additional Services costs as defined herein; or
- 7.1.13.5 All other costs not within the control of the CM or identified as being not within the Guaranteed Maximum Price.
- 7.1.13.6 All costs incurred directly by the OWNER in which the OWNER makes direct payment for materials, equipment or services to a party outside of this agreement.
- 7.1.14 The Cost of the Work may be further defined in the documentation required by Paragraph 12.1.2 of this Agreement. If the requirements of this Paragraph 7.1.2 and the documentation required by Paragraph 12.1.2 differ, then the CM shall identify and explain the difference, but the documentation provided in accordance with Paragraph 12.1.2 shall be the basis for determining the scope of the Guaranteed Maximum

Price.

7.2 Adjustments to the Guaranteed Maximum Price

The CM understands, confirms and agrees that its responsibility hereunder is to construct the Project in accordance with the drawings and specifications. It is recognized that the Guaranteed Maximum Price may be determined based upon incomplete design documents and in those instances in which the drawings and specifications are not complete at the time the Guaranteed Maximum Price is established, the CM shall exercise reasonable care and judgment to determine the intent of the design and shall calculate the Guaranteed Maximum Price on the basis of the quality of construction, materials, and finishes that can be reasonably inferred from the design documents or other specified sources. The CM shall determine unit prices and the Cost of the Work and shall make those assumptions regarding the project scope and the quality of the intended construction as may be necessary to fully document the Guaranteed Maximum Price. The OWNER and CM shall use the documentation specified in Paragraph 12.1.2 in determining whether or not the scope of the Project or a part thereof has been changed and in determining entitlement to an adjustment to the Guaranteed Maximum Price. A determination regarding all requests for adjustment to the Guaranteed Maximum Price shall be made in writing within thirty (30) days from the date of a written request for an adjustment.

- 7.2.1 The amount of adjustment to increase or decrease the Guaranteed Maximum Price resulting from a change in the Project shall be determined in one or more of the following ways:
- 7.2.1.1 By mutual acceptance of a lump sum, properly itemized and supported by cost data; or
- 7.2.1.2 By unit prices, if any; or

7.2.4 The PROGRAM MANAGER shall have the authority to issue a Field Order addressing minor changes in the Project consistent with the intent of the drawings and specifications and not involving an adjustment in the Guaranteed Maximum Price or change of the construction completion date. Such changes may be affected by written order only and shall be signed by the OWNER and the CM prior to the work being performed.

7.3 CM's Cost Plus Fee

The OWNER shall compensate the CM on the basis of the Cost of the Work plus the CM's Fee in accordance with the terms and conditions of this Agreement as specifically as follows:

7.3.1 Compensation for Basic Services

The CM shall be compensated for performing the Basic Services as described in Article 3 as follows:

7.3.1.1 A CM Fee to be negotiated per Task Order.

7.3.2 Construction Manager's Accounting Records

7.3.2.1 Records for the CM's personnel expenses, consultant's fees and direct expenses pertaining to the Project shall be maintained on the basis of generally accepted accounting practices and shall be available for inspection by the OWNER or the OWNER's representative are mutually convenient times for a period of five years after completion of the CM's Basic Services.

7.3.3 Payments

CM shall submit to OWNER on the twentieth (20th) day of each month for approval, CM's Application for Payment. OWNER shall have ten (10) working days from receipt to review and provide written comment and/or approve the Progress Payment. CM Applications for Payment shall be detailed by Task Order. If the OWNER determines the CM is not entitled to all or part of a payment for a Task Order, the OWNER shall withhold payment by Task Order only. Payments to the CM shall be made monthly, not later than forty-five (45) days after presentation of the CM's invoice to the OWNER as follows:

- 7.3.3.1 Payment of the Fixed Fee as indicated in Paragraph 7.3.1.1 shall be based upon the amount of Cost of the Work completed during the billing period. Payment of personnel expense and the fixed hourly rate for principals shall be in amounts equal to the actual hours spent during the billing period on the Project and in accordance with the compensation schedule as set forth in the Attached Exhibit E.
- 7.3.3.2 Reimbursement for the Cost of the Work shall be in amounts equal to expenditures made during the billing period and during previous billing periods not yet invoiced;
- 7.3.3.3 <u>Retainage</u> OWNER will retain ten percent (10%) of the Cost of the Work for each respective Task Order, provided, however, that when fifty percent (50%) of the Work per Task Order has been completed by CM, the CM may request a reduction of the retainage. Provided the OWNER determines that the CM is in material compliance with its obligations under this Agreement and continues to remain in compliance, the OWNER shall not retain any additional amounts from CM's subsequent Applications for Payment after the request.
- 7.3.3.4 Upon Substantial Completion of the Task Order or, if applicable, any portion of the Work that the OWNER has the beneficial use of, OWNER may release to CM all or portions of retained amounts relating, as applicable, to the Task Order or completed portion of the Work.

7.3.3.5 <u>Final Payment</u>. CM shall submit its Final Application for Payment by Task Order to OWNER in accordance with the General Conditions. OWNER shall make payment on CM's properly submitted and accurate Final Application for Payment within thirty (30) days after OWNER's receipt of the Final Application for Payment, provided that CM has satisfied the requirements for final payment as defined in the Contract Documents.

7.3.3.6 Intentionally Deleted

7.3.3.7 Payments due to the CM that are unpaid for more than sixty (60) days from the date of the CM's invoice shall bear interest at Prime Rate from the due date, compounded monthly.

7.3.4 Compensation for Additional Services

The CM shall be compensated and payments shall be made for performing Additional Services in the amount equal to the value of the work actually preformed.

ARTICLE 8 INSURANCE AND MUTUAL INDEMNITY

8.1 CM's Liability Insurance

- 8.1.1 The CM shall purchase and maintain the insurance in the amounts set forth in Exhibit D in accordance with the requirements set forth in the Supplemental General Conditions.
- 8.1.2 If the OWNER occupies or uses a part or parts of the Project prior to substantial completion thereof, such occupancy shall not occur until the OWNER obtains property insurance for the structure and until all insurance companies providing insurance for the Project consent to such occupancy by endorsement to the insurance policies.

8.2 OWNER's Insurance

The CM shall be named as an additional insured in any insurance policy for the Project that may be obtained by the OWNER.

- 8.3 The OWNER shall cause the Designer to indemnify and hold harmless the CM, PROGRAM MANAGER and OWNER, their employees, agents and representatives to the same extent and in the same manner that CM has provided indemnification for the OWNER under Paragraph 8.4.
- 8.4 The OWNER hereby indemnifies and holds harmless the CM and its employees, agents and

representatives from and against any and all claims, demands, suits and damages for bodily injury and property damage for which the OWNER is liable that arise out of or result from breach of this Agreement or negligent acts or omissions of the OWNER, its employees, agents, representatives, independent contractors, suppliers, and the Designer.

8.5 The CM shall cause the Subcontractors to indemnify and hold harmless the OWNER, CM, PROGRAM MANAGER and Designer from and against any and all claims, demands, suits, damages, including consequential damages and damages resulting from personal injury or property damage, costs, and expenses and fees that are asserted against the OWNER, CM, PROGRAM MANAGER and the Designer and that arise out of or result from negligent acts or omissions or the breach of the Construction Subcontract by the Subcontractor, its employees, agents and representatives in performing the Work.

ARTICLE 9 TERMINATION AND SUSPENSION

9.1 Termination

- 9.1.1 This Agreement may be terminated by the OWNER for convenience after thirty (30) days written notice to the CM.
- 9.1.2 This Agreement may be terminated by either party hereto upon thirty (30) days written notice should the other party fail substantially to perform in accordance with the terms hereof through no fault of the terminating party or if the Project in whole or substantial part is stopped for a period of sixty (60) days under an order of any court or other public authority having jurisdiction or as a result of an act of government.
- 9.1.3 In the event of termination pursuant to Paragraph 9.1.1, the CM shall be paid its compensation for services performed to the date of termination, the Cost of the Work preformed through the date of termination and all termination expenses.
- 9.1.4 In the event of termination pursuant to Paragraph 9.1.2, the CM shall be paid its compensation for services and the Cost of the Work performed to the date of termination, direct expenses and all termination expenses. No amount computed as provided in Paragraphs 9.1.2 shall be paid in addition, if the termination is due to the CM's failure to substantially perform in accordance with the terms of this Agreement.

9.2 Suspension

9.2.1 The OWNER may order, in writing, the CM to suspend all or any part of the CM's services for the Project for the convenience of the OWNER or for work stoppage beyond the control of the OWNER or the CM. If the performance of all or any part of the services for the Project is suspended, an

adjustment in the CM's compensation shall be made for the increase, if any, in the cost of the CM's performance of this Agreement including an adjustment to the GMP caused by such suspension and this Agreement shall be modified in writing accordingly.

9.2.2 In the event the CM's services on the Project are suspended, the OWNER shall reimburse the CM for all of the costs of its construction site staff, assigned Project home office staff and other costs provided for by this Agreement for the first thirty (30) days of such suspension. The CM shall reduce the size of such staff for the remainder of the suspension period as directed by the OWNER and during such period, the OWNER shall reimburse the CM for all costs of reduced staff. Upon cessation of the suspension, the CM shall restore the construction site and home office staff to its former size.

9.2.3 Persons assigned to another project during such suspension or period and not available to return to this Project upon cessation of the suspension shall be replaced. The OWNER shall reimburse the CM for costs incurred in relocating staff persons returning to the Project or new persons assigned to the Project.

9.2.4 If the Project is suspended by the OWNER for more than three (3) months, the CM shall be paid compensation for services performed prior to receipt of written notice from the OWNER of such suspension, together with direct expenses then due and all expenses and costs directly resulting from such suspension. If the Project is resumed after being suspended for more than six (6) month, the CM shall have the option of requiring that its compensation, including rates and fees, be renegotiated. Subject to the provisions of this Agreement relating to termination, a delay or suspension of the Project does not void this Agreement.

ARTICLE 10 DISPUTE RESOLUTION

Intentionally Deleted

ARTICLE 11 ADDITIONAL PROVISIONS

11.1 Confidentiality

11.1 The CM will keep all information designated and marked by the OWNER as "Confidential" and concerning the Project confidential, except for communications incident to completion of the Project between the CM, PROGRAM MANAGER, Designer, and Subcontractors, and their independent professional engineers, architects and other consultants and subcontractors, and except for publicity approved by the OWNER and communications in connection with filings with governmental bodies having jurisdiction over the design or construction of the Project.

11.2 Limitation and Assignment

- 11.2.1 The OWNER and the CM each bind itself, its successors, assigns, insurers, and legal representatives to the terms of this Agreement.
- 11.2.2 Neither the OWNER nor the CM shall assign or transfer its rights or interest in this Agreement without the written consent of the other, except that the CM may assign accounts receivable to a commercial bank for securing loans without approval of the OWNER. However, nothing contained in this paragraph can prevent the CM from employing contractors or such consultants, associates or subcontractors as the CM may deem appropriate to assist in performance of the services and of the Work hereunder.

11.3 Governing Law

11.3.1 Unless otherwise provided, this Agreement shall be governed by the law of the State where the Project is located.

11.4 Extent of Agreement

11.4.1 This Agreement represents the entire and integrated agreement between the OWNER and the CM and supersedes all prior negotiations, representations or agreements, either written or oral. The Pre-Construction Services Agreement is incorporated by reference, solely to provide the context of this Agreement. This Agreement may be modified or amended only by written instrument signed by both the OWNER and the CM. Nothing contained in this Agreement is intended to benefit any third party. The Subcontractors and Designer are not intended third party beneficiaries of this Agreement.

11.5 Severability

11.5.1 If any provision of this Agreement is held as a matter of law to be unenforceable, the remainder of this Agreement shall be enforceable without such provision.

11.6 Meaning of Terms

- 11.6.1 References made in the singular shall include the plural and the masculine shall include the feminine or neuter.
- 11.6.2 The meaning of terms used herein shall be consistent with the definitions expressed in Article 2 of this Agreement.

11.7 Notices

11.7.1 Whenever any provision of the Contract Documents requires the giving of written notice, it shall be deemed to have been validly given if delivered in person to the individual or to a member of the firm or to an

officer of the corporation for whom it is intended or if delivered or sent by registered or certified mail, postage prepaid, addressed as follows:

To the OWNER:

Augusta PMT Attn: Clifford Carey 360 Bay Street, Suite 100 Augusta, GA 30901

To the CM:

MWH Constructors

Attn: Michael Donnelly, Esq. 370 Interlocken Blvd., Ste. 300

Broomfield, CO 80021

ARTICLE 12 SPECIAL GUARANTEED MAXIMUM PRICE PROVISIONS

12.1 Guaranteed Maximum Price

- 12.1.1 Pursuant to this Agreement, the OWNER and the CM desire to set a Guaranteed Maximum Price for each of the Task Orders necessary to complete the Project.
- 12.1.2 Documentation of the Guaranteed Maximum Price for each Task Order shall be developed by the CM from the design drawings and specifications and such other documents as may be specified in the GMP Proposal.
- 12.1.3 The form attached hereto as Exhibit C and made a part hereof by reference shall be used to set forth the Guaranteed Maximum Price for each of the separate Task Orders. The Total Guaranteed Maximum Price for the entire Project shall be the sum of each Task Order Guaranteed Maximum Price agreed to in a signed Task Order, as adjusted pursuant to this Agreement and/or said Task Order, plus any other cost included in the Total Guaranteed Maximum Price pursuant to the terms of this Agreement.

12.1.4 The Total Guaranteed Maximum Price for the each Task Order shall include a mutually agreed upon "Project Contingency". The Project Contingency or "Contingency" is available for CM's exclusive use for costs that are incurred in performing the Work that are not included in a specific line item or the basis for a Change Order under the Contract Documents. By way of example, and not as a limitation, such costs include: trade buy-out differentials; overtime; acceleration; costs in correcting defective, damaged or nonconforming Work (including litigation costs) when beyond the reasonable control of CM; cost overruns, unforeseen conditions and Subcontractor defaults. The Contingency is not available to OWNER for any reason, including changes in scope or any other item for which the CM would be entitled to increase the GMP under the Contract Documents.

12.1.4.1 CM shall provide OWNER with notice of all anticipated charges against the Contingency. Further, the CM shall provide to OWNER written documentation of any costs CM incurs and reasonably determines are chargeable to the Contingency, together with a written explanation of the factual basis for such charge. OWNER shall review and respond with concurrence or denial within ten (10) working days of receipt of CM's notice. Any Contingency costs the CM incurs after the Contingency is exhausted, unless provided otherwise under this Agreement shall be non-reimbursable. The Contingency is separate from and independent of any contingency amount the OWNER may set aside for cost increases due to changes in the Project scope.

12.1.4.2 The CM shall for budgeting purposes allocate the Contingency amount among the Task Orders in percentages or amounts determined by the CM. Any Contingency remaining after completion of a Task Order shall be rolled over and made available for use on any other Task Order and the CM may borrow Contingency from any Task Order to fund Contingency costs on any other Task Order such that the total of the Contingency amounts set forth in all Task Orders represent the Project Contingency.

12.1.5 Intentionally Deleted

12.1.6 The documentation shall be prepared by the CM and submitted to the OWNER with the Guaranteed Maximum Prices. The documentation may include drawings, sketches, specifications, calculations or other data used to identify the basis of the Guaranteed Maximum Price.

12.1.7 Intentionally Deleted

12.1.8 Intentionally Deleted

12.1.9 In the event that the cost of any Task Order exceeds the Guaranteed Maximum Price for the Task Order and the Project Contingency has been exhausted, the CM shall continue to perform at no additional cost to the OWNER until the Task Order is complete. The CM shall be responsible for paying all costs, in accordance with the terms of this Agreement that may be necessary to complete the Task Order. The CM

may use the Contingency for the Project to fund the cost overruns and any cost overruns that exceed the amount of the Contingency shall be carried as a negative balance in the Contingency which shall be adjusted as set forth below.

- 12.1.10 If any Task Order is completed at a cost which is less than the Guaranteed Maximum Price and any adjustments therein as may be due pursuant to the terms hereof, then the difference (the "Savings") shall be added to the balance of the Contingency. If at the end of the Project the Contingency has a negative balance, the CM shall be responsible for paying all costs associated with such balance
- Price Escalations. The OWNER and Construction Manager acknowledge that due to recent events construction costs are escalating in an unpredictable manner and agree to share the risk of escalation in the following manner. If the Cost of the Work for any Task Order or portion of the Work increases more than five percent (5%) based upon an indices agreeable to OWNER and CM, after the parties agree on a GMP for such Work, the OWNER shall authorize use of Allowance by the amount of the increase in the Cost of the Work plus the Construction Management Fee.

12.4 Allowance definition.

For the purposes of the Guaranteed Maximum Price and the Contract Documents, "Allowance" shall mean a stated requirement of the Contract Documents and or the GMP Proposal whereby a specified sum of money is incorporated, or allowed, into the Guaranteed Maximum Price in order to sustain the cost of a stipulated material, piece of equipment, or other cost of the construction work. Allowances are to cover "known" but unquantifiable items covered in the Guaranteed Maximum Price as provided herein or the GMP Proposal. The payment of an Allowance must be approved by the OWNER and for the OWNER's sole and exclusive use. Any payment exceeding the original specified sum of money stipulated for that Allowance shall be the responsibility of the OWNER, who will execute a Change Order to Guaranteed Maximum Price equal to such excess payment.

Article 13 Additional Conditions

13.1 The CM further represents and acknowledges that the GMP has been developed with full consideration of all requirements to allow the OWNER to maintain the existing J. B. Messerly WPCP in full operation at all times during the construction process including close coordination with the OWNERs staff and being prepared to make scheduled activity adjustments when required to allow uninterrupted operation of the water treatment plant under normal operating conditions.

13.2 Performance and Payment Bond

Upon execution of this agreement, the CM shall deliver to the OWNER a performance and payment bond for the full GMP in the form usually used by the OWNER.

13.3 <u>Limitation Of Liability</u>

The OWNER in recognition of the amount of the CM's fee, the relative risks and benefits of the Project to both the OWNER and the CM, the parties agree to allocate any liabilities and unforeseen risks assumed by the CM under the terms of this Agreement or by operation of law, including but not limited to: injury to persons or property, Force Majure, Defective Work, Cost Overruns, Indemnification and Delays as follows: (1) to the fullest extent of permitted by law, the OWNER agrees to limit the liability of the CM and its affiliated companies, directors, officers, employees, agents, and representatives to the OWNER and anyone claiming by or through the OWNER, for any and all claims, losses, costs or damages, including attorneys' fees and costs and expert- witness fees and costs of any nature whatsoever or claims expenses resulting from or in any way related to the Project or this Agreement from any cause to the amount of the actual direct damages (excluding any special or consequential damages) incurred by the OWNER or the CM's fee earned on the Task Order out of which the claim arose, whichever is less. This limitation shall apply regardless of the cause of action or legal theory pled or asserted. and OWNER hereby irrevocably waives and releases CM and its affiliated companies, directors, officers, employees, agents, and representatives from all liability in excess thereof.

13.4 Exhibits.

Title:

The following Exhibits attached to this Agreement are hereby incorporated by reference and made part of this Agreement:

Exhibit B	List of Task Orders
Exhibit C	Sample Task Order
Exhibit D	Project Insurance Rates and Requirements
Exhibit E	Compensation Schedule
This Agreement is executed the day and year first written above.	
OWNER:	

Exhibit A General Conditions and Supplemental General Conditions

Attest:

CONSTRUCTION MANAGER:	
Title:	
Attest:	

EXHIBIT A

SUPPLEMENTAL GENERAL CONDITIONS AND GENERAL CONDITIONS

MWH CONSTRUCTORS, INC.
AUGUSTA CAPITAL IMPROVEMENTS PROGRAM PROJECT NO. 80130
J B MESSERLY WATER POLLUTION CONTROL PLANT
CONSTRUCTION MANAGEMENT AT RISK AGREEMENT – CONSTRUCTION SERVICES

SUPPLEMENTAL GENERAL CONDITIONS

ARTICLE I--DEFINITIONS

Delete Article I and replace with the following: "Wherever used in these General Conditions or in the other Contract Documents all terms have the meanings as defined in Article 2 of the Agreement, which are applicable to both the singular and plural thereof.

ARTICLE 2-PRELIMINARY MATTERS

Copies of Documents:

2.2. Add the following phrase after "one (1) complete" in line 2: "reproducible electronic" so that the entire paragraph reads as follows:

"After the award of the Contract, OWNER shall furnish CONTRACTOR, at no cost, one (1) complete reproducible electronic set of the Contract Documents for execution of the work. Additional sets of the project manual and drawings and/or individual pages or sheets of the project manual or drawings will be furnished by COUNTY upon CONTRACTOR's request and at CONTRACTOR's expense, which will be OWNER's standard charges for printing and reproduction."

Commencement of Contract Time, Notice to Proceed:

2.3. Add the following after "A Notice to Proceed" in the second sentence: "shall be given in 15 days" and delete "may be given at any time" in second sentence so that the entire paragraph reads as follows:

"The Contract Time shall commence as established in the Notice to Proceed. A Notice to Proceed shall be given within 15 days after the Effective Date of the Contract."

Before Starting Construction:

2.5. Delete "or reasonably should have known" from final line so that the entire paragraph reads as follows:

"Before undertaking each part of the Work, CONTRACTOR shall carefully study and compare the Contract Documents and check and verify pertinent figures shown thereon and all applicable field measurements. CONTRACTOR shall promptly report in writing to PROFESSIONAL any conflict, error, ambiguity, or discrepancy which CONTRACTOR may discover and shall obtain a written interpretation or clarification from PROFESSIONAL before proceeding with any Work affected thereby. CONTRACTOR shall be liable to OWNER for failure to report any conflict, error, ambiguity or discrepancy in the Contract Documents, if CONTRACTOR knew thereof."

ARTICLE 3-CONTRACT DOCUMENTS; INTENT, AMENDING, REUSE

Intent:

3.2. Delete "Any Work, materials or equipment that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the intended result will be supplied whether or not specifically called for." So that the entire paragraph reads as follows:

"It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents. When words or phrases which have a well-known technical or construction industry or trade meaning are used to describe Work, materials or equipment, such words shall be interpreted in accordance with that meaning."

3.4. Delete the following from Line 2 "whether such reference be specific or by implication". So that the entire paragraph reads as follows:

"Reference to standards, specifications, manuals or codes of any technical society, organization or association, or to the Laws or Regulations of any governmental authority shall mean the latest standard, specification, manual, code or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Agreement if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.

3.5. Delete the following from the final Line: "or should reasonably known thereof" so that the entire paragraph reads as follows:

"If, during the performance of the Work, CONTRACTOR discovers any conflict, error, ambiguity or discrepancy within the Contract Documents or between the Contract Documents and any provision of any such Law or Regulation applicable to the performance of the Work or of any such standard, specification, manual or code or of any instruction of any Supplier referred to in 6.7, CONTRACTOR shall so report to PROFESSIONAL in writing at once and before proceeding with the Work affected thereby and shall obtain a written interpretation or clarification from PROFESSIONAL; however, CONTRACTOR shall not be liable to OWNER or PROFESSIONAL for failure to report any conflict, error, ambiguity or discrepancy in the Contract Documents unless CONTRACTOR had actual knowledge thereof."

Reuse of documents:

3.8. Add the following sentence at the end of this Section: "The CONSTRUCTION MANAGER and Subcontractors shall, however, be provided with electronic versions of the Contract Documents to assist in the submission of shop drawings and other submittals." So that the entire paragraph reads as follows:

Neither CONTRACTOR nor any Subcontractor or Supplier or other person or organization performing or furnishing any of the Work under a direct or indirect contract with OWNER shall have or acquire any title to or OWNERSHIP rights in any of the Drawings, Specifications or other documents (or copies of any thereof) prepared by or bearing the seal of PROFESSIONAL or PROFESSIONAL's consultant; and they shall not reuse such Drawings, Specifications or other documents (or copies of any thereof) on extensions of the Project or any other project without written consent of OWNER and PROFESSIONAL and specific written verification or adaptation by PROFESSIONAL. The CONSTRUCTION MANAGER and Subcontractors shall, however, be provided with electronic versions of the Contract Documents to assist in the submission of shop drawings and other submittals.

ARTICLE 5-BONDS AND INSURANCE

CONTRACTOR's Liability Insurance:

5.3.7. Add the following word before "general liability insurance" in Line 1: "commercial".

Contractual Liability Insurance:

5.4. Replace "comprehensive" with "commercial" in Line 1 and replace "paragraphs 6.32 and 6.33" with "this Agreement" at the end of the final Line so the entire paragraph reads as follows:

"The commercial general liability insurance required by paragraph 5.3 will include contractual liability insurance applicable to CONTRACTOR's obligations under this Agreement."

Indemnification

- 5.16.1. Delete the entire paragraph.
- 5.16.2. Delete the entire paragraph.
- 5.16.3. Delete the entire paragraph.

ARTICLE 6--CONTRACTOR'S RESPONSIBILITIES

6.2. Replace the word "superintendent" with the phrase "project manager" so that the entire paragraph reads as follows:

"CONTRACTOR shall keep on the Work, at all times during its progress, key personnel proposed in CONTRACTOR's statement of qualifications and oral presentation including a competent resident project manager, who shall not be replaced without written notice to OWNER and PROFESSIONAL except under extraordinary circumstances. The Project Manager will be CONTRACTOR's representative at the site and shall have authority to act on behalf of CONTRACTOR. All communications to the Project Manager shall be as binding as if given to CONTRACTOR."

Adjusting Progress Schedule:

6.6. Replace "PROFESSIONAL" with "OWNER" in Line 1.

Substitutes or "Or-Equal" Items:

6.7.1. Delete and Replace entire Section 6.7.1 with the following: "Whenever materials or equipment are specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the naming of the item is intended to establish the type, function and quality required. In the event the Contract Documents indicate allowance or use of equal materials or equipment, then materials or equipment of other Suppliers may be used, following the process for approval set forth in 6.23 and following."

6.7.2. Delete the final line in this Section: "The procedure for review by PROFESSIONAL will be similar to that provided in paragraph 6.7.1 as applied by PROFESSIONAL and as may be supplemented in the General Requirements." so the entire paragraph reads as follows:

"If a specific means, method, technique, sequence or procedure of construction is indicated in or required by the Contract Documents, CONTRACTOR may furnish or utilize a substitute means, method, sequence, technique or procedure of construction acceptable to PROFESSIONAL, if CONTRACTOR submits sufficient information to allow PROFESSIONAL to determine that the substitute proposed is equivalent to that indicated or required by the Contract Documents."

6.7.3. Delete this Section in its entirety.

Patent Fees and Royalties:

6.12. Add the following language to the end of the Final Line: ", except to the extent such infringement is due to the fault of the OWNER or PROFFESSIONAL." So that the entire paragraph reads as follows:

"CONTRACTOR shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product or device which is the subject of patent rights or copyrights held by others. CONTRACTOR shall indemnify and hold harmless OWNER and PROFESSIONAL and anyone directly or indirectly employed by either of them from and against all claims, damages, losses and expenses including attorneys' fees and court and arbitration costs arising out of any infringement on patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product or device not specified in the Contract Documents, and shall defend all such claims in connection with any alleged infringement of such rights, except to the extent such infringement is due to the fault of the OWNER or PROFFESSIONAL."

Permits:

6.13. Delete and replace the sentence with the following: "Any delays associated with the permitting process will be considered for time extensions and actual damages or additional compensation unless due to the fault of the CONTRACTOR." So that the entire paragraph reads as follows:

"CONTRACTOR shall obtain and pay for all construction permits, licenses, governmental charges and inspection fees, and all public utility charges which are applicable and necessary for the execution of the Work. All permit costs shall be included in the base bid. Permits, if any, which are provided and paid for by OWNER, are listed in the Supplementary Conditions. Any delays associated with the permitting process will be considered for time extensions and actual damages or additional compensation unless due to the fault of the CONTRACTOR."

Shop Drawings and Samples:

6.24.1. Delete the final Line "Any delays associated with the submittal process will be considered for time extensions only, and no damages or additional compensation for delay will be allowed." in its entirety so the entire paragraph reads as follows:

- "No Work requiring a submittal or sample submission shall commence until the submission has been approved by PROFESSIONAL. A copy of each approved submittal and each approved sample shall be kept in good order by CONTRACTOR at the site and shall be available to PROFESSIONAL and OWNER."
- 6.24.2. Delete the entire Section which reads: "Before submission of each Shop Drawing or sample, CONTRACTOR shall have determined and verified all quantities, dimensions, specified performance criteria, installation requirements, materials, catalog numbers and similar data with respect thereto and reviewed or coordinated each Shop Drawing or sample with other Shop Drawings and samples and with the requirements of the Work and the Contract Documents." in it's entirety.
- 6.24.3. Delete the entire Section which reads: "At the time of each submission, CONTRACTOR shall give PROFESSIONAL specific written notice of each variation that the Shop Drawings or samples may have from the requirements of the Contract Documents, and, in addition, shall cause a specific notation to be made on each Shop Drawing submitted to PROFESSIONAL for review and approval of each such variation." in its entirety.
- 6.27. Delete the entire section which reads: "PROFESSIONAL's approval of submittals or samples shall not relieve CONTRACTOR from responsibility for any variation from the requirements of the Contract Documents unless CONTRACTOR has, in writing, called PROFESSIONAL's attention to each such variation at the time of submission and the OWNER has given written approval to the specific deviation; any such approval by PROFESSIONAL shall not relieve CONTRACTOR from responsibility for errors or omissions in the submittals." in it's entirety.
- 6.28. Delete the entire section and replace it with the following which reads: "Where a shop drawing or sample is required by the Contract Documents or the schedule of shop drawings and sample submissions accepted by PROFESSIONAL as required, any related work performed prior to PROFESSIONAL's review and approval of the pertinent submittal will be at the sole risk of CONTRACTOR" in it's entirety.

Indemnification:

6.32. Delete this Section in it's entirety and replace with the following: "To the fullest extent permitted by Laws and Regulations, CONTRACTOR shall indemnify and hold harmless OWNER, PROGRAM MANAGER and PROFESSIONAL and their consultants, agents and employees from and against all claims, damages, losses and expenses, (including but not limited to fees and charges of architects, attorneys and other experts and court and arbitration costs) arising out of or resulting from the performance of the Work, provided that any such claim, damage, loss or expense (a) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including the loss of use resulting there from and (b) is caused by any negligent act or omission of CONTRACTOR, any Subcontractor, any person or organization directly or indirectly employed by any of them to perform or furnish any of the Work or anyone for whose acts any of them may be liable."

ARTICLE 10--CHANGES IN THE WORK

10.2. Delete the following from the final line: "The effect of this paragraph shall remain paramount and shall prevail irrespective of any conflicting provisions contained in these Contract Documents."

ARTICLE 11-CHANGE OF CONTRACT PRICE

- 11.1. Replace "Contract Price" in the final line with "GMP."
- 11.2. Replace "Contract Price" in the first and second lines with "GMP."
 Add ", Task Order" immediately following "Change Order" in the first line.
- 11.3.5. Replace this Section in its entirety with the following Section: "If the pricing methods specified in 11.3 are inapplicable, or if the parties are unable to agree on a price for the changed work, the CONSTRUCTION MANAGER shall perform the Work on a cost plus basis for a price equal to the Cost of the Work plus the CONSTRUCTION MANAGER's Fee in accordance with 7.1.3 of the Agreement. OWNER shall then process a unilateral Change Order, specifying the cost plus method to be paid and CONSTRUCTION MANAGER shall perform the Work as directed in the Change Order."
- 11.3.6. Add the following sentence to the end of this Section: "If the CONSTRUCTION MANAGER disagrees with the OWNER's adjustment it may contests that amount in a claim pursuant to this Article and Article 16."

Cost of the Work:

- 11.4. Delete this Section and all of its subsections in its entirety.
- 11.5. Delete this Section and all of its subsections in its entirety.

CONTRACTOR's Fee:

- 11.6. Delete this Section and all of its subsections in its entirety and replace with the following:
- "The Contractor shall be entitled to a negotiated fee for increases in the GMP caused by a Change Order."
- 11.7. Delete this Section in its entirety.

Cash Allowances:

11.8. Delete the following from the only line in this Section: "shall cause the Work so covered to be done by such Subcontractors or Suppliers and for such sums within the limit of the allowances as may be acceptable to PROFESSIONAL"

ARTICLE 12--CHANGE OF CONTRACT TIME

12.2. Delete the following from the end of this Section: "Provided, however, notwithstanding anything in the Contract Documents to the contrary, no interruption, interference, inefficiency, suspension or delay in the performance, progress, commencement or completion of the Work for any cause whatsoever, including those for which OWNER or PROFESSIONAL may be responsible in whole or in part, shall relieve CONTRACTOR of its

duty to perform or give rise to any right to damages or additional compensation from OWNER. CONTRACTOR's sole and exclusive remedy against OWNER for interruption, interference, inefficiency, suspension or delay of any aspect of the Work shall be the right to seek an extension to the Contract Time in accordance with the procedures set forth herein." Also, remove the phrase "which OWNER may" immediately after "number of days of delay" from the second sentence and replace the word "strictly" with the word "substantially" between "shall have" and "complied with" in the second sentence, so the entire paragraph reads as follows:

"If CONTRACTOR is delayed at any time in the performance, progress, commencement, or completion of the Work by any act or neglect of OWNER or PROFESSIONAL, or by an employee of either, or by any separate CONTRACTOR employed by OWNER, or by changes ordered in the Work, or by labor disputes, fire, unavoidable casualties, utility conflicts which could not have been identified or foreseen by CONTRACTOR using reasonable diligence, or any causes beyond CONTRACTOR's control or fault, then the Contract Time shall be extended by Change Order for such reasonable time as OWNER may determine. CONTRACTOR shall be entitled to an extension of time for such causes only for the number of days of delay determined to be due solely to such causes and only to the extent such occurrences actually delay the completion of the Work and then only if CONTRACTOR shall have substantially complied with all the requirements of the Contract Documents."

ARTICLE 13--WARRANTY AND GUARANTEE; TESTS AND INSPECTIONS: CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

Uncovering Work:

13.9. Delete the following language from the end of Line 2 "and OWNER shall be entitled to an appropriate decrease in the Contract Price and, if the parties are unable to agree as to the amount thereof, OWNER may make a claim therefore as provided in Article 11." and replace with "as part of the Cost of the Work."

Replace the lines immediately following "as part of the Cost of the Work" (above) with "If, however, such Work is not found to be defective and the CONSTRUCTION MANAGER is not at fault, then the CONSTRUCTION MANAGER shall be allowed an increase in the GMP or an extension of the Contract Time, or both, directly attributable to such uncovering, exposure, observation, inspection, testing and reconstruction, and, if the parties are unable to agree as to the amount or extent thereof, CONSTRUCTION MANAGER may make a claim therefore as provided in Articles 11 and 12."

One Year Correction Period:

13.12. Delete ", indirect and consequential" immediately after "direct" in the final line.

Acceptance of Defective Work:

13.13. Delete "indirect and consequential costs" immediately after "direct" in the first line.

Add "as part of the Cost of the Work" immediately after "attorneys and other professionals)" in Line 2. Delete "and OWNER shall be entitled to an appropriate decrease in the Contract Price, and, if the parties are unable to agree as to the amount thereof, OWNER may make a claim therefore as provided in Article 11" in the second to last line.

Replace "after such recommendation" with "after final payment" in the final line.

OWNER May Correct Defective Work:

13.14. Remove "indirect and consequential" from lines 4 and 5.

ARTICLE 14-PAYMENTS TO CONTRACTOR AND COMPLETION

Application for Progress Payment:

14.2. Delete the entire paragraph and replace with the following:

"At least twenty (20) calendar days before the date established for each progress payment (but not more often than once a month), CONTRACTOR shall submit to PROFESSIONAL for review an application for Payment filled out and signed by CONTRACTOR covering the work completed as of the date of the application and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice or other documentation warranting that OWNER has received the materials and equipment free and clear of all liens and evidence that the materials and equipment are covered by appropriate property insurance and other arrangements to protect OWNER's interest therein, all of which will be satisfactory to OWNER. The amount of retainage with respect to progress payments will be as stipulated in the Agreement."

Final Application for Payment:

14.12.3. Delete the entire paragraph which states: "General Indemnity: CONTRACTOR shall indemnify OWNER and PROFESSIONAL for any damages sustained, including lost profits, resulting from CONTRACTOR's failure or refusal to perform the work required by these contract documents."

ARTICLE 16--DISPUTE RESOLUTION

16.1. Delete the entire paragraph and replace it with the following:

"All disputes arising under this Contract or its interpretation whether involving law or fact or both, or extra work, and all claims for alleged breach of contract shall within thirty (30) days of a decision by the PROFESSIONAL or a reasonable time after the commencement of the dispute be presented by CONSTRUCTION MANAGER to OWNER for decision. All papers pertaining to claims shall be filed in quadruplicate. Such notice need not detail the amount of the claim but shall state the facts surrounding the claim in sufficient detail to identify the claim, together with its character and scope. In the meantime, CONTRACTOR shall proceed with the Work as directed. Any claim not presented within the time limit specified in this paragraph shall be deemed to have been waived. If the claim is of a continuing character a notice of a potential claim shall be given within fifteen (15) working days of its commencement and the claim shall be submitted within fifteen (15) working days after the full impact is known. Each decision by OWNER will be in writing and will be mailed to CONTRACTOR by registered or certified mail, return receipt requested, directed to his last known address within 30 days of receipt."

ARTICLE 17-MISCELLANEOUS

General:

17.11 These General Conditions are part of a Guaranteed Maximum Price Contract (GMP); in the event of conflict between Sections of the General Conditions and similar terms and conditions of the GMP, the GMP terms and conditions will control.

GENERAL CONDITIONS

ARTICLE I--DEFINITIONS

Wherever used in these General Conditions or in the other Contract Documents the following terms have the meanings indicated, which are applicable to both the singular and plural thereof:

Addenda - Any changes, revisions or clarifications of the Contract Documents which have been duly issued by OWNER to prospective Bidders prior to the time of opening of Bids.

Agreement-The written agreement between OWNER and CONTRACTOR covering the Work to be performed; other Contract Documents are attached to the Agreement and made a part thereof as provided therein.

Application for Payment-The form accepted by PROFESSIONAL which is to be used by CONTRACTOR in requesting progress or final payments and which is to include such supporting documentation as is required by the Contract Documents.

Bid-The offer or proposal of the bidder submitted on the prescribed form setting forth the price(s) for the Work to be performed.

Bonds-Bid, performance and payment bonds and other instruments of security furnished by CONTRACTOR and its Surety in accordance with the Contract Documents.

Change Order-- A document recommended by PROFESSIONAL, which is signed by CONTRACTOR and OWNER, and authorizes an addition, deletion or revision in the Work, or an adjustment in the Contract Price or the Contract Time, issued on or after the Effective Date of the Agreement.

Contract Documents-The Agreement: Addenda (which pertain to the Contract Documents); CONTRACTOR's Bid (including documentation accompanying the Bid and any post-Bid documentation submitted prior to the Notice of Award) when attached as an exhibit to the Agreement; the Bonds; these General Conditions; the Supplementary Conditions; the Plans, Specifications and the Drawings as the same are more specifically identified in the Agreement; Certificates of Insurance; Notice of Award; and Change Order duly delivered after execution of Contract together with all amendments, modifications and supplements issued pursuant to paragraphs 3.3 and 3.5 or after the Effective Date of the Agreement.

Contract Price-The moneys payable by OWNER to CONTRACTOR under the Contract Documents as stated in the Agreement (subject to the provisions of paragraph 11.9.1 in the case of Unit Price Work).

Contract Time-The number of days (computed as provided in paragraph 17.2.1) or the date stated in the Agreement for the completion of the Work.

CONTRACTOR - The person, firm or corporation with whom OWNER has entered into the Agreement.

COUNTY-Richmond County, Georgia, or Augusta, Georgia, political subdivisions of the State of Georgia, the Augusta-Richmond County Commission, and its authorized designees, agents, or employees.

Day -Either a working day or calendar day as specified in the bid documents. If a calendar day shall fall on a legal holiday, that day will be omitted from the computation. Legal Holidays: New Year's Day, Martin Luther King Day, Memorial Day, 4th of July, Labor Day, Veterans Day, Thanksgiving Day and the following Friday, and Christmas Day.

Defective-An adjective which, when modifying the word Work, refers to Work that is unsatisfactory, faulty or

deficient, does not conform to the Contract Documents, or does not meet the requirements of any inspection, reference standard, test or approval referred to in the Contract Documents, or has been damaged prior to PROFESSIONAL's recommendation of final payment, unless responsibility for the protection thereof has been assumed by OWNER at Substantial Completion (in accordance with paragraph 14.8 or 14.10).

Drawings-The drawings which show the character and scope of the Work to be performed and which have been prepared or approved by PROFESSIONAL and are referred to in the Contract Documents.

Effective Date of the Agreement-The date indicated in the Agreement on which it becomes effective, but if no such date is indicated it means the date on which the Agreement is signed by the Mayor of Augusta, Georgia.

*Field Order-*A written order issued by PROFESSIONAL that modifies Drawings and Specifications, but which does not involve a change in the Contract Price or the Contract Time.

General Requirements-Sections of Division I of the Specifications.

Laws or Regulations-Laws, rules, regulations, ordinances, codes and/or orders.

Notice of Award-The written notice by OWNER to the apparent successful bidder stating that upon compliance by the apparent successful bidder with the conditions precedent enumerated therein, within the time specified, OWNER will sign and deliver the Agreement.

Notice to Proceed-A written notice given by OWNER to CONTRACTOR (with a copy to PROFESSIONAL) fixing the date on which the Contract Time will commence to run and on which CONTRACTOR shall start to perform CONTRACTOR'S obligations under the Contract Documents.

OWNER- Augusta, Georgia, and the Augusta-Richmond County Commission.

Partial Utilization-Placing a portion of the Work in service for the purpose for which it is intended or for a related purpose) before reaching Substantial Completion for all the Work.

PROFESSIONAL-The Architectural/Engineering firm or individual or in-house licensed person designated to perform the design and/or resident engineer services for the Work.

PROGRAM MANAGER – The professional firm or individual designated as the representative or the OWNER who shall act as liaison between OWNER and both the PROFESSIONAL and CONTRACTOR when project is part of an OWNER designated program.

Project-The total construction of which the Work to be provided under the Contract Documents may be the whole, or a part, as indicated elsewhere in the Contract Documents.

Project Area-The area within which are the specified Contract Limits of the improvements contemplated to be constructed in whole or in part under this Contract.

Project Manager-The professional in charge, serving OWNER with architectural or engineering services, his successor, or any other person or persons, employed by said OWNER, for the purpose of directing or having in charge the work embraced in this Contract.

Resident Project Representative-The authorized representative of PROFESSIONAL as PROGRAM MANAGER who is assigned to the site or any part thereof.

Shop Drawings-All drawings, diagrams, illustrations, schedules and other data which are specifically prepared by or for CONTRACTOR to illustrate some portion of the Work and all illustrations, brochures, standard schedules, performance charts, instructions, diagrams and other information prepared by a Supplier and submitted by CONTRACTOR to illustrate material or equipment for some portion of the Work.

Specifications-Those portions of the Contract Documents consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the Work and certain administrative details applicable thereto.

Subcontractor-An individual, firm or corporation having a direct contract with CONTRACTOR or with any other SUBCONTRACTOR for the performance of a part of the Work at the site.

Substantial Completion-The Work (or a specified part thereof) has progressed to the point where, in the opinion of PROFESSIONAL as evidenced by PROFESSIONAL's definitive certificate of Substantial Completion, it is sufficiently complete, in accordance with the Contract Documents, so that the Work (or specified part) can be used for the purposes for which it is intended, or if there be no such certificate issued, when final payment is due in accordance with paragraph 14.13. The terms "substantially completed" as applied to any Work refer to Substantial Completion thereof.

Supplementary Conditions-The part of the Contract Documents which amends or supplements these General Conditions.

Supplier-A manufacturer, fabricator, supplier, distributor, materialman or vendor.

Underground Facilities-All pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels or other such facilities or attachments, and any encasement containing such facilities which have been installed underground to furnish any of the following services or materials: electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, sewage and drainage removal, traffic or other control systems, or water.

Unit Price Work-Work to be paid for on the basis of unit prices.

Work-The entire completed construction or the various separately identifiable parts thereof required to be furnished under the Contract Documents. Work is the result of performing services, furnishing labor and furnishing and incorporating materials and equipment into the construction, and furnishing documents, all as required by the Contract Documents.

Work Change Directive-A written directive to CONTRACTOR, issued on or after the Effective Date of the Agreement and signed by OWNER and recommended by PROFESSIONAL, ordering an addition, deletion or revision in the Work, or responding to differing or unforeseen physical conditions under which the Work is to be performed as provided in paragraph 4.2 or 4.3 or to emergencies under paragraph 6.22. A Work Change Directive may not change the Contract Price or the Contract Time but is evidence that the parties expect that the change directed or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Time as provided in Article 10.

Written Amendment-A written amendment of the Contract Documents, signed by OWNER and CONTRACTOR on or after the Effective Date of the Agreement and normally dealing with the non-engineering or non-technical rather than strictly Work-related aspects of the Contract Documents.

ARTICLE 2-PRELIMINARY MATTERS

Delivery of Bonds:

2.1. When CONTRACTOR delivers the executed Agreements to OWNER, CONTRACTOR shall also deliver to OWNER such Bonds as CONTRACTOR may be required to furnish in accordance with these Contract Documents.

Copies of Documents:

2.2. After the award of the Contract, OWNER shall furnish CONTRACTOR, at no cost, one (1) complete set of the Contract Documents for execution of the work. Additional sets of the project manual and drawings and/or individual pages or sheets of the project manual or drawings will be furnished by COUNTY upon CONTRACTOR's request and at CONTRACTOR's expense, which will be OWNER's standard charges for printing and reproduction.

Commencement of Contract Time, Notice to Proceed:

2.3. The Contract Time shall commence as established in the Notice to Proceed. A Notice to Proceed may be given at any time after the Effective Date of the Contract.

Starting the Project:

2.4. CONTRACTOR shall begin the Work on the date the Contract Time commences. No Work shall be done prior to the date on which the Contract Time commences. Any Work performed by CONTRACTOR prior to date on which Contract Time commences shall be at the sole risk of CONTRACTOR.

Before Starting Construction:

- 2.5. Before undertaking each part of the Work, CONTRACTOR shall carefully study and compare the Contract Documents and check and verify pertinent figures shown thereon and all applicable field measurements. CONTRACTOR shall promptly report in writing to PROFESSIONAL any conflict, error, ambiguity, or discrepancy which CONTRACTOR may discover and shall obtain a written interpretation or clarification from PROFESSIONAL before proceeding with any Work affected thereby. CONTRACTOR shall be liable to OWNER for failure to report any conflict, error, ambiguity or discrepancy in the Contract Documents, if CONTRACTOR knew or reasonably should have known thereof.
- 2.6. Within ten days after the Effective Date of the Agreement (unless otherwise specified in the General Requirements). CONTRACTOR shall submit to PROFESSIONAL and OWNER for review:
- 2.6.1. an estimated progress schedule indicating the starting and completion dates of the various stages of the Work:
 - 2.6.2. a preliminary schedule of Shop Drawing and Sample submissions, and
- 2.6.3. a preliminary schedule of values for all of the Work which will include quantities and prices of items aggregating the Contract Price and will subdivide the Work into component parts in sufficient detail to serve as the basis for progress payments during construction. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work which will be confirmed in writing by CONTRACTOR at the time of submission.

2.7. Before any Work at the site is started, CONTRACTOR shall deliver to OWNER, with copies to each additional insured identified in the Supplementary Conditions, an original policy or certified copies of each insurance policy (and other evidence of insurance which OWNER may reasonably request) which CONTRACTOR is required to purchase and maintain in accordance with Article 5.

Pre-construction Conference:

2.8. Before any Work at the site is started, a conference attended by CONTRACTOR, OWNER, PROFESSIONAL and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in 2.6 as well as procedures for handling Shop Drawings and other submittals, processing applications for payment and maintaining required records.

Finalizing Schedules:

2.9. At least ten days before submission of the first Application for Payment, a conference attended by CONTRACTOR, PROFESSIONAL and OWNER and others as appropriate will be held to finalize the schedules submitted in accordance with paragraph 2.6. CONTRACTOR shall have an additional ten (10) calendar days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to CONTRACTOR until the schedules are submitted and acceptable to OWNER and PROFESSIONAL as provided below. The finalized progress schedule will be acceptable to OWNER and PROFESSIONAL as providing an orderly progression of the Work to completion within any specified Milestones and the Contract Time, but such acceptance will neither impose on PROFESSIONAL responsibility for the sequencing, scheduling or progress of the Work nor interfere with or relieve CONTRACTOR from full responsibility therefor. The finalized schedule of Shop Drawing submissions and Sample submissions will be acceptable to PROFESSIONAL as providing a workable arrangement for reviewing and processing the submissions. CONTRACTOR's schedule of values shall be approved by PROFESSIONAL as to form and substance.

CONTRACTOR, in addition to preparing an initially acceptable schedule, shall be responsible for maintaining the schedule, including updating schedule. Schedule updates shall include progression of work as compared to scheduled progress on work. Schedule updates shall accompany each pay request.

ARTICLE 3-CONTRACT DOCUMENTS; INTENT,

AMENDING, REUSE

Intent:

- 3.1. The Contract Documents comprise the entire agreement between OWNER and CONTRACTOR concerning the Work. The Contract Documents are complementary: what is called for by one is as binding as if called for by all. The Contract Documents will be construed in accordance with the law of the State of Georgia.
- 3.2. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents. Any Work, materials or equipment that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the intended result will be supplied whether or not specifically called for. When words or phrases which have a well-known technical or construction industry or trade meaning are used to describe Work, materials or equipment, such words shall be interpreted in accordance with that meaning.
- 3.3. Except as otherwise specifically stated in the Contract Documents or as may be provided by amendment or supplement thereto issued by one of the methods indicated in 3.6 or 3.7, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity or discrepancy between the provisions of the Contract Documents and the provisions of any such standard, specification, manual, code or instruction (whether or not specifically incorporated by reference in the Contract Documents) and the provisions of any such Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation). Clarifications and interpretations of the Contract Documents shall be issued by PROFESSIONAL as provided in paragraph 9.4.
- 3.4. Reference to standards, specifications, manuals or codes of any technical society, organization or association, or to the Laws or Regulations of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard, specification, manual, code or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Agreement if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.
- 3.5. If, during the performance of the Work, CONTRACTOR discovers any conflict, error, ambiguity or discrepancy within the Contract Documents or between the Contract Documents and any provision of any such Law or Regulation applicable to the performance of the Work or of any such standard, specification, manual or code or of any instruction of any Supplier referred to in 6.7, CONTRACTOR shall so report to PROFESSIONAL in writing at once and before proceeding with the Work affected thereby and shall obtain a written interpretation or clarification from PROFESSIONAL; however, CONTRACTOR shall not be liable to OWNER or PROFESSIONAL for failure to report any conflict, error, ambiguity or discrepancy in the Contract Documents unless CONTRACTOR had actual knowledge thereof or should reasonably have known thereof.

Amending and Supplementing Contract Documents:

- 3.6. The Contract Documents may be amended to provide for additions, deletions and revisions in the Work or to modify the terms and conditions thereof in one or more of the following ways:
 - 3.6.1. a formal Written Amendment,

- 3.6.2. a Change Order (pursuant to paragraph 10.3), or
- 3.6.3. a Work Change Directive (pursuant to paragraph 10.4).

As indicated in paragraphs 11.2 and 12.1, Contract Price and Contract Time may only be changed by a Change Order or a Written Amendment.

- 3.7. In addition, the requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized in one or more of the following ways:
 - 3.7.1. a Field Order (pursuant to paragraph 9.5).
- 3.7.2. PROFESSIONAL's approval of a Shop Drawing or sample (pursuant to paragraphs 6.24 and 6.26), or
 - 3.7.3. PROFESSIONAL's written interpretation or clarification (pursuant to paragraph 9.4).

Reuse of documents:

3.8. Neither CONTRACTOR nor any Subcontractor or Supplier or other person or organization performing or furnishing any of the Work under a direct or indirect contract with OWNER shall have or acquire any title to or OWNERSHIP rights in any of the Drawings, Specifications or other documents (or copies of any thereof) prepared by or bearing the seal of PROFESSIONAL or PROFESSIONAL's consultant; and they shall not reuse such Drawings, Specifications or other documents (or copies of any thereof) on extensions of the Project or any other project without written consent of OWNER and PROFESSIONAL and specific written verification or adaptation by PROFESSIONAL.

ARTICLE 4-AVAILABILITY OF LANDS, PHYSICAL CONDITIONS; REFERENCE POINTS

Availability of Lands:

4.1. OWNER shall furnish, as indicated in the Contract Documents, the lands upon which the Work is to be performed, rights-of-way and easements for access thereto, and such other lands which are designated for the use of CONTRACTOR. Necessary easements or rights-of-way will be obtained and expenses will be borne by OWNER. If CONTRACTOR and OWNER are unable to agree on entitlement to or the amount or extent of any adjustments in the Contract Price or the Contract Times as a result of any delay in OWNER's furnishing these lands, rights-of-way or easements, the CONTRACTOR may make a claim therefor as provided in Articles 11 and 12. The CONTRACTOR shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

Physical Conditions:

- 4.2.1. Explorations and Reports: Reference is made to the Supplementary Conditions for identification of those reports of explorations and tests of subsurface conditions at or contiguous to the site that have been utilized in preparing the Contract Documents and those drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the site (except Underground Facilities) that have been utilized in preparing the Contract Documents.
- 4.2.2. CONTRACTOR may rely upon the general accuracy of the "technical data" contained in such reports and drawings. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," CONTRACTOR may not rely upon or make any claim against OWNER, PROFESSIONAL, or any of PROFESSIONAL's Consultants with respect to:
- 4.2.2.1. the completeness of such reports and drawings for CONTRACTOR's purposes, including but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by CONTRACTOR and safety precautions and programs incident thereto, or
- 4.2.2.2. other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings, or
- 4.2.2.3. any CONTRACTOR interpretation of or conclusion drawn from any "technical data" or any such data, interpretations, opinions or information.
- 4.2.3. If conditions are encountered, excluding existing utilities, at the site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, which 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, then CONTRACTOR shall give OWNER notice thereof promptly before conditions are disturbed and in no event later than 48 hours after first observance of the conditions.
- 4.2.4. The OWNER and PROFESSIONAL shall promptly investigate such conditions, and, if they differ materially and cause an increase or decrease in CONTRACTOR's cost of, or time required for, performance of any part of the Work, the OWNER and PROFESSIONAL shall recommend an equitable adjustment in the Contract Price or Contract Time, or both. If the OWNER and PROFESSIONAL determine that the conditions at the Site are not materially different from those indicated in the Contract Documents or are not materially different from those ordinarily found and that no change in the terms of the Contract is

justified, the PROFESSIONAL shall notify CONTRACTOR of the determination in writing. The Work shall be performed after direction is provided by the PROFESSIONAL.

Physical Conditions-Underground Facilities:

- 4.3.1. Shown or Indicated: The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the site is based on information and data furnished to OWNER or PROFESSIONAL by OWNER'S of such Underground Facilities or by others. Unless it is otherwise expressly provided in the Supplementary Conditions:
- 4.3.1.1. OWNER and PROFESSIONAL shall not be responsible for the accuracy or completeness of any such information or data; and
- 4.3.1.2. The cost of all of the following will be included in the Contract Price and CONTRACTOR shall have full responsibility for reviewing and checking all such information and data for locating all Underground Facilities shown or indicated in the Contract Documents, for coordination of the Work with the OWNER'S of such Underground Facilities during construction, for the safety and protection thereof as provided in paragraph 6.20 and repairing any damage thereto resulting from the Work, the cost of all of which will be considered as having been included in the Contract Price.
- 4.3.2. Not Shown or Indicated. If an Underground Facility is uncovered or revealed at or contiguous to the site which was not shown or indicated in the Contract Documents and which CONTRACTOR could not reasonably have been expected to be aware of, CONTRACTOR shall, promptly after becoming aware thereof and before performing any Work affected thereby except in an emergency as permitted by paragraph 6.22, identify the OWNER of such Underground Facility and give written notice thereof to that OWNER and to OWNER and PROFESSIONAL. PROFESSIONAL will promptly review the Underground Facility to determine the extent to which the Contract Documents should be modified to reflect and document the consequences of the existence of the Underground Facility, and the Contract Documents will be amended or supplemented to the extent necessary. During such time, CONTRACTOR shall be responsible for the safety and protection of such Underground Facility as provided in paragraph 6.20. CONTRACTOR shall be allowed an increase in the Contract Price or an extension of the Contract Time, or both, to the extent that they are attributable to the existence of any Underground Facility that was not shown or indicated in the Contract Documents and which CONTRACTOR could not reasonably have been expected to be aware of. If the parties are unable to agree as to the amount or length thereof, CONTRACTOR may make a claim therefor as provided in Articles 11 and 12.

Reference Points:

4.4. OWNER shall provide Engineering surveys to establish reference points for construction which in PROFESSIONAL's judgment are necessary to enable CONTRACTOR to proceed with the Work. CONTRACTOR shall be responsible for laying out the Work (unless otherwise specified in the General Requirements), shall protect and preserve the established reference points and shall make no changes or relocations without the prior written approval of OWNER. CONTRACTOR shall report to PROFESSIONAL whenever any reference point is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points by professionally qualified personnel.

Asbestos, PCBs, Petroleum, Hazardous Waste or Radioactive Material:

- 4.5 OWNER shall be responsible for any Asbestos, PCBs, Petroleum, Hazardous Waste or Radioactive Material uncovered or revealed at the site which was not shown or indicated in Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work and which may present a substantial danger to persons or property exposed thereto in connection with the Work at the site. OWNER shall not be responsible for any such materials brought to the site by CONTRACTOR, Subcontractor, Suppliers or anyone else for whom CONTRACTOR is responsible.
- 4.6 CONTRACTOR shall immediately: (i) stop all work in connection with such hazardous condition and in any area affected thereby (except in an emergency as required by 6.22), and (ii) notify OWNER and PROFESSIONAL (and thereafter confirm such notice in writing). OWNER shall promptly consult with PROFESSIONAL concerning the necessity for OWNER to retain a qualified expert to evaluate such hazardous condition or take corrective action, if any. CONTRACTOR shall not be required to resume Work in connection with such hazardous condition or in any such affected area until after OWNER has obtained any required permits related thereto and delivered to CONTRACTOR special written notice (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work, or (ii) specifying any special conditions under which such Work may be resumed safely. If OWNER and CONTRACTOR cannot agree as to entitlement to or the amount or extent of an adjustment, if any, in Contract Price or Contract Times as a result of such Work stoppage or such special conditions under which Work is agreed by CONTRACTOR to be resumed, either party may make a claim therefor as provided in Articles 11 and 12.
- 4.7 If after receipt of such special written notice, CONTRACTOR does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then CONTRACTOR may order such portion of the Work that is in connection with such hazardous conditions or in such affected area to be deleted from the Work. If OWNER and CONTRACTOR cannot agree as to entitlement to or the amount or extent of an adjustment, if any, in Contract Price or Contract Times as a result of deleting such portion of the Work, then either party may make a claim therefor as provided in Articles 11 and 12. OWNER may have deleted such portion of the Work performed by OWNER's own forces or others in accordance with Article 7.
- 4.7.1 The provisions of 4.2 and 4.3 are not intended to apply to Asbestos, PCBs, Petroleum, Hazardous Waste or Radioactive Material uncovered or revealed at the site.

ARTICLE 5-BONDS AND INSURANCE

Performance and Other Bonds:

5.1. CONTRACTOR shall furnish performance and payment Bonds, each in an amount at least equal to the Contract Price as Security for the faithful performance and payment of all CONTRACTOR's obligations under the Contract Documents. These Bonds shall remain in effect at least until one year after the date when final payment becomes due, except as otherwise provided by Law or Regulation or by the Contract Documents. CONTRACTOR shall also furnish such other Bonds as are required by the Supplementary Conditions. All Bonds shall be in the forms prescribed by Law or Regulation or by the Contract Documents and be executed by such sureties as are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds, and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Audit Staff Bureau of Accounts, U.S. Treasury Department. All Bonds signed by an agent must be accompanied by a certified copy of the authority to act.

Licensed Sureties and Insurers; Certificates of Insurance

- 5.2.1 All bonds and insurance required by the Contract Documents to be purchased and maintained by CONTRACTOR shall be obtained from surety or insurance companies that are duly licensed or authorized in the State of Georgia to issue bonds or insurance policies for the limits and coverages so required. All bonds signed by an agent must be accompanied by a certified copy of authority to act. Such surety and insurance companies shall also meet such additional requirements and qualifications as may be provided in the Supplementary Conditions.
- 5.2.2. CONTRACTOR shall deliver to OWNER, with copies to each additional insured identified in 5.3, an original or a certified copy of the complete insurance policy for each policy required, certificates of insurance (and other evidence of insurance requested by OWNER or any other additional insured) which CONTRACTOR is required to purchase and maintain in accordance with 5.3.
- 5.2.3. If the surety on any Bond furnished by CONTRACTOR is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of paragraph 5.1, CONTRACTOR shall within five days thereafter substitute another Bond and Surety, both of which must be acceptable to OWNER.

CONTRACTOR's Liability Insurance:

- 5.3. CONTRACTOR shall purchase and maintain such comprehensive general liability and other insurance as is appropriate for the Work being performed and furnished and as will provide protection from claims set forth below which may arise out of or result from CONTRACTOR's performance and furnishing of the Work and CONTRACTOR's other obligations under the Contract Documents, whether it is to be performed or furnished by CONTRACTOR, by any Subcontractor, by anyone directly or indirectly employed by any of them to perform or furnish any of the Work, or by anyone for whose acts any of them may be liable:
- 5.3.1. Claims under workers' or workmen's compensation, disability benefits and other similar employee benefit acts;
- 5.3.2. Claims for damages because of bodily injury, occupational sickness or disease, or death of CONTRACTOR's employees;

- 5.3.3. Claims for damages because of bodily injury, sickness or disease, or death of any person other than CONTRACTOR's employees;
- 5.3.4. Claims for damages insured by personal injury liability coverage which are sustained (a) by any person as a result of an offense directly or indirectly related to the employment of such person by CONTRACTOR, or (b) by any other person for any other reason;
- 5.3.5. Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom;
- 5.3.6. Claims arising out of operation of Laws or Regulations for damages because of bodily injury or death of any person or for damage to property; and
- 5.3.7. Claims for damages because of bodily injury or death of any person or property damage arising out of the OWNERSHIP, maintenance or use of any motor vehicle.

The insurance required by this paragraph 5.3 shall include the specific coverage's and be written for not less than the limits of liability and coverage's provided in the Supplementary Conditions, or required by law, whichever is greater. The comprehensive general liability insurance shall include completed operations insurance. All of the policies of insurance so required to be purchased and maintained (or the certificates or other evidence thereof) shall contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least thirty days prior written notice has been given to OWNER, PROGRAM MANAGER, and PROFESSIONAL by certified mail. All such insurance shall remain in effect until final payment and at all times thereafter when CONTRACTOR may be correcting, removing or replacing defective Work in accordance with paragraph 13.12. In addition, CONTRACTOR shall maintain such completed operations insurance for at least two years after final payment and furnish OWNER with evidence of continuation of such insurance at final payment and one year thereafter.

Contractual Liability Insurance:

5.4. The comprehensive general liability insurance required by paragraph 5.3 will include contractual liability insurance applicable to CONTRACTOR's obligations under paragraphs 6.32 and 6.33.

OWNER's Liability Insurance:

5.5. OWNER shall be responsible for purchasing and maintaining OWNER's own liability insurance, and/or Risk Retention Program, and, at OWNER's option, may purchase and maintain such insurance as will protect OWNER against claims which may arise from operations under the Contract Documents.

Property Insurance:

5.6. Unless otherwise provided in the Supplementary Conditions, OWNER shall purchase and maintain property insurance upon the Work at the site to the full insurable value thereof (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). This insurance shall include the interests of OWNER, CONTRACTOR, Subcontractors, PROGRAM MANAGER, PROFESSIONAL and PROFESSIONAL's consultants in the Work, all of whom shall be listed as insureds or additional insured parties, shall insure against the perils of fire and extended coverage and shall include "all risk" insurance for physical loss and damage including theft, vandalism and malicious mischief, collapse and water damage, and such other perils as may be provided in the Supplementary

Conditions, and shall include damages, losses and expenses arising out of or resulting from any insured loss or incurred in the repair or replacement of any insured property (including but not limited to fees and charges of PROFESSIONALs, architects, attorneys and other PROFESSIONALs). If not covered under the "all risk" insurance or otherwise provided in the Supplementary Conditions, CONTRACTOR shall purchase and maintain similar property insurance on portions of the Work stored on and off the site or in transit when such portions of the Work are to be included in an Application for Payment.

- 5.7. OWNER shall purchase and maintain such boiler and machinery insurance or additional property insurance as may be required by the Supplementary Conditions or Laws and Regulations which will include the interests of OWNER, CONTRACTOR, Subcontractors, PROFESSIONAL AND PROFESSIONAL's consultants in the Work, all of whom shall be listed as insured or additional insured parties.
- 5.8. All the policies of insurance (or the certificates or other evidence thereof) required to be purchased and maintained by OWNER in accordance with paragraphs 5.6 and 5.7 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least thirty days prior written notice has been given to CONTRACTOR by certified mail and will contain waiver provisions in accordance with paragraph of 5.11.2.
- 5.9. OWNER shall not be responsible for purchasing and maintaining any property insurance to protect the Interests of CONTRACTOR, Subcontractors or others in the Work to the extent of any deductible amounts that are provided in the Supplementary Conditions. The risk of loss within the deductible amount will be borne by CONTRACTOR, Subcontractor or others suffering any such loss, and if any of them wishes property insurance coverage within the limits of such amounts, each may purchase and maintain it at the purchaser's own expense.
- 5.10. If CONTRACTOR requests in writing that other special insurance be included in the property insurance policy, OWNER shall, if possible, include such insurance, and the cost thereof will be charged to CONTRACTOR by appropriate Change Order or Written Amendment. Prior to commencement of the Work at the site, OWNER shall in writing advise CONTRACTOR whether or not such other insurance has been procured by OWNER.

Waiver of Rights:

- 5.11.1. OWNER and CONTRACTOR waive all rights against each other for all losses and damages caused by any of the perils covered by the policies of insurance provided in response to paragraphs 5.6 and 5.7 and other property insurance applicable to the Work, and also waive all such rights against the Subcontractors, PROFESSIONAL, PROFESSIONAL's consultants and all other parties named as insureds in such policies for losses and damages so caused. As required by paragraph 6.11, each subcontract between CONTRACTOR and a Subcontractor will contain similar waiver provisions by the Subcontractor in favor of OWNER, CONTRACTOR, PROFESSIONAL, PROFESSIONAL's consultants and all other parties named as insureds. None of the above waivers shall extend to the rights that any of the insured parties may have to the proceeds of insurance held by OWNER as trustee or otherwise payable under any policy so issued.
- 5.11.2. OWNER and CONTRACTOR intend that policies provided in response to paragraphs 5.6 and 5.7 shall protect all of the parties insured and provide primary coverage for all losses and damages caused by the perils covered thereby. Accordingly, all such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurer will have no rights of recovery against any of the parties named as insureds or additional insureds, and if the insurers require separate waiver forms to be signed by PROFESSIONAL or PROFESSIONAL's consultant, OWNER will obtain the same, and if such waiver forms are required of any Subcontractor, CONTRACTOR will obtain the same.

Receipt and Application of Proceeds:

5.12. Any insured loss under the policies of insurance required by paragraphs 5.6 and 5.7 will be adjusted with OWNER and made payable to OWNER as trustee for the insureds, as their interests may appear, subject to the requirements of any applicable mortgage clause and of paragraph 5.13. OWNER shall deposit in a separate account any money so received and shall distribute it in accordance with such agreement as the parties in interest may reach. If no other special agreement is reached, the damaged Work shall be repaired or replaced, the moneys so received applied on account thereof, and the Work and the cost thereof covered by an appropriate Change Order or Written Amendment.

Receipt and Application of Insurance Proceeds

5.13. OWNER, as trustee, shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing within fifteen days after the occurrence of loss to OWNER's exercise of this power. If such objection be made, OWNER, as trustee, shall make settlement with the insurers in accordance with such agreement as the parties in interest may reach. If required in writing by any party in interest, OWNER as trustee shall, upon the occurrence of an insured loss, give bond for the proper performance of such duties.

Acceptance of Insurance:

5.14. If OWNER has any objection to the coverage afforded by or other provisions of the insurance required to be purchased and maintained by CONTRACTOR in accordance with paragraphs 5.3 and 5.4 on the basis of its not complying with the Contract Documents, OWNER shall notify CONTRACTOR in writing thereof within ten days of the date of delivery of such certificates to OWNER in accordance with paragraph 2.7. If CONTRACTOR has any objection to the coverage afforded by or other provisions of the policies of insurance required to be purchased and maintained by OWNER in accordance with paragraphs 5.6 and 5.7 on the basis of their not complying with the Contract Documents, CONTRACTOR shall notify OWNER in writing thereof within ten days of the date of delivery, of such certificates to CONTRACTOR in accordance with paragraph 2.7. OWNER and CONTRACTOR shall each provide to the other such additional information in respect of insurance provided by each as the other may reasonably request. Failure by OWNER or CONTRACTOR to give any such notice of objection within the time provided shall constitute acceptance of such insurance purchased by the other as complying with the Contract Documents.

Partial Utilization-Property Insurance:

5.15. If OWNER finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work, such use or occupancy may be accomplished in accordance with paragraph 14.10 provided that no such use or occupancy shall commence before the insurers providing the property insurance have acknowledged notice thereof and in writing effected the changes in coverage necessitated thereby. The insurers providing the property insurance shall consent by endorsement on the policy or policies, but the property insurance shall not be canceled or lapse on account of any such partial use or occupancy.

Indemnification

5.16.1. CONTRACTOR shall indemnify and hold harmless OWNER, PROGRAM MANAGER, and its employees and agents from and against all liabilities, claims, suits, demands, damages, losses, and

expenses, including attorneys' fees, arising out of or resulting from the performance of its Work, provided that any such liability, claim, suit, demand, damage, loss, or expense (a) is attributable to bodily injury, sickness, disease or death, or injury to or destruction of tangible property, including the loss of use resulting therefrom and (b) is caused in whole or in part by an act or omission of CONTRACTOR, any Subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, whether or not it is caused in whole or in part by the negligence or other fault of a party indemnified hereunder.

- 5.16.2. In any and all claims against OWNER or any of its agents or employees by any employee of CONTRACTOR, any SUBCONTRACTOR, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation under the previous paragraph shall not be limited in any way as to the amount or type of damages, compensation or benefits payable by or for CONTRACTOR or any SUBCONTRACTOR under workmen's compensation acts, disability benefit acts, or other employee benefit acts.
- 5.16.3. CONTRACTOR shall indemnify and hold harmless OWNER and anyone directly or indirectly employed by it from and against all claims, suits, demands, damages, losses expenses (including attorneys' fees) arising out of any infringement on patent or copyrights held by others and shall defend all such claims in connection with any alleged infringement of such rights.

ARTICLE 6--CONTRACTOR'S RESPONSIBILITIES

- 6.1. CONTRACTOR shall supervise and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. CONTRACTOR shall be solely responsible for the means, methods, techniques, sequences and procedures of construction, but CONTRACTOR shall not be responsible for the negligence of others in the design or specification of a specific means, method, technique, sequence or procedure of construction which is shown or indicated in and expressly required by the Contract Documents. CONTRACTOR shall be responsible to see that the finished Work complies accurately with the Contract Documents.
- 6.2. CONTRACTOR shall keep on the Work, at all times during its progress, a competent resident superintendent, who shall not be replaced without written notice to OWNER and PROFESSIONAL except under extraordinary circumstances. The superintendent will be CONTRACTOR's representative at the site and shall have authority to act on behalf of CONTRACTOR. All communications to the superintendent shall be as binding as if given to CONTRACTOR.

Labor, Materials and Equipment:

- 6.3. CONTRACTOR shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. CONTRACTOR shall at all times maintain good discipline and order at the site. Except in connection with the safety or protection of persons or the Work or property at the site or adjacent thereto, and except as otherwise indicated in the Contract Documents, all Work at the site shall be performed during regular working hours, and CONTRACTOR will not permit evening work or the performance of Work on Saturday, Sunday or any legal holiday without OWNER's written consent given after prior written notice to PROFESSIONAL.
- 6.4. Unless otherwise specified in the General Requirements, CONTRACTOR shall furnish and assume full responsibility for all materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities and all other facilities and incidentals whether temporary or permanent necessary for the execution, testing, initial operation, and completion of the Work as required by the Contract Documents.
- 6.5. All materials and equipment shall be of good quality and new, except as otherwise provided in the Contract Documents. If required by PROFESSIONAL, CONTRACTOR shall furnish satisfactory evidence (including reports of required tests) as to the kind and quality of materials and equipment. All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instructions of the applicable Supplier except as otherwise provided in the Contract Documents; but no provision of any such instructions will be effective to assign to PROFESSIONAL, or any of PROFESSIONAL's consultants, agents or employees, any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of paragraph 9.14 or 9.15.

Adjusting Progress Schedule:

6.6. CONTRACTOR shall submit to PROFESSIONAL for acceptance to the extent indicated in paragraph 2.9 adjustments in the progress schedule to reflect the impact thereon of new developments; these will conform generally to the progress schedule then in effect and additionally will comply with any provisions of the General Requirements applicable thereto.

Substitutes or "Or-Equal" Items:

- 6.7.1. Whenever materials or equipment are specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the naming of the item is intended to establish the type, function and quality required. Unless the name is followed by words indicating that no substitution is permitted, materials or equipment of other Suppliers may be accepted by PROFESSIONAL if sufficient information is submitted by CONTRACTOR to allow PROFESSIONAL to determine that the material or equipment proposed is equivalent or equal to that named. The procedure for review by PROFESSIONAL will include the following as supplemented in the General Requirements. Requests for review of substitute items of material and equipment will not be accepted by PROFESSIONAL from anyone other than CONTRACTOR. If CONTRACTOR wishes to furnish or use a substitute item of material or equipment. CONTRACTOR shall make written application to PROFESSIONAL for acceptance thereof, certifying that the proposed substitute will perform adequately the functions and achieve the results called for by the general design, be similar and of equal substance to that specified and be suited to the same use as that specified. The application will state that the evaluation and acceptance of the proposed substitute will not prejudice CONTRACTOR's achievement of Substantial Completion on time, whether or not acceptance of the substitute for use in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with OWNER for work on the Project) to adapt the design to the proposed substitute and whether or not incorporation or use of the substitute in connection with the Work is subject to payment of any license fee or royalty. All variations of the proposed substitute from that specified will be identified in the application and available maintenance, repair and replacement service will be indicated. The application will also contain an itemized estimate of all costs that will result directly or indirectly from acceptance of such substitute, including costs of redesign and claims of other contractors affected by the resulting change, all of which shall be considered by PROFESSIONAL. In evaluating the proposed substitute, PROFESSIONAL may require CONTRACTOR to furnish, at CONTRACTOR's expense, additional data about the proposed substitute.
- 6.7.2. If a specific means, method, technique, sequence or procedure of construction is indicated in or required by the Contract Documents, CONTRACTOR may furnish or utilize a substitute means, method, sequence, technique or procedure of construction acceptable to PROFESSIONAL, if CONTRACTOR submits sufficient information to allow PROFESSIONAL to determine that the substitute proposed is equivalent to that indicated or required by the Contract Documents. The procedure for review by PROFESSIONAL will be similar to that provided in paragraph 6.7.1 as applied by PROFESSIONAL and as may be supplemented in the General Requirements.
- 6.7.3. PROFESSIONAL will be allowed a reasonable time within which to evaluate each proposed substitute. PROFESSIONAL will be the sole judge of acceptability and no substitute will be ordered, installed or utilized without PROFESSIONAL's prior written acceptance which will be evidenced by either a Change Order or an approved Shop Drawing. OWNER may require CONTRACTOR to furnish, at CONTRACTOR's expense, a special performance guarantee or other surety with respect to any substitute. PROFESSIONAL will record time required by PROFESSIONAL and PROFESSIONAL's consultants in evaluating substitutions proposed by CONTRACTOR and in making changes in the Contract Documents occasioned thereby. Whether or not PROFESSIONAL accepts a proposed substitute, CONTRACTOR shall reimburse OWNER for the charges of PROFESSIONAL and PROFESSIONAL's consultants for evaluating each proposed substitute.

Concerning Subcontractors, Suppliers and Others:

6.8.1. CONTRACTOR shall not employ any Subcontractor, Supplier or other person or organization (including those acceptable to OWNER and PROFESSIONAL as indicated in paragraph 6.8.2) whether initially or as a substitute, against whom OWNER or PROFESSIONAL may have reasonable objection. CONTRACTOR shall not be required to employ any Subcontractor, Supplier or other person or organization

to furnish or perform any of the Work against whom CONTRACTOR has reasonable objection.

- 6.8.2. If the Supplementary Conditions require the identity of certain Subcontractors, Suppliers or other persons or organizations including those who are to furnish the principal items of materials and equipment to be submitted to OWNER prior to the Effective Date of the Agreement for acceptance by OWNER and PROFESSIONAL and if CONTRACTOR has submitted a list thereof in accordance with the Supplementary Conditions, OWNER's or PROFESSIONAL's acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the bidding documents or the Contract Documents) of any such Subcontractor, Supplier or other person or organization so identified may be revoked on the basis of reasonable objection after due investigation, in which case CONTRACTOR shall submit an acceptable substitute, the Contract Price will be increased by the difference, and the cost occasioned by such substitution and an appropriate Change Order will be issued or Written Amendment signed. No acceptance by OWNER or PROFESSIONAL of any such Subcontractor, Supplier or other person or organization shall constitute a waiver of any right of OWNER or PROFESSIONAL to reject defective Work.
- 6.9. CONTRACTOR shall be fully responsible to OWNER and PROFESSIONAL for all acts and omissions of the Subcontractors, Suppliers and other persons and organizations performing or furnishing any of the Work under a direct or indirect contract with CONTRACTOR just as CONTRACTOR is responsible for CONTRACTOR's own acts and omissions. Nothing in the Contract Documents shall create any contractual relationship between OWNER or PROFESSIONAL and any such Subcontractor, Supplier or other person or organization, nor shall it create any obligation on the part of OWNER or PROFESSIONAL to pay or to see to the payment of any moneys due any such Subcontractor, Supplier or other person or organization except as may otherwise be required by Laws and Regulations.
- 6.10. The divisions and sections of the Specifications and the identifications of any Drawings shall not control CONTRACTOR in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.
- 6.11. All Work performed for CONTRACTOR by a Subcontractor will be pursuant to an appropriate agreement between CONTRACTOR and the Subcontractor which specifically binds the Subcontractor to the applicable terms and conditions of the Contract Documents for the benefit of OWNER and PROFESSIONAL and contains waiver provisions as required by paragraph 5.11. CONTRACTOR shall pay each Subcontractor a just share of any insurance moneys received by CONTRACTOR on account of losses under policies issued pursuant to paragraphs 5.6 and 5.7.

Patent Fees and Royalties:

6.12. CONTRACTOR shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product or device which is the subject of patent rights or copyrights held by others. CONTRACTOR shall indemnify and hold harmless OWNER and PROFESSIONAL and anyone directly or indirectly employed by either of them from and against all claims, damages, losses and expenses including attorneys' fees and court and arbitration costs arising out of any infringement on patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product or device not specified in the Contract Documents, and shall defend all such claims in connection with any alleged infringement of such rights.

Permits:

6.13. CONTRACTOR shall obtain and pay for all construction permits, licenses, governmental charges and inspection fees, and all public utility charges which are applicable and necessary for the execution of the Work. All permit costs shall be included in the base bid. Permits, if any, that are provided and

paid for by OWNER are listed in the Supplementary Conditions. Any delays associated with the permitting process will be considered for time extensions only and no damages or additional compensation for delay will be allowed.

Laws and Regulations:

- 6.14.1. CONTRACTOR shall give all notices and comply with all Laws and Regulations applicable to furnishing and performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither OWNER nor PROFESSIONAL shall be responsible for monitoring CONTRACTOR's compliance with any Laws or Regulations.
- 6.14.2. If CONTRACTOR observes that any of the Contract Documents are contradictory to such laws, rules, and regulations, it will notify the Project Manager promptly in writing. Any necessary changes shall then be adjusted by an appropriate Change Order. If CONTRACTOR performs any Work that it knows or should have known to be contrary to such laws, ordinances, rules, and regulations and without such notice to the Project Manager, it shall bear all related costs.

Taxes:

6.15. CONTRACTOR shall pay all sales, consumer, use and other similar taxes required to be paid in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the Work.

Use of Premises:

- 6.16. CONTRACTOR shall confine construction equipment, the storage of materials and equipment and the operations of workers to the Project site and land and areas identified in and permitted by the Contract Documents and other land and areas permitted by Laws and Regulations, rights-of-way, permits and easements. CONTRACTOR shall not unreasonably encumber the premises with construction equipment or other materials or equipment. Any loss or damage to CONTRACTOR's or any Subcontractor's equipment is solely at the risk of CONTRACTOR. CONTRACTOR shall assume full responsibility for any damage to any such land or area, or to the OWNER or occupant thereof or of any land or areas contiguous thereto, resulting from the performance of the Work. Should any claim be made against OWNER or PROFESSIONAL by any such OWNER or occupant because of the performance of the Work, CONTRACTOR shall promptly attempt to settle with such other party by agreement or otherwise resolve the claim by arbitration or at law. CONTRACTOR shall, to the fullest extent permitted by Laws and Regulations, indemnify and hold OWNER harmless from and against all claims, damages, losses and expenses (including, but not limited to, fees of PROFESSIONALs, architects, attorneys and other professionals and court and arbitration costs) arising directly, indirectly or consequentially out of any action, legal or equitable, brought by any such other party against OWNER to the extent based on a claim arising out of CONTRACTOR's performance of the Work.
- 6.17. During the progress of the Work, CONTRACTOR shall keep the premises free from accumulations of waste materials, rubbish and other debris or contaminants resulting from the Work. At the completion of the Work, CONTRACTOR shall remove all waste materials, rubbish and debris from and about the premises as well as all tools, appliances, construction equipment and machinery, and surplus materials, and shall leave the site clean and ready for occupancy by OWNER. CONTRACTOR shall restore to original condition all property not designated for alteration by the Contract Documents.

6.18. CONTRACTOR shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall CONTRACTOR subject any part of the Work or adjacent property to stresses or pressures that will endanger them.

Record Documents:

6.19. Contractor shall keep at the site and in good order one record copy of the Contract Documents and all Drawings and Specifications. These documents shall be annotated on a continuing basis to show all changes made during the construction process. These shall be available to PROFESSIONAL and the Project Manager and shall be submitted with the Application for Final Payment.

Safety and Protection:

- 6.20. CONTRACTOR shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. CONTRACTOR shall assume all risk of loss for stored equipment or materials, irrespective of whether CONTRACTOR has transferred the title of the stored equipment or materials to OWNER. CONTRACTOR shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:
- 6.20.1. all employees on the Work and other persons and organizations who may be affected thereby;
- 6.20.2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the site; and
- 6.20.3. other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities and Underground Facilities not designated for removal, relocation or replacement in the course of construction.

CONTRACTOR shall comply with all applicable Laws and Regulations of any public body having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss; and shall erect and maintain all necessary safeguards for such safety and protection. CONTRACTOR shall notify OWNERs of adjacent property and of Underground Facilities and utility OWNERs when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation and replacement of their property. All damage, injury or loss to any property referred to in paragraph 6.20.2 or 6.20.3 caused, directly or indirectly, in whole or in part, by CONTRACTOR, any Subcontractor, Supplier or any other person or organization directly or indirectly employed by any of them to perform or furnish any of the Work or anyone for whose acts any of them may be liable, shall be remedied by CONTRACTOR (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of OWNER or PROFESSIONAL or anyone employed by either of them or anyone for whose acts either of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of CON-TRACTOR). CONTRACTOR's duties and responsibilities for the safety and protection of the Work shall continue until such time as all the Work is completed and PROFESSIONAL has issued a notice to OWNER and CONTRACTOR in accordance, with paragraph 14.13 that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

6.21. CONTRACTOR shall designate a responsible member of its organization whose duty shall be the prevention of accidents at the site. This person shall be CONTRACTOR's superintendent unless otherwise designated in writing by CONTRACTOR to the Project Manager.

Emergencies:

- 6.22. In emergencies affecting the safety or protection of persons or the Work or property at the site or adjacent thereto, CONTRACTOR, without special instruction or authorization from PROFESSIONAL or OWNER, is obligated to act to prevent threatened damage, injury or loss. CONTRACTOR shall give PROFESSIONAL prompt written notice if CONTRACTOR believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby. If PROFESSIONAL determines that a change in the Contract Documents is required because of the action taken in response to an emergency, a Work Change Directive or Change Order be issued to document the consequences of the changes or variations.
- 6.22.1. CONTRACTOR shall immediately notify PROFESSIONAL of all events involving injuries to any person on the Site, whether or not such person was engaged in the construction of the Project, and shall file a written report on such person(s) and any other event resulting in property damage of any amount within five (5) days of the occurrence.
- 6.22.2. If PROFESSIONAL determines that a change in the Contract Documents is required because of the action taken by CONTRACTOR in response to such an emergency, a Change Order will be issued to document the consequences of such action.

Shop Drawings and Samples:

- 6.23. After checking and verifying all field measurements, CONTRACTOR shall promptly submit to PROFESSIONAL for approval, in accordance with the accepted schedule of submittals, all submittals and samples required by the Contract Documents. All submittals and samples shall have been checked by and stamped with the approval of CONTRACTOR and identified as PROFESSIONAL may require. The data shown on or with the submittals will be complete with respect to dimensions, design criteria, materials and any other information necessary to enable PROFESSIONAL to review the submittal as required. At the time of each submission, CONTRACTOR shall give notice to PROFESSIONAL of all deviations that the submittal or sample may have from the requirements of the Contract Documents.
- 6.24. PROFESSIONAL shall review and approve submittals and samples. Professional's review and approval shall be only for conformance with the design concept of the Project and compliance with the information given in the Contract Documents. The approval of a separate item as such will not indicate approval of the assembly in which the item functions. CONTRACTOR will make any corrections required by PROFESSIONAL and resubmit the required number of corrected copies until approved. CONTRACTOR's stamp of approval on any submittal or sample shall constitute its representation to PROFESSIONAL and OWNER that CONTRACTOR has determined and verified all quantities, dimensions, field construction criteria, materials, catalog numbers, and similar data, and that each submittal or sample has been reviewed or coordinated with the requirements of the Work and the Contract Documents.
- 6.24.1. No Work requiring a submittal or sample submission shall commence until the submission has been approved by PROFESSIONAL. A copy of each approved submittal and each approved sample shall be kept in good order by CONTRACTOR at the site and shall be available to PROFESSIONAL and OWNER. Any delays associated with the submittal process will be considered for time extensions only, and no damages or additional compensation for delay will be allowed.
- 6.24.2. Before submission of each Shop Drawing or sample, CONTRACTOR shall have determined and verified all quantities, dimensions, specified performance criteria, installation requirements, materials, catalog numbers and similar data with respect thereto and reviewed or coordinated each Shop Drawing or sample with other Shop Drawings and samples and with the requirements of the Work and the Contract Documents.

- 6.24.3. At the time of each submission, CONTRACTOR shall give PROFESSIONAL specific written notice of each variation that the Shop Drawings or samples may have from the requirements of the Contract Documents, and, in addition, shall cause a specific notation to be made on each Shop Drawing submitted to PROFESSIONAL for review and approval of each such variation.
- 6.26. PROFESSIONAL will review and approve with reasonable promptness Shop Drawings and samples, but PROFESSIONAL's review and approval will be only for conformance with the design concept of the Project and for compliance with the information given in the Contract Documents and shall not extend to means, methods, techniques, sequences or procedures of construction (except where a specific means, method, technique, sequence or procedure of construction is indicated in or required by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.
- 6.27. PROFESSIONAL's approval of submittals or samples shall not relieve CONTRACTOR from responsibility for any variation from the requirements of the Contract Documents unless CONTRACTOR has, in writing, called PROFESSIONAL's attention to each such variation at the time of submission and the OWNER has given written approval to the specific deviation; any such approval by PROFESSIONAL shall not relieve CONTRACTOR from responsibility for errors or omissions in the submittals.
- 6.28. Where a shop drawing or sample is required by the Contract Documents or the schedule of shop drawings and sample submissions accepted by PROFESSIONAL as required, any related work performed prior to PROFESSIONAL's review and approval of the pertinent submittal will be at the sole expense and responsibility of CONTRACTOR.

Continuing the Work:

6.30. CONTRACTOR shall carry on the Work and adhere to the progress schedule during all disputes or disagreements with OWNER. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as permitted by paragraph 15.6 or as CONTRACTOR and OWNER may otherwise agree in writing.

Cleaning Up:

6.31. CONTRACTOR shall maintain the site free from accumulations of waste materials, rubbish, and other debris or contaminants resulting from the work on a daily basis or as required. At the completion of the work, CONTRACTOR shall remove all waste materials, rubbish, and debris from the site as well as all tools, construction equipment and machinery, and surplus materials and will leave the Site clean and ready for occupancy by OWNER. All disposal shall be in accordance with applicable Laws and Regulations. In addition to any other rights available to OWNER under the Contract Documents, CONTRACTOR's failure to maintain the site may result in withholding of any amounts due CONTRACTOR. CONTRACTOR will restore to original condition those portions of the site not designated for alteration by the Contract Documents.

Indemnification:

6.32. To the fullest extent permitted by Laws and Regulations, CONTRACTOR shall indemnify and hold harmless OWNER, PROGRAM MANAGER and PROFESSIONAL and their consultants, agents and employees from and against all claims, damages, losses and expenses, direct, indirect or consequential (including but not limited to fees and charges of PROGRAM MANAGER, PROFESSIONALs, architects, attorneys and other PROFESSIONALs and court and arbitration costs) arising out of or resulting from the performance of the Work, provided that any such claim, damage, loss or expense (a) is attributable to bodily

injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including the loss of use resulting therefrom and (b) is caused in whole or in part by any negligent act or omission of CONTRACTOR, any Subcontractor, any person or organization directly or indirectly employed by any of them to perform or furnish any of the Work or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder or arises by or is imposed by Law and Regulations regardless of the negligence of any such party.

- 6.33. In any and all claims against OWNER, PROGRAM MANAGER or PROFESSIONAL or any of their consultants, agents or employees by any employee of CONTRACTOR, any Subcontractor, any person or organization directly or indirectly employed by any of them to perform or furnish any of the Work or anyone for whose acts any of them may be liable, the indemnification obligation under paragraph 6.32 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for CONTRACTOR or any such Subcontractor or other person or organization under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.
- 6.34. The obligations of CONTRACTOR under paragraph 6.32 shall not extend to the liability of PROFESSIONAL, PROFESSIONAL's consultants, agents or employees arising out of the preparation or approval of maps, drawings, opinions, reports, surveys, Change Orders, designs or specifications.

ARTICLE 7---OTHER WORK

Related Work at Site:

- 7.1. OWNER may perform other work related to the Project at the site by OWNER's own forces, have other work performed by aided OWNERs or let other direct contracts therefor which shall contain General Conditions similar to these. If the fact that such other work is to be performed was not noted in the Contract Documents, written notice thereof will be given to CONTRACTOR prior to starting any such other work, and, if CONTRACTOR believes that such performance will involve additional expense to CONTRACTOR or requires additional time and the parties are unable to agree as to the extent thereof, CONTRACTOR may make a claim therefor as provided in Articles 11 and 12.
- 7.1.2. CONTRACTOR shall afford each utility OWNER and other contractor who is a party to such a direct contract for OWNER, if OWNER is performing the additional work with OWNER's employees, proper and safe access to the site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such work, and shall properly connect and coordinate the Work with theirs. CONTRACTOR shall do all cutting, fitting and patching of the Work that may be required to make its several parts come together properly and integrate with such other work. CONTRACTOR shall not endanger any work of others by cutting, excavating or otherwise altering their work and will only cut or alter their work with the written consent of PROFESSIONAL and the others whose work will be affected. The duties and responsibilities of CONTRACTOR under this paragraph are for the benefit of such utility OWNERs and other contractors to the extent that there are comparable provisions for the benefit of CONTRACTOR in said direct contracts between OWNER and such utility OWNERs and other contractors.
- 7.2. If any part of CONTRACTOR's Work depends for proper execution or results upon the work of any such other contractor or utility OWNER (or OWNER), CONTRACTOR shall inspect and promptly report to PROFESSIONAL in writing any delays, defects or deficiencies in such work that render it unavailable or unsuitable for such proper execution and results. CONTRACTOR's failure so to report will constitute an acceptance of the other work as fit and proper for integration with CONTRACTOR's Work except for latent or nonapparent defects and deficiencies in the other work.

Coordination:

7.4. If OWNER contracts with others for the performance of other work on the Project at the site, the person or organization who will have authority and responsibility for coordination of the activities among the various prime contractors will be identified in the Supplementary Conditions, and the specific matters to be covered by such authority and responsibility will be itemized, and the extent of such authority and responsibilities will be provided in the Supplementary Conditions. Unless otherwise provided in the Supplementary Conditions, neither OWNER nor PROFESSIONAL shall have any authority or responsibility in respect of such coordination.

ARTICLE 8---OWNER'S RESPONSIBILITIES

- 8.1. Except as otherwise provided in these General Conditions, OWNER shall issue all communications to CONTRACTOR through the PROGRAM MANAGER or PROFESSIONAL.
- 8.2. In case of termination of the employment of PROFESSIONAL, OWNER shall appoint a PROFESSIONAL against whom CONTRACTOR makes no reasonable objection, whose status under the Contract Documents shall be that of the former PROFESSIONAL. Any dispute in connection with such appointment shall be subject to arbitration.
- 8.3. OWNER shall furnish the data required of OWNER under the Contract Documents promptly and shall make payments to CONTRACTOR promptly after they are due as provided in paragraphs 14.4 and 14.13.
- 8.4. OWNER's duties in respect of providing lands and easements and providing Engineering surveys to establish reference points are set forth in paragraphs 4.1 and 4.4. Paragraph 4.2 refers to OWNER's identifying and making available to CONTRACTOR copies of reports of explorations and tests of subsurface conditions at the site and in existing structures which have been utilized by PROFESSIONAL in preparing the Drawings and Specifications.
- 8.5. OWNER's responsibilities in respect of purchasing and maintaining liability and property insurance are set forth in paragraphs 5.5 through 5.8.
 - 8.6. OWNER is obligated to execute Change Orders as indicated in paragraph 10.3.
- 8.7. OWNER's responsibility in respect of certain inspections, tests and approvals is set forth in paragraph 13.4.
- 8.8. In connection with OWNER's right to stop Work or suspend Work, see paragraphs 13.10 and 15.1. Paragraph 15.2 deals with OWNER's right to terminate services of CONTRACTOR under certain circumstances.

ARTICLE 9---PROFESSIONAL'S STATUS DURING CONSTRUCTION

OWNER's Representative:

9.1. PROFESSIONAL will be OWNER's representative during the construction period. The duties and responsibilities and the limitations of authority of PROFESSIONAL as OWNER's representative during construction are set forth in the Contract Documents and shall not be extended without written consent of OWNER and PROFESSIONAL.

Visits to Site:

9.2. PROFESSIONAL will make visits to the site at intervals appropriate to the various stages of construction to observe the premises and quality of the executed Work and to determine, in general, if the Work is proceeding in accordance with the Contract Documents. PROFESSIONAL will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. PROFESSIONAL's efforts will be directed toward providing for OWNER a greater degree of confidence that the completed Work will conform to the Contract Documents. On the basis of such visits and on-site observations as an experienced and qualified design PROFESSIONAL, PROFESSIONAL will keep OWNER informed of the progress of the Work and will endeavor to guard OWNER against defects and deficiencies in the Work.

Project Representation:

9.3. If OWNER and PROFESSIONAL agree, PROFESSIONAL will furnish a Resident Project Representative to assist PROFESSIONAL in observing the performance of the Work. The duties, responsibilities and limitations of authority of any such Resident Project Representative and assistants will be as provided in the Supplementary Conditions. If OWNER designates another agent to represent OWNER at the site who is not PROFESSIONAL's agent or employee, the duties, responsibilities and limitations of authority of such other person will be as provided in the Supplementary Conditions.

Clarifications and Interpretations:

9.4. PROFESSIONAL shall issue such written clarifications or interpretations of the Contract Documents (in the form of Drawings or otherwise) as may be determined necessary, or as reasonably requested by CONTRACTOR, which shall be consistent with or reasonably inferable from the overall intent of the Contract Documents. If CONTRACTOR believes that a written clarification and interpretation entitles it to an increase in the Contract Price and/or Contract Time, CONTRACTOR may make a claim as provided for in Articles 11 or 12.

Authorized Variations in Work:

9.5. PROFESSIONAL may authorize minor variations in the Work from the requirements of the Contract Documents which do not involve an adjustment in the Contract Price or the Contract Time and are consistent with the overall intent of the Contract Documents. These may be accomplished by a Field Order and will be binding on OWNER and also on CONTRACTOR who shall perform the Work involved promptly. If CONTRACTOR believes that a Field Order justifies an increase in the Contract Price or an extension of the Contract Time and the parties are unable to agree as to the amount or extent thereof, CONTRACTOR may make a claim therefor as provided in Article 11 or 12.

Rejecting Defective Work:

9.6. PROFESSIONAL will have authority to disapprove or reject Work which PROFESSIONAL believes to be defective and will also have authority to require special inspection or testing of the Work as provided in paragraph 13.9, whether or not the Work is fabricated, installed or completed.

Shop Drawings, Change Orders and Payments:

- 9.7. In connection with PROFESSIONAL's responsibility for Shop Drawings and samples, see paragraphs 6.29 inclusive.
- 9.8. In connection with PROFESSIONAL's responsibilities as to Change Orders, see Articles 10, 11 and 12.
- 9.9. In connection with PROFESSIONAL's responsibilities in respect of Applications for Payment, etc., see Article 14.

Determinations for Unit Prices:

9.10. PROFESSIONAL will determine the actual quantities and classifications of Unit Price Work performed by CONTRACTOR. PROFESSIONAL will review with CONTRACTOR PROFESSIONAL's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). PROFESSIONAL's written decisions thereon will be final and binding upon OWNER and CONTRACTOR, unless, within ten days after the date of any such decision, either OWNER or CONTRACTOR delivers to the other party to the Agreement and to PROFESSIONAL written notice of intention to appeal from such a decision.

Decisions on Disputes:

- 9.11. PROFESSIONAL will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. Claims, disputes and other matters relating to the acceptability of the Work or the interpretation of the requirements of the Contract Documents pertaining to the performance and furnishing of the Work and claims under Articles 11 and 12 in respect of changes to the Contract Price or Contract Time will be referred initially to PROFESSIONAL in writing with a request for a formal decision in accordance with this paragraph, which PROFESSIONAL will render in writing within a reasonable time. Written notice of each such claim, dispute and other matter will be delivered by the claimant to PROFESSIONAL and the other party to the Agreement promptly (but in no event later than thirty days after the occurrence of the event giving rise thereto) and written supporting data will be submitted to PROFESSIONAL and the other party within sixty days after such occurrence unless PROFESSIONAL allows an additional period of time to ascertain more accurate data in support of the claim.
- 9.12. When functioning as interpreter and judge under paragraphs 9.10 and 9.11, PROFESSIONAL will not show partiality to OWNER or CONTRACTOR and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity. The rendering of a decision by PROFESSIONAL pursuant to paragraphs 9.10 and 9.11 with respect to any such claim, dispute or other matter (except any which have been waived by the making or acceptance of final payment as provided in paragraph 14.16) will be a condition

precedent to any exercise by OWNER or CONTRACTOR of such rights or remedies as either may otherwise have under the Contract Documents or by Laws or Regulations in respect of any such claim, dispute or other matter.

Limitations on PROFESSIONAL's Responsibilities:

- 9.13. Neither PROFESSIONAL's authority to act under this Article or elsewhere in the Contract Documents nor any decision made in good faith to exercise such authority shall give rise to any duty or responsibility of PROFESSIONAL to CONTRACTOR, any Subcontractor, any of their agents or employees.
- 9.14. PROFESSIONAL shall not be responsible for the construction means, methods, techniques, sequences, or procedures or the safety precautions and programs used. PROFESSIONAL shall not be responsible for CONTRACTOR's failure to perform the Work in accordance with the Contract Documents.
- 9.15. PROFESSIONAL shall not be responsible for the acts or omissions of CONTRACTOR, any Subcontractors, any agents or employees, or any other persons performing any of the Work.

ARTICLE 10--CHANGES IN THE WORK

- 10.1. Without invalidating the Contract, OWNER may at any time or from time to time order additions, deletions, or revisions in the Work. The OWNER shall provide CONTRACTOR with a proposal request, identifying the Work to be added, deleted or revised. Upon receipt, CONTRACTOR shall promptly submit a written proposal for the changed work prepared in accordance with Articles 11 and 12. If the proposal request calls only for the deletion of Work, the OWNER may order the partial suspension of any Work related to the proposed deletion, in which case CONTRACTOR must cease performance as directed; CONTRACTOR shall not be entitled to claim lost profits on deleted work. All changed Work shall be executed under the applicable conditions of the Contract Documents.
- 10.2. Additional Work performed by CONTRACTOR without authorization of a Change Order will not entitle CONTRACTOR to an increase in the Contract Price or an extension of the Contract Time, except in the case of an emergency as provided in Article 6. The effect of this paragraph shall remain paramount and shall prevail irrespective of any conflicting provisions contained in these Contract Documents.
- 10.3. Upon agreement as to changes in the Work to be performed, Work performed in an emergency as provided in Article 6, and any other claim of CONTRACTOR for a change in the Contract Time or the Contract Price, PROFESSIONAL will prepare a written Change Order to be signed by PROFESSIONAL and CONTRACTOR and submitted to OWNER for approval.
- 10.4. In the absence of an agreement as provided in 10.3, OWNER may, at its sole discretion, issue a Work Change Directive to CONTRACTOR. Pricing of the Work Change Directive will be in accordance with Section 11.3. The Work Change Directive will specify a price, and if applicable a time extension, determined to be reasonable by OWNER. If CONTRACTOR fails to sign such Work Change Directive, CONTRACTOR may submit a claim in accordance with Articles 11 and 12, but CONTRACTOR shall nevertheless be obligated to fully perform the work as directed by the Work Change Directive.
- 10.5. CONTRACTOR shall proceed diligently with performance of the Work as directed by OWNER, regardless of pending claim actions, unless otherwise agreed to in writing.
- 10.6. If notice of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Time) is required by the provisions of any Bond to be given to a surety, the giving of any such notice will be CONTRACTOR's responsibility, and the amount of each applicable Bond will be adjusted accordingly.

ARTICLE 11-CHANGE OF CONTRACT PRICE

- 11.1. The Contract Price constitutes the total compensation (subject to written authorized adjustments) payable to CONTRACTOR for performing the Work. All duties, responsibilities and obligations assigned to or undertaken by CONTRACTOR shall be at CONTRACTOR's expense without change in the Contract Price.
- 11.2. The Contract Price may only be changed by a Change Order or by a Written Amendment. Any claim for an increase or decrease in the Contract Price shall be based on written notice delivered by the party making the claim to the other party and to PROFESSIONAL promptly (but in no event later than thirty days) after the occurrence of the event giving rise to the claim and stating the general nature of the claim. Notice of the amount of the claim with supporting data shall be delivered within sixty days after such occurrence (unless PROFESSIONAL allows an additional period of time to ascertain more accurate data in support of the claim) and shall be accompanied by claimant's written statement that the amount claimed covers all known amounts (direct, indirect and consequential) to which the claimant is entitled as a result of the occurrence of said event. All claims for adjustment in the Contract Price shall be determined by PROFESSIONAL in accordance with paragraph 9.11 if OWNER and CONTRACTOR cannot otherwise agree on the amount involved. No claim for an adjustment in the Contract Price will be valid if not submitted in accordance with this paragraph 11.2.
- 11.3. The value of any Work covered by a Change Order or of any claim for an adjustment in the Contract Price will be determined by the following procedures:
- 11.3.1. Designated Unit Price (Field Measure). CONTRACTOR and OWNER recognize and acknowledge that the quantities shown for those items designated in the Bid Proposal as unit price items are approximations prepared by OWNER for bid purposes and that the actual compensation payable to CONTRACTOR for the utilization of such items is based upon the application of unit prices to the actual quantities of items involved as measured in the field and required to complete the Work as originally defined in the Contract Documents.
- 11.3.2. When it is determined by OWNER that an addition, deletion, or revision to the Work, as defined in these Contract Documents, is required and affects the quantities required for items designed in the Bid Proposal as unit price items, CONTRACTOR and OWNER agree that the compensation payable to CONTRACTOR for such unit price items shall be adjusted accordingly by a Change Order based upon the application of the appropriate unit prices shown in the Bid Proposal to the quantity of the unit price item required to complete the Work as defined in the Contract Documents.
- 11.3.3. Other Unit Prices. For items not designated in the bid proposal as unit prices, OWNER and CONTRACTOR may establish unit prices as agreed on by Change Order.
- 11.3.4. Lump Sum. When it is determined by OWNER that an addition, deletion or revision to the Work is required which results in a change in Work designated in the Bid Proposal as a lump sum item, the amount of increase or decrease in the lump sum price shall be established by mutual agreement of the parties.
- 11.3.5. If the pricing methods specified in 11.3 are inapplicable, or if the parties are unable to agree on a price for the changed work, a reasonable price for the same shall be established by OWNER in accordance with 11.4 and 11.5. OWNER shall then process a unilateral Change Order, specifying the said

reasonable price, in accordance with 11.4 through 11.6. CONTRACTOR shall perform the Work as directed in the Change Order.

11.3.6. Failure on the part of CONTRACTOR to construct any item to plan or authorized dimensions within the specification tolerances shall result in: reconstruction to acceptable tolerances at no additional costs to OWNER; acceptance at no pay; or acceptance at reduced final pay quantity or reduced unit price, all at the discretion of OWNER. Determinations of aggregate monetary change for items identified as lump sum quantities shall be made by OWNER based upon an analysis of the scope of CONTRACTOR's failure to construct to plan or authorized dimensions.

Cost of the Work:

- 11.4. The term Cost of the Work means the sum of all costs necessarily incurred and paid by CONTRACTOR in the proper performance of the Work. Except as otherwise may be agreed to in writing by OWNER, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall include only the following items and shall not include any of the costs itemized in paragraph 11.5:
- 11.4.1. Payroll costs for employees in the direct employ of CONTRACTOR in the performance of the Work under schedules of job classifications agreed upon by OWNER and CONTRACTOR. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits which shall include social security contributions, unemployment, excise and payroll taxes, workers' or workmen's compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. Such employees shall include superintendents and foremen at the site. The expenses of performing Work after regular working hours, on Saturday, Sunday or legal holidays, shall be included in the above to the extent authorized by OWNER.
- 11.4.2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to CONTRACTOR unless OWNER deposits funds with CONTRACTOR with which to make payments, in which case the cash discounts shall accrue to OWNER. Trade discounts, rebates and refunds and all returns from sale of surplus materials and equipment shall accrue to OWNER, and CONTRACTOR shall make provisions so that they may be obtained.
- 11.4.3. Payments made by CONTRACTOR to the Subcontractors for Work performed by Subcontractors. If required by OWNER, CONTRACTOR shall obtain competitive bids from Subcontractors acceptable to CONTRACTOR and shall deliver such bids to OWNER who then determines, with the advice of PROFESSIONAL, which bids will be accepted. If a subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work Plus a Fee, the Subcontractor's Cost of the Work shall be determined in the same manner as CONTRACTOR's Cost of the Work. All subcontracts shall be subject to the other provisions of the Contract Documents insofar as applicable.
- 11.4.4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys and accountants) employed for services specifically related to the Work.
 - 11.4.5. Supplemental costs including the following:
- 11.4.5.1. The proportion of necessary transportation, travel and subsistence expenses of CONTRACTOR's employees incurred in discharge of duties connected with the Work.

- 11.4.5.2. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office and temporary facilities at the site and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost less market value of such items used but not consumed which remain the property of CONTRACTOR.
- 11.4.5.3. Rentals of all construction equipment and machinery and the parts thereof whether rented from CONTRACTOR or others in accordance with rental agreements approved by OWNER with the advice of PROFESSIONAL, and the costs of transportation, loading, unloading, installation, dismantling and removal thereof-all in accordance with terms of said rental agreements. The rental of any such equipment, machinery or parts shall cease when the use thereof is no longer necessary for the Work.
- 11.4.5.4. Sales, consumer, use or similar taxes related to the Work, and for which CONTRACTOR is liable, imposed by Laws and Regulations.
- 11.4.5.5. Deposits lost for causes other than negligence of CONTRACTOR, any Subcontractor or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
- 11.4.5.6. Losses and damages (and related expenses), not compensated by insurance or otherwise, to the Work or otherwise sustained by CONTRACTOR in connection with the performance and furnishing of the Work (except losses and damages within the deductible amounts of property insurance established by OWNER in accordance with paragraph 5.6) provided they have resulted from causes other than the negligence of CONTRACTOR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of OWNER. No such losses, damages and expenses shall be included in the Cost of the Work for the purpose of determining CONTRACTOR's Fee. If, however, any such loss or damage requires reconstruction and CONTRACTOR is placed in charge thereof, CONTRACTOR shall be paid for services a fee proportionate to that stated in paragraph 11.6.2.
 - 11.4.5.7. The cost of utilities, fuel and sanitary facilities at the site.
- 11.4.5.8. Minor expenses such as telegrams, long distance telephone calls, telephone service at the site, expressage and similar petty cash items in connection with the Work.
- 11.4.5.9. Cost of premiums for additional Bonds and insurance required because of changes in the Work and premiums of property insurance coverage within the limits of the deductible amounts established by OWNER in accordance with paragraph 5.6.
 - 11.5. The term Cost of the Work shall not include any of the following:
- 11.5.1. Payroll costs and other compensation of CONTRACTOR's officers, executives, principals (of partnership and sole proprietorships), general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks and other personnel employed by CONTRACTOR whether at the site or in CONTRACTOR's principal or a branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in paragraph 11.4.1 or specifically covered by paragraph 11.4.4-all of which are to be considered administrative costs covered by CONTRACTOR's Fee.

- 11.5.2. Expenses of CONTRACTOR's principal area branch offices other than CONTRACTOR's office at the site.
- 11.5.3. Any part of CONTRACTOR's capital expenses, including interest on CONTRACTOR'S capital used for the Change Order Work and charges against CONTRACTOR for delinquent payments.
- 11.5.4. Cost of premiums for all Bonds and for all insurance whether or not CONTRACTOR is required by the Contract Documents to purchase and maintain the same (except for the cost of premiums covered by subparagraph 11.4.5.9 above).
- 11.5.5. Costs due to the negligence of CONTRACTOR, any Subcontractor, or anyone directly or indirectly, employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied and making good any damage to property.
- 11.5.6. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in paragraph 11.4.

CONTRACTOR's Fee:

- 11.6. CONTRACTOR's Fee allowed to CONTRACTOR for overhead and profit shall be determined as follows:
 - 11.6.1. a mutually acceptable fixed fee, or if none can be agreed upon;
 - 11.6.2. a fee based on the following percentages of the various portions of the Cost of the Work:
- 11.6.2.1. for costs incurred under paragraphs 11.4.1 and 11.4.2, CONTRACTOR's Fee shall be fifteen percent,
- 11.6.2.2. for costs incurred under paragraph 11.4.3, CONTRACTOR's Fee shall five percent; and if a subcontract is on the basis of Cost of the Work Plus a Fee, the maximum allowable to CONTRACTOR on account of overhead and profit of all Subcontractors shall be fifteen percent,
- 11.6.2.3. no fee shall be payable on the basis of costs itemized under paragraphs 11.4.4, 11.4.5 and 11.3,
- 11.6.2.4. the amount of credit to be allowed by CONTRACTOR to OWNER for any such change which results in a net decrease in cost will be the amount of the actual net decrease plus a deduction in CONTRACTOR's Fee by an amount equal to ten percent of the net decrease, and
- 11.6.2.5. when both additions and credits are involved in any one change, the adjustment in CONTRACTOR's Fee shall be computed on the basis of the net change in accordance with paragraphs 11.6.2.1 through 11.6.2.4, inclusive.
- 11.7. For all changes, CONTRACTOR shall submit an itemized cost breakdown, together with supporting data in such detail and form as prescribed by the Project Manager. When a credit is due, the

amount of credit to be allowed by CONTRACTOR to OWNER for any such change which results in a net decrease in cost will be the amount of the actual net decrease in direct cost as determined by the Project Manager, plus the applicable reduction in overhead and profit. When both additions and credits are involved in any change, the combined overhead and profit shall be calculated on the basis of the net change, whether an increase or decrease. In any event, the minimum detail shall be an itemization of all man-hours required by discipline/trade with the unit cost per man-hour and total labor price, labor burden, equipment hours and rate for each piece of equipment, material by units of measure and price per unit, other costs specifically itemized, plus the overhead and profit markup.

Cash Allowances:

- 11.8. It is understood that CONTRACTOR has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be done by such Subcontractors or Suppliers and for such sums within the limit of the allowances as may be acceptable to PROFESSIONAL CONTRACTOR agrees that:
- 11.8.1. The allowances include the cost to CONTRACTOR (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the site and all applicable taxes; and
- 11.8.2. CONTRACTOR's costs for unloading and handling on the site, labor, installation costs, overhead, profit and other expenses contemplated for the allowances have been included in the Contract Price and not in the allowances. No demand for additional payment on account of any thereof will be valid.

Prior to final payment, an appropriate Change Order will be issued as recommended by PROFESSIONAL to reflect actual amounts due CONTRACTOR on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted.

Unit Price Work:

- 11.9.1. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the established unit prices for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by CONTRACTOR will be made by PROFESSIONAL in accordance with Paragraph 9.10.
- 11.9.2. Each unit price will be deemed to include an amount considered by CONTRACTOR to be adequate to cover CONTRACTOR's overhead and profit for each separately identified item.
- 11.9.3. Where the quantity of any item of Unit Price Work performed by CONTRACTOR differs materially and significantly from the estimated quantity of such item indicated in the Agreement and there is no corresponding adjustment with respect to any other item of Work and if CONTRACTOR believes that CONTRACTOR has incurred additional expense as a result thereof, CONTRACTOR may make a claim for an increase in the Contract Price in accordance with Article 11 if the parties are unable to agree as to the amount of any such increase.

ARTICLE 12--CHANGE OF CONTRACT TIME

- 12.1. The Contract Time may only be changed by a Change Order. Any request for an extension in the Contract Time shall be made in writing and delivered to PROFESSIONAL and OWNER within seven (7) calendar days of the occurrence first happening and resulting in the claim. Written supporting data will be submitted to PROFESSIONAL and OWNER within fifteen (15) calendar days after such occurrence unless the OWNER allows additional time. All claims submitted by CONTRACTOR for adjustments to the Contract Time must set forth in detail the reasons for and causes of the delay and clearly indicate why the subject delay was beyond CONTRACTOR's control or fault.
- 12.2. If CONTRACTOR is delayed at any time in the performance, progress, commencement, or completion of the Work by any act or neglect of OWNER or PROFESSIONAL, or by an employee of either, or by any separate CONTRACTOR employed by OWNER, or by changes ordered in the Work, or by labor disputes, fire, unavoidable casualties, utility conflicts which could not have been identified or foreseen by CONTRACTOR using reasonable diligence, or any causes beyond CONTRACTOR's control or fault, then the Contract Time shall be extended by Change Order for such reasonable time as OWNER may determine. CONTRACTOR shall be entitled to an extension of time for such causes only for the number of days of delay which OWNER may determine to be due solely to such causes and only to the extent such occurrences actually delay the completion of the Work and then only if CONTRACTOR shall have strictly complied with all the requirements of the Contract Documents. Provided, however, notwithstanding anything in the Contract Documents to the contrary, no interruption, interference, inefficiency, suspension or delay in the performance, progress, commencement or completion of the Work for any cause whatsoever, including those for which OWNER or PROFESSIONAL may be responsible in whole or in part, shall relieve CONTRACTOR of its duty to perform or give rise to any right to damages or additional compensation from OWNER. CONTRACTOR's sole and exclusive remedy against OWNER for interruption, interference, inefficiency, suspension or delay of any aspect of the Work shall be the right to seek an extension to the Contract Time in accordance with the procedures set forth herein.

ARTICLE 13--WARRANTY AND GUARANTEE; TESTS AND INSPECTIONS: CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

Warranty and Guarantee:

13.1. CONTRACTOR warrants and guarantees to OWNER that all materials and equipment will be new unless otherwise specified and that all work will be of good quality, performed in a workmanlike manner, free from faults or defects, and in accordance with the requirements of the Contract Documents and any inspections, tests, or approvals referred to in this Article. All unsatisfactory Work, all faulty Work and all Work not conforming to the requirements of the Contract Documents or such inspections, tests, approvals, or all applicable building, construction and safety requirements shall be considered defective. Notice of all defects shall be given to CONTRACTOR by PROFESSIONAL. All defective work, whether or not in place, may be rejected, corrected, or accepted as provided in this Article.

Access to Work:

13.2. For the duration of the Work, PROFESSIONAL and its representatives, other designated representatives of OWNER, and authorized representatives of any regulatory agency shall at all times be given access to the Work. CONTRACTOR shall provide proper facilities for such access and observation of the Work and also for any inspection or testing by others.

Tests and Inspections:

- 13.3. If the Contract Documents, laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any Work to specifically be inspected, tested, or approved by someone other than CONTRACTOR, CONTRACTOR shall give PROFESSIONAL timely notice of readiness therefore.
- 13.4. The testing firm(s) (if assigned by OWNER to this Work) and all such inspections, tests, or approvals provided for by OWNER shall be identified in writing by PROFESSIONAL to CONTRACTOR. All other inspections, tests or approvals shall be at CONTRACTOR's expense including additional expenses for inspection and tests required as a result of delays by CONTRACTOR or hours worked in excess of 40 hours per week. For all required inspections, tests, and approvals on any Work prepared, performed, or assembled away from the site, CONTRACTOR will furnish PROFESSIONAL with the required Certificates of Inspection, testing, or approval. All such tests will be in accordance with the methods prescribed by the American Society for Testing and Materials or such other applicable organizations as may be required by law or the Contract Documents. Materials or Work in place that fail to pass acceptability tests shall be retested at the direction of PROFESSIONAL and at CONTRACTOR's expense.
- 13.5. All inspections, tests or approvals other than those required by Laws or Regulations of any public body having jurisdiction shall be performed by organizations acceptable to OWNER and CONTRACTOR (or by PROFESSIONAL if so specified).
- 13.6. If any Work (including the work of others) that is to be inspected, tested or approved is covered without written concurrence of PROFESSIONAL, it must, if requested by PROFESSIONAL, be uncovered for observation. Such uncovering shall be at CONTRACTOR's expense unless CONTRACTOR has given PROFESSIONAL timely notice of CONTRACTOR's intention to cover the same and PROFESSIONAL has not acted with reasonable promptness in response to such notice.

13.7. Neither observations by PROFESSIONAL or Project Manager nor inspections, tests, or approvals by persons other than CONTRACTOR shall relieve CONTRACTOR of its obligations to perform the Work in accordance with the requirements of the Contract Documents.

Uncovering Work:

- 13.8. If any Work required to be inspected, tested or approved is covered prior thereto without the prior written approval of PROFESSIONAL, or if any Work is covered contrary to the request of PROFESSIONAL, the Work shall, if requested by PROFESSIONAL, be uncovered for observation, inspection, testing or approval and replaced at CONTRACTOR's expense.
- 13.9. If PROFESSIONAL considers it necessary or advisable that covered Work be observed by PROFESSIONAL or inspected or tested by others, CONTRACTOR, at PROFESSIONAL's request, shall uncover, expose or otherwise make available for observation, inspection or testing as PROFESSIONAL may require, that portion of the Work in question, furnishing all necessary labor, material and equipment. If it is found that such Work is defective, CONTRACTOR shall bear all direct and consequential costs of such uncovering, exposure, observation, inspection and testing and of satisfactory reconstruction (including but not limited to fees and charges of PROFESSIONALs, architects, attorneys and other PROFESSIONALs), and OWNER shall be entitled to an appropriate decrease in the Contract Price and, if the parties are unable to agree as to the amount thereof, OWNER may make a claim therefor as provided in Article 11. If, however, such Work is not found to be defective, CONTRACTOR shall be allowed an increase in the Contract Price or an extension of the Contract Time, or both, directly attributable to such uncovering, exposure, observation, inspection, testing and reconstruction, and, if the parties are unable to agree as to the amount or extent thereof, CONTRACTOR may make a claim therefor as provided in Articles 11 and 12.

OWNER May Stop the Work:

13.10. When Work is defective or when CONTRACTOR fails to supply sufficient skilled workmen or suitable materials or equipment or make prompt payments to Subcontractors for labor, materials, or equipment or if CONTRACTOR violates any provisions of these Contract Documents, OWNER may order CONTRACTOR to stop the Work until the cause for such order has been eliminated. However, this right of OWNER to stop the Work shall not give rise to any duty on the part of OWNER to exercise this right for the benefit of CONTRACTOR or any other party. CONTRACTOR shall have no right to claim an increase in the Contract Price or Contract Time or other damages for a stop work order under this paragraph.

Correction or Removal of Defective Work:

13.11. When directed by PROFESSIONAL, CONTRACTOR shall promptly, without cost to OWNER and as specified by PROFESSIONAL, either correct the defective Work whether fabricated, installed, or completed, or remove it from the site and replace it with non-defective Work. If CONTRACTOR does not correct such defective Work or remove and replace such defective Work within a reasonable time, as specified in a written notice from PROFESSIONAL, OWNER may have the deficiency corrected. All direct and indirect costs of such correction shall be paid by CONTRACTOR or deducted from payment to CONTRACTOR. CONTRACTOR will also bear the expense of correcting or removing and replacing all Work of others destroyed or damaged by the correction, removal, or replacement of the defective Work.

One Year Correction Period:

13.12. If, after approval of final payment and prior to the expiration of one year after the date of substantial completion or such longer period of time as may be prescribed by law or by the terms of any applicable special guarantee required by the Contract Documents, any Work or materials are found to be defective, incomplete, or otherwise not in accordance with the Contract Documents, CONTRACTOR shall promptly, without cost to OWNER and in accordance with OWNER's written instructions, either correct such defective Work or if it has been rejected by OWNER, remove it from the Site and replace it with non-defective Work. If CONTRACTOR does not promptly comply with the terms of such instructions, OWNER may have the defective Work corrected, removed, or replaced. All direct, indirect and consequential costs of such removal and replacement (including but not limited to fees and charges of engineers, architects, attorneys and other professionals) will be paid by CONTRACTOR.

Acceptance of Defective Work:

13.13. If, instead of requiring correction or removal and replacement of defective Work, OWNER (and, prior to PROFESSIONAL's recommendation of final payment, PROFESSIONAL) prefers to accept it, OWNER may do so. CONTRACTOR shall bear all direct, indirect and consequential costs attributable to OWNER's evaluation of and determination to accept such defective Work (such costs to be approved by PROFESSIONAL as to reasonableness and to include but not be limited to fees and charges of engineers, architects, attorneys and other professionals). If any such acceptance occurs prior to PROFESSIONAL's recommendation of final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and OWNER shall be entitled to an appropriate decrease in the Contract Price, and, if the parties are unable to agree as to the amount thereof, OWNER may make a claim therefor as provided in Article 11. If the acceptance occurs after such recommendation, an appropriate amount will be paid by CONTRACTOR to OWNER.

OWNER May Correct Defective Work:

13.14. If CONTRACTOR fails within a reasonable time after written notice of PROFESSIONAL to proceed to correct defective Work or to remove and replace rejected Work as required by PROFESSIONAL in accordance with paragraph 13.11, or if CONTRACTOR fails to perform the Work in accordance with the Contract Documents, or if CONTRACTOR falls to comply with any other provision of the Contract Documents, OWNER may, after seven days' written notice to CONTRACTOR, correct and remedy any such deficiency. In exercising the rights and remedies under this paragraph, OWNER shall proceed expeditiously, to the extent necessary to complete corrective and remedial action. OWNER may exclude CONTRACTOR from all or part of the site, take possession of all or part of the Work, and suspend CONTRACTOR's services related thereto, take possession of CONTRACTOR's tools, appliances, construction equipment and machinery at the site and incorporate in the Work all materials and equipment stored at the site or for which OWNER has paid CONTRACTOR but which are stored elsewhere. CONTRACTOR shall allow OWNER, OWNER's representatives, agents and employees such access to the site as may be necessary to enable OWNER to exercise the rights and remedies under this paragraph. All direct, indirect and consequential costs of OWNER in exercising such rights and remedies will be charged against CONTRACTOR in an amount approved as to reasonableness by PROFESSIONAL, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and OWNER shall be entitled to an appropriate decrease in the Contract Price, and, if the parties are unable to agree as to the amount thereof, OWNER may make a claim therefor as provided in Article 11. Such direct, indirect and consequential costs will include, but not be limited to, fees and charges of engineers, architects, attorneys and other professionals, all court costs

and all costs of repair and replacement of work of others destroyed or damaged by correction, removal or replacement of CONTRACTOR's defective Work. CONTRACTOR shall not be allowed an extension of the Contract Time because of any delay in performance of the Work attributable to the exercise by OWNER of OWNER's rights and remedies hereunder.

Neglected Work by CONTRACTOR

13.15. If CONTRACTOR neglects to execute the Work in accordance with the Contract Documents, including any requirements of the progress schedule, PROFESSIONAL may direct CONTRACTOR to submit a recovery plan and take specific corrective actions including, but not limited to, employing additional workmen and/or equipment, and working extended hours and additional days, all at no cost to OWNER in order to put the Work back on schedule. If CONTRACTOR fails to correct the deficiency or take appropriate corrective action, OWNER may terminate the contract or CONTRACTOR's right to proceed with that portion of Work and have the Work done by others. The cost of completion under such procedure shall be charged against CONTRACTOR. A Change Order shall be issued incorporating the necessary revisions in the Contract Documents, including an appropriate reduction in the Contract Price. If the payments due CONTRACTOR are not sufficient to cover such amount, CONTRACTOR shall pay the difference to OWNER.

13.16. Should CONTRACTOR work overtime, weekends or holidays to regain the schedule, all costs to OWNER of associated inspection, construction management and resident engineers shall be identified to CONTRACTOR and the Contract Price reduced by a like amount via Change Order.

ARTICLE 14-PAYMENTS TO CONTRACTOR AND COMPLETION

Schedule of Values:

14.1. The schedule of values established as provided in 2.9 will serve as the basis for progress payments and will be incorporated into a form of application for Payment acceptable to Project Manager. Progress payments on account of Unit Price Work will be based on the number of units completed.

Application for Progress Payment:

14.2. At least twenty (20) calendar days before the date established for each progress payment (but not more often than once a month), CONTRACTOR shall submit to PROFESSIONAL for review an application for Payment filled out and signed by CONTRACTOR covering the work completed as of the date of the application and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice or other documentation warranting that OWNER has received the materials and equipment free and clear of all liens and evidence that the materials and equipment are covered by appropriate property insurance and other arrangements to protect OWNER's interest therein, all of which will be satisfactory to OWNER. Payment is subject to a ten percent (10%) retainage that will be held until the final payment or acceptance by OWNER. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

CONTRACTOR's Warranty of Title:

14.3. CONTRACTOR warrants and guarantees that title to all Work, materials and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to OWNER no later than the time of payment free and clear of all Liens.

Review of Applications for Progress Payment:

- 14.4. PROFESSIONAL will, within ten (10) calendar days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the application to OWNER, or return the application to CONTRACTOR indicating in writing PROFESSIONAL's reasons for refusing to recommend payment. In the latter case, CONTRACTOR may make the necessary corrections and resubmit the application. OWNER shall, within thirty-one calendar days of presentation to him of the application for payment with PROFESSIONAL's recommendation of the amount for payment, pay CONTRACTOR amount recommended.
- 14.5. PROFESSIONAL's recommendation of any payment requested in an Application for Payment will constitute a representation by PROFESSIONAL to OWNER, based on PROFESSIONAL's on-site observations of the Work in progress as an experienced and qualified design PROFESSIONAL and on PROFESSIONAL's review of the Application for Payment and the accompanying data and schedules, that the Work has progressed to the point indicated; that, to the best of PROFESSIONAL's knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents, to a final determination of quantities and classifications for Unit Price

Work under paragraph 9.10, and to any other qualifications stated in the recommendation; and that CONTRACTOR is entitled to payment of the amount recommended. However, by recommending any such payment, PROFESSIONAL will not thereby be deemed to have represented that exhaustive or continuous on-site inspections have been made to check the quality or the quantity of the Work beyond the responsibilities specifically assigned to PROFESSIONAL in the Contract Documents or that there may not be other matters or issues between the parties that might entitle CONTRACTOR to be paid additionally by OWNER or OWNER to withhold payment to CONTRACTOR.

- 14.6. PROFESSIONAL's recommendation of final payment will constitute an additional representation by PROFESSIONAL to OWNER that the conditions precedent to CONTRACTOR's being entitled to final payment as set forth in paragraph 14.13 have been fulfilled.
- 14.7. PROFESSIONAL may refuse to recommend the whole or any part of any payment if, in PROFESSIONAL's opinion, it would be incorrect to make such representations to OWNER. PROFESSIONAL may also refuse to recommend any such payment, or, because of subsequently discovered evidence or the results of subsequent inspections or tests, nullify any such payment previously recommended, to such extent as may be necessary in PROFESSIONAL's opinion to protect OWNER from loss because:
- 14.7.1. the Work is defective, or completed Work has been damaged requiring correction or replacement.
 - 14.7.2. the Contract Price has been reduced by Written Amendment or Change Order.
- 14.7.3. OWNER has been required to correct defective Work or complete Work in accordance with paragraph 13.14. or
- 14.7.4. of PROFESSIONAL's actual knowledge of the occurrence of any of the events enumerated in paragraphs 15.2.1 through 15.2.9 inclusive.

OWNER may refuse to make payment of the full amount recommended by PROFESSIONAL because claims have been made against OWNER on account of CONTRACTOR's performance or furnishing of the Work or Liens have been filed in connection with the Work or there are other items entitling OWNER to a off-set against the amount recommended, but OWNER must give CONTRACTOR immediate written notice (with a copy to PROFESSIONAL) stating the reasons for such action.

Substantial Completion:

14.8. When CONTRACTOR considers the entire Work ready for its intended use, CONTRACTOR shall notify OWNER and PROFESSIONAL in writing that the entire Work is substantially complete (except for items specifically listed by CONTRACTOR as incomplete) and request that PROFESSIONAL issue a certificate of Substantial Completion. Within a reasonable time thereafter, OWNER, CONTRACTOR and PROFESSIONAL shall make an inspection of the Work to determine the status of completion. If PROFESSIONAL does not consider the Work substantially complete, PROFESSIONAL will notify CONTRACTOR in writing giving the reasons therefor. If PROFESSIONAL considers the Work substantially complete, PROFESSIONAL will prepare and deliver to OWNER a tentative certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a tentative list of items to be completed or corrected before final payment. OWNER shall have seven days after receipt of the tentative certificate during which to make written objection to PROFESSIONAL as to any

provisions of the certificate or attached list. If, after considering such objections, PROFESSIONAL concludes that the Work is not substantially complete, PROFESSIONAL will, within fourteen days after submission of the tentative certificate to OWNER notify CONTRACTOR in writing stating the reasons therefor. If, after consideration of OWNER's, objections, PROFESSIONAL considers the Work substantially complete, PROFESSIONAL will within said fourteen days execute and deliver to OWNER and CONTRACTOR a definitive certificate of Substantial Completion (with a revised tentative list of items to be completed or corrected) reflecting such changes from the tentative certificate as PROFESSIONAL believes justified after consideration of any objections from OWNER. At the time of delivery of the tentative certificate of Substantial Completion, PROFESSIONAL will deliver to OWNER and CONTRACTOR a written recommendation as to division of responsibilities pending final payment between OWNER and CONTRACTOR with respect to security, operation, safety, maintenance, heat, utilities, insurance and warranties. Unless OWNER and CONTRACTOR agree otherwise in writing and so inform PROFESSIONAL prior to PROFESSIONAL's issuing the definitive certificate of Substantial Completion, PROFESSIONAL's aforesaid recommendation will be binding on OWNER and CONTRACTOR until final payment.

14.9. OWNER shall have the right to exclude CONTRACTOR from the Work after the date of Substantial Completion, but OWNER shall allow CONTRACTOR reasonable access to complete or correct items on the tentative list.

Partial Utilization:

- 14.10. Use by OWNER at OWNER's option of any substantially completed part of the Work which (i) has specifically been identified in the Contract Documents, or (ii) OWNER, PROFESSIONAL, and CONTRACTOR agree constitutes a separately functioning and usable part of the Work that can be used by OWNER for its intended purpose without significant interference with CONTRACTOR's performance of the remainder of the Work, may be accomplished prior to Substantial Completion of all the Work subject to the following:
- 14.10.1. OWNER at any time may request CONTRACTOR in writing to permit OWNER to use any such part of the Work which OWNER believes to be ready for its intended use and substantially complete. If CONTRACTOR agrees, CONTRACTOR will certify to OWNER and PROFESSIONAL that said part of the Work is substantially complete and request PROFESSIONAL to issue a certificate of Substantial Completion for that part of the Work. CONTRACTOR at any time may notify OWNER and PROFESSIONAL in writing that CONTRACTOR considers any such part of the Work ready for its intended use and substantially complete and request PROFESSIONAL to issue a certificate of Substantial Completion for that part of the Work. Within a reasonable time after either such request, OWNER, CONTRACTOR and PROFESSIONAL shall make an inspection of that part of the Work to determine its status of completion. If PROFESSIONAL does not consider that part of the Work to be substantially complete, PROFESSIONAL will notify OWNER and CONTRACTOR, in writing, giving the reasons therefor. If PROFESSIONAL considers that part of the Work to be substantially complete, the provisions of paragraphs 14.8 and 14.9 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.
- 14.10.2. OWNER may at any time request CONTRACTOR, in writing, to permit OWNER to take over operation of any such part of the Work although it is not substantially complete. A copy of such request will be sent to PROFESSIONAL and, within a reasonable time thereafter, OWNER, CONTRACTOR and PROFESSIONAL shall make an inspection of that part of the Work to determine its status of completion, and PROFESSIONAL will prepare a list of the items remaining to be completed or corrected thereon before final payment. If CONTRACTOR does not object in writing to OWNER and PROFESSIONAL that such part of the

Work is not ready for separate operation by OWNER, PROFESSIONAL will finalize the list of items to be completed or corrected and will deliver such list to OWNER and CONTRACTOR together with a written recommendation as to the division of responsibilities pending final payment between OWNER and CONTRACTOR with respect to security, operation, safety, maintenance, utilities, insurance, warranties and guarantees for that part of the Work which will become binding upon OWNER and CONTRACTOR at the time when OWNER takes over such operation (unless they shall have otherwise agreed in writing and so informed PROFESSIONAL). During such operation and prior to Substantial Completion of such part of the Work, OWNER shall allow CONTRACTOR reasonable access to complete or correct items on said list and to complete other related Work.

- 14.10.3. No occupancy or separate operation of part of the Work will be accomplished prior to compliance with the requirements of paragraph 5.15 in respect of property insurance.
- 14.10.4. OWNER, may at its discretion, reduce the amount of retainage subject to Beneficial Occupancy.

Final Inspection:

14.11. Upon written notice from CONTRACTOR that the entire Work or an agreed upon portion thereof is complete, PROFESSIONAL will make a final inspection with OWNER and CONTRACTOR and will notify CONTRACTOR in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. CONTRACTOR shall immediately take such measures as are necessary to remedy such deficiencies.

Final Application for Payment:

- After CONTRACTOR has completed all such corrections to the satisfaction of PROFESSIONAL and OWNER and delivered in accordance with the Contract Documents all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance required by 5.2, certificates of inspection, marked-up record documents and other documents. CONTRACTOR may make application for final payment following the procedure for progress payments. The final Application for Payment shall be accompanied (except as previously delivered) by: (i) all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required, (ii) consent of the surety. if any, to final payment, and (iii) complete and legally effective releases or waivers (satisfactory to OWNER) of all liens arising out of or filed in connection with the Work. In lieu of such releases or waivers of liens and as approved by OWNER, CONTRACTOR may furnish receipts or release in full and an affidavit of CONTRACTOR that (i) the releases and receipts include all labor, services, material and equipment for which a lien could be filed, and (ii) all payrolls, material and equipment bills and other indebtedness connected with the Work for which OWNER or OWNER's property might in any way be responsible have been paid or otherwise satisfied. If any Subcontractor or supplier fails to furnish such a release or receipt in full, CONTRACTOR may furnish a bond or other collateral satisfactory to OWNER to indemnify OWNER against any lien.
- 14.12.1. No application for final payment will be accepted by OWNER until approved as-built documents by CONTRACTOR are accepted and approved by PROFESSIONAL.

- 14.12.2. Notwithstanding any other provision of these contract documents to the contrary, OWNER and PROFESSIONAL are under no duty or obligation whatsoever to any vendor, materials provider, Subcontractor, laborer or other party to ensure that payments due and owing by CONTRACTOR to any of them are or will be made. Such parties shall rely only on CONTRACTOR's surety bonds for remedy of nonpayment by him. CONTRACTOR agrees to defend and resolve all claims made by Subcontractors, indemnifying OWNER and PROFESSIONAL for all claims arising from or resulting from Subcontractor or supplier or material men or laborer services in connection with this project.
- 14.12.3. General Indemnity: CONTRACTOR shall indemnify OWNER and PROFESSIONAL for any damages sustained, including lost profits, resulting from CONTRACTOR's failure or refusal to perform the work required by these contract documents.

Final Payment and Acceptance:

- 14.13. If, on the basis of PROFESSIONAL's observation of the Work during construction and final inspection and PROFESSIONAL's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, PROFESSIONAL is satisfied that the Work has been completed and CONTRACTOR's other obligations under the Contract Documents have been fulfilled, PROFESSIONAL will, within ten (10) working days after receipt of the final Application for Payment, indicate in writing PROFESSIONAL's recommendation of payment and present the Application to OWNER for payment. At the same time PROFESSIONAL will also give written notice to OWNER and CONTRACTOR that the Work is acceptable subject to the provisions of 14.6. Otherwise, PROFESSIONAL will return the application to CONTRACTOR, indicating in writing the reasons for refusing to recommend final payment, in which case CONTRACTOR shall make the necessary corrections and resubmit the Application. After the presentation to OWNER of the application and accompanying documentation, in appropriate form and substance and with PROFESSIONAL's recommendation and notice of acceptability, the amount recommended by PROFESSIONAL will become due and will be paid by OWNER to CONTRACTOR.
- 14.14. If, through no fault of CONTRACTOR, final completion of the Work is significantly delayed and if PROFESSIONAL so confirms, OWNER shall, upon receipt of CONTRACTOR's final Application for Payment and recommendation of PROFESSIONAL and without terminating the Agreement, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by OWNER for Work not fully completed or corrected is less than the retainage stipulated in the Contract and if bonds have been furnished as required in Article 5, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by CONTRACTOR to PROFESSIONAL with the application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

CONTRACTOR's Continuing Obligation:

14.15. CONTRACTOR's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. Neither recommendation of any progress or final payment by PROFESSIONAL, nor the issuance of a certificate of Substantial Completion, nor any payment by OWNER to CONTRACTOR under the Contract Documents, nor any use or occupancy of the Work or any part thereof by OWNER, nor any act of acceptance by OWNER nor any failure to do so, nor any review and approval of a Shop Drawing or sample submission, nor the issuance of a notice of acceptability by PROFESSIONAL pursuant to paragraph 14.13, nor any correction of defective Work by OWNER will constitute an

acceptance of Work not in accordance with the Contract Documents or a release of CONTRACTOR's obligation to perform the Work in accordance with the Contract Documents (except as provided in paragraph 14.16).

Waiver of Claims:

- 14.16. The making and acceptance of final payment will constitute:
- 14.16.1. A waiver of all claims by OWNER against CONTRACTOR, except claims arising from unsettled liens, from defective Work appearing after final inspection pursuant to 14.11, from failure to comply with the Contract Documents or the terms of any special guarantees specified therein, or from CONTRACTOR's continuing obligations under the Contract Documents; and
- 14.16.2. A waiver of all claims by CONTRACTOR against OWNER other than those previously made in writing and still unsettled.

ARTICLE 15--SUSPENSION OF WORK AND TERMINATION

OWNER May Suspend Work:

15.1. OWNER may, at any time and without cause, suspend the Work or any portion thereof for a period of not more than ninety days by notice in writing to CONTRACTOR and PROFESSIONAL which will fix the date on which Work will be resumed. CONTRACTOR shall resume the Work on the date so fixed. CONTRACTOR shall be allowed an adjustment in the Contract Price or an extension of the Contract Time, or both, directly attributable to any suspension if CONTRACTOR makes an approved claim therefor as provided in Articles 11 and 12.

Termination For Cause:

- 15.2. Upon the occurrence of any one or more of the following events:
- 15.2. 1. if CONTRACTOR commences a voluntary case under any chapter of the Bankruptcy Code (Title 11, United States Code), as now or hereafter in effect, or if CONTRACTOR takes any equivalent or similar action by filing a petition or otherwise under any other federal or state law in effect at such time relating to the bankruptcy or insolvency;
- 15.2.2. if a petition is filed against CONTRACTOR under any chapter of the Bankruptcy Code as now or hereafter in effect at the time of filing, or if a petition is filed seeking any such equivalent or similar relief against CONTRACTOR under any other federal or state law in effect at the time relating to bankruptcy or insolvency;
 - 15.2.3. if CONTRACTOR makes a general assignment for the benefit of creditors;
- 15.2.4. if a trustee, receiver, custodian or agent of CONTRACTOR is appointed under applicable law or under contract, whose appointment or authority to take charge of property of CONTRACTOR is for the purpose of enforcing a Lien against such property or for the purpose of general administration of such property for the benefit of CONTRACTOR's creditors;
 - 15.2.5. if CONTRACTOR admits in writing an inability to pay its debts generally, as they become due;
- 15.2.6. if CONTRACTOR fails to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the progress schedule established under paragraph 2.9 as revised from time to time);
 - 15.2.7. if CONTRACTOR disregards Laws or Regulations of any public body having jurisdiction;
 - 15.2.8. if CONTRACTOR disregards the authority of PROFESSIONAL; or
- 15.2.9. if CONTRACTOR otherwise violates in any substantial way any provisions of the Contract Documents,

OWNER may, after giving CONTRACTOR (and the surety, if there be one) seven days' written notice and to the extent permitted by Laws and Regulations, terminate the services of CONTRACTOR, exclude

CONTRACTOR from the site and take possession of the Work and of all CONTRACTOR's tools, appliances, construction equipment and machinery at the site and use the same to the full extent they could be used by CONTRACTOR (without liability to CONTRACTOR for trespass or conversion), incorporate in the Work all materials and equipment stored at the site or for which OWNER has paid CONTRACTOR but which are stored elsewhere, and finish the Work as OWNER may deem expedient. In such case CONTRACTOR shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Price exceeds the direct, indirect and consequential costs of completing the Work (including but not limited to fees and charges of PROFESSIONALs, architects, attorneys and other PROFESSIONALs and court and arbitration costs) such excess will be paid to CONTRACTOR. If such costs exceed such unpaid balance, CONTRACTOR shall pay the difference to OWNER. Such costs incurred by OWNER will be approved as to reasonableness by PROFESSIONAL and incorporated in a Change Order, but when exercising any rights or remedies under this paragraph, OWNER shall not be required to obtain the lowest price for the Work performed.

15.3. In the event OWNER terminates the contract for cause and it is subsequently judicially determined that there was no cause for termination, the termination for convenience provision will be the means for disposition of the balance of the contract obligations.

Termination for Convenience

- 15.4. Upon seven working days' written notice to CONTRACTOR and PROFESSIONAL, OWNER may, without cause and without prejudice to any other right or remedy of OWNER, elect to terminate the Contract. In such case, CONTRACTOR shall be paid (without duplication of any items):
- 15.4.1. For completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work:
- 15.4.2. For expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses;
- 15.4.3. For all claims, costs, losses and damages incurred in settlement of terminated contracts with Subcontractors, suppliers and others; and
 - 15.4.4. For reasonable expenses directly attributable to termination.

CONTRACTOR shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

15.5. Where CONTRACTOR's services have been so terminated by OWNER, the termination will not affect any rights or remedies of OWNER against CONTRACTOR then existing or which may thereafter accrue. Any retention or payment of moneys due CONTRACTOR by OWNER will not release CONTRACTOR from liability.

CONTRACTOR May Stop Work or Terminate:

15.6. If through no act or fault of CONTRACTOR, the Work is suspended for a period of more than

ninety calendar days by OWNER or under an order of court or other public authority, or PROFESSIONAL fails to act on any Application for Payment within thirty days after it is submitted or OWNER fails for thirty-one days to pay CONTRACTOR any sum finally determined to be due, then CONTRACTOR may upon seven working days' written notice to OWNER and PROFESSIONAL and provided OWNER or PROFESSIONAL did not remedy such suspension or failure within that time, terminate the Agreement and recover from OWNER payment on the same terms as provided in 15.2. In lieu of terminating the Agreement and without prejudice to any other right or remedy, if PROFESSIONAL has failed to act on an Application for Payment within thirty days after it is submitted or OWNER has failed for thirty-one calendar days after it is submitted to pay CONTRACTOR any sum finally determined to be due, CONTRACTOR may upon seven days' written notice to OWNER and PROFESSIONAL stop the Work until receipt of payment of all such amounts due CONTRACTOR, including interest thereon. The provisions of this paragraph are not intended to preclude CONTRACTOR from making claim under Articles 11 and 12 for an increase in Contract Price or Contract Time or otherwise for expenses or damage directly attributable to CONTRACTOR's stopping Work as permitted by this paragraph. The provisions of this paragraph shall not relieve CONTRACTOR of the obligations under paragraph 6.30 to carry on the Work in accordance with the progress schedule and without delay during disputes and disagreements with OWNER.

ARTICLE 16--DISPUTE RESOLUTION

- 16.1. All disputes arising under this Contract or its interpretation whether involving law or fact or both, or extra work, and all claims for alleged breach of contract shall within ten (10) working days of the commencement of the dispute be presented by CONTRACTOR to OWNER for decision. All papers pertaining to claims shall be filed in quadruplicate. Such notice need not detail the amount of the claim but shall state the facts surrounding the claim in sufficient detail to identify the claim, together with its character and scope. In the meantime, CONTRACTOR shall proceed with the Work as directed. Any claim not presented within the time limit specified in this paragraph shall be deemed to have been waived, except that if the claim is of a continuing character and notice of the claim is not given within ten (10) working days of its commencement, the claim will be considered only for a period commencing ten (10) working days prior to the receipt by OWNER of notice thereof. Each decision by OWNER will be in writing and will be mailed to CONTRACTOR by registered or certified mail, return receipt requested, directed to his last known address.
- 16.2 All claims, disputes and other matters in question between OWNER and CONTRACTOR arising out of, or relating to, the Contract Documents or the breach thereof shall be decided under Georgia Law in the Superior Court of Richmond County, Georgia. CONTRACTOR by execution of the Contract consents to jurisdiction and venue in the Superior Court of Richmond County, Georgia, and waives any right to contest same.

ARTICLE 17-MISCELLANEOUS

Giving Notice:

17.1. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or if delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.

Computation of Time:

- 17.2.1. When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.
- 17.2.2. A calendar day of twenty-four hours measured from midnight to the next midnight shall constitute a day.

General:

- 17.3. Should OWNER or CONTRACTOR suffer injury or damage to person or property because of any error, omission or act of the other party or of any of the other party's employees or agents or others for whose acts the other party is legally liable, claim should be made in writing to the other party within a reasonable time of the first observance of such injury or damage. The provisions of this paragraph 17.3 shall not be construed as a substitute for or a waiver of the provisions of any applicable statute of limitations or repose.
- 17.4. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto, and, in particular but without limitation, the warranties, guarantees and obligations imposed upon CONTRACTOR by paragraphs 6.32, 13.1, 13.12, 13.14, 14.3 and 15.2 and all of the rights and remedies available to OWNER and PROFESSIONAL thereunder, are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee or by other provisions of the Contract Documents, and the provisions of this paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right and remedy to which they apply. All representations, warranties and guarantees made in the Contract Documents will survive final payment and termination or completion of the Agreement.
- 17.5. CONTRACTOR shall keep adequate records and supporting documentation applicable to this Work and Contract. Said records and documentation shall be retained by CONTRACTOR for a minimum of five (5) years from the date of final completion or termination of this Contract. OWNER shall have the right to audit, inspect, and copy all such records and documentation as often as OWNER deems necessary during the period of the Contract and for a period of five (5) years thereafter provided, however, such activity shall be conducted only during normal business hours. OWNER, during this period of time, shall also have the right to obtain a copy of and otherwise inspect any audit made at the direction of CONTRACTOR as concerns the aforesaid records and supporting documentation.

- 17.6. The Contract Documents are intended by the Parties to, and do, supersede any and all provisions of the Georgia Prompt Pay Act, O.C.G.A. Section 13-11-1, et seq. In the event any provision of the Contract Documents are inconsistent with any provision of the Prompt Pay Act, this provision of the Contract Documents shall control.
- 17.7. Notwithstanding any provision of the law to the contrary, the parties agree that no interest shall be due Contractor on any sum held as retainage pursuant to the Contract Documents and CONTRACTOR specifically waives any claim to same.

Substitutions:

17.8. Notwithstanding any provision of these general conditions, there shall be no substitutions of materials that are not determined to be equivalent to those indicated or required in the contract documents without an amendment to the contract.

Sanitary Sewer Overflow Prevention:

- 17.9. Procedures to Prevent Overflows During Sanitary Sewer Construction:
- 17.9.1 The CONTRACTOR is hereby notified that the discharge of any untreated wastewater to waters of the State is a violation of Georgia Water Quality Regulations and is prohibited.
- 17.9.2 The CONTRACTOR will submit an Emergency Response Plan prior to beginning work. This plan will include a list of key personnel with 24-hour contact information who will respond during an emergency situation. The ERP will include estimates of mobilization time for a response crew to arrive onsite. Any changes to the Emergency Response Plan will be submitted to the RESIDENT PROJECT REPRESENTATIVE prior to implementation.
- 17.9.3 In the event bypass pumping is required to facilitate new sewer construction, bypassing plans and supporting calculations must be submitted to the Augusta Utilities Department for review prior to establishment of the bypass. All bypass systems will include complete redundancy in pumping systems, if failure of the primary pumping system could result in a discharge of untreated wastewater to waters of the State.
- 17.9.4 Bypass pumping will be monitored continuously by a person knowledgeable in pump operation and maintenance if the failure of the bypass pump could result in the discharge of untreated wastewater to waters of the State.
- 17.9.5 In the event of a discharge of untreated wastewater, the CONTRACTOR will take the following actions:
 - 1. Take immediate steps to eliminate or minimize the discharge of untreated wastewater.
 - 2. Immediately notify the Utilities Department dispatcher (706.796.5000) and the RESIDENT PROJECT REPRESENTATIVE (contact information will be provided at the preconstruction conference).
 - 3. Maintain a chronicle of relevant information regarding the incident including specific actions taken by the CONTRACTOR and estimates of the discharge volume.
- 17.9.6 The RESIDENT PROJECT REPRESENTATIVE will coordinate notification of the Georgia Environmental Protection Division (800.241.4113) and the Augusta Emergency Management Agency if

appropriate.

17.9.7 If, in the opinion of the RESIDENT PROJECT REPRESENTATIVE and the OWNER, the CONTRACTOR is not responding to an emergency situation in an appropriate manner, the Utilities Department will undertake necessary actions to abate an overflow situation. The cost of these actions will be the responsibility of the CONTRACTOR.

17.9.8 Following a discharge of untreated wastewater, a downstream inspection will be conducted by the Utilities Department to assess potential mitigation measures that may be required of the CONTRACTOR.

PROGRAM MANAGER:

17.10 The PROGRAM MANAGER for the project is CH2M HILL, 360 Bay Street, Suite 100 Augusta, GA 30901.

The presence or duties of PROGRAM MANAGER's personnel at the construction site, whether as onsite representatives or otherwise, do not make PROGRAM MANAGER or PROGRAM MANAGER's personnel in any way responsible for those duties that belong to OWNER and / or the CONTRACTOR or other entities, and do not relieve the CONTRACTOR or any other entity of their obligations, duties, and responsibilities, including, but not limited to, all construction methods, means, techniques, sequences, and procedures necessary for coordinating and completing all portions of the construction work in accordance with the construction Contract Documents and any health and safety precautions required by such construction work.

PROGRAM MANAGER and PROGRAM MANAGER's personnel have no authority to exercise any control over any construction contractor or other entity or their employees in connection with their work or any health or safety precautions and have no duty of inspecting, noting, observing, correcting, or reporting on health or safety deficiencies of the CONTRACTOR(s) or other entity or any other persons at the site except PROGRAM MANAGER's own personnel.

The presence of PROGRAM MANAGER's personnel at the construction site is for the purpose of providing to OWNER a greater degree of confidence that the completed construction work will conform generally to the construction documents and that the integrity of the design concept as reflected in the construction documents has been implemented and preserved by the construction contractor(s). PROGRAM MANAGER neither guarantees the performance of the construction contractor(s) nor assumes responsibility for construction contractor's failure to perform work in accordance with the construction documents.

For this AGREEMENT only, construction sites include places of manufacture for materials incorporated into the construction work, and construction contractors include manufacturers of materials incorporated into the construction work

EXHIBIT B

LIST OF TASK ORDERS

MWH CONSTRUCTORS, INC. AUGUSTA CAPITAL IMPROVEMENTS PROGRAM PROJECT NO. 80130 J B MESSERLY WATER POLLUTION CONTROL PLANT CONSTRUCTION MANAGEMENT AT RISK AGREEMENT – CONSTRUCTION SERVICES

TASK ORDER NUMBER DESCRIPTION GMP AMOUNT

TO-1 Early Construction/20" Force main \$3,543,069

EXHIBIT C

SAMPLE TASK ORDER

MWH CONSTRUCTORS, INC.
AUGUSTA CAPITAL IMPROVEMENTS PROGRAM PROJECT NO. 80130
J B MESSERLY WATER POLLUTION CONTROL PLANT
CONSTRUCTION MANAGEMENT AT RISK AGREEMENT – CONSTRUCTION
SERVICES

CONSTRUCTION MANAGEMENT AT RISK CONTRACT James B. Messerly WPCP 2003 Master Plan Implementation – Phase I (80130)

TASK ORDER AGREEMENT NO. _

This Task Order Agreement No, ("Tas	k Order") is made pursuant to and is part of the
Construction Management at Risk Contract between	the City of Augusta (the "Owner"), and MWH
Constructors, Inc., ("MWH"), dated	, 2006 for the James B. Messerly WPCP Master Plan
Implementation Project (the "Contract").	

RECITALS

- A. In accordance with the Contract, MWH is to provide to the Owner certain Construction Management (CM) services on a task order basis with a separate scope of work, time for performance and price to be established for each task order; and,
- B. As contemplated by the parties, individual task orders are to be governed and developed in accordance with the terms and conditions of the Contract and developed Contract Documents, subject to approval by the Owner; and,
- C. The purpose of this Task Order is to establish the time for performance, price, and to provide Owner's authorization to proceed with the scope of work identified herein.
 - D. Work under this Task Order is performed under and as part of the Contract.

THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

SCOPE OF WORK

The Scope of Work for this Task Order is identified in Attachment **A**, based upon MWH's preconstruction phase services prepared under a separate contract. Any changes to the Scope of Work are subject to the changes clause of the Contract, any developed Contract Documents, and any other applicable provisions of the Contract.

2. TASK ORDER PRICE

Owner shall compensate MWH for the labor, materials and services for the scope of work under this Task Order in accordance with the terms and conditions of the Contract based on the cost of work plus fee. The Guaranteed Maximum Price ("GMP") for this Task Order is \$_______, based upon the Scope of Work in Attachment A and the Schedule in the GMP Proposal and established in accordance with the provisions of the Contract.

3. SCHEDULE AND COMPLETION

The schedule for the work is the attached, and shall be in accordance with the anticipated date for Substantial Completion for the entire work outlined in the attached, and as may be changed or amended from time to time by the Parties. The parties shall use their best efforts to coordinate concurrent or conflicting Task Order activities associated with this and other Task Orders, ongoing operational obligations of the Owner, or other matters which might impact or otherwise interfere with the schedule for this Task Order or the anticipated date for Substantial Completion of the Project.

Work under this Task Order shall commence within five (5) days of MWH's receipt of Owner's Notice to Proceed, unless otherwise agreed in writing by the parties.

4. PAYMENT

MWH will be paid under this Task Order in accordance with the Contract.

5. INTEGRATION

It is the intent of the parties that this Task Order, and applicable contract documents, schedules, drawings, or other related documentation or Work developed in conjunction with this Task Order which would reasonably be part of the overall Contract Documents for the Project shall be deemed to be integrated into the Contract.

6. OTHER PROVISIONS	
Other provisions, if any are as follows:	. <u></u>
	ned representatives on behalf of the Owner and MWH sary authority and approval to execute this Task Order,
Dated this the day of	_ 2000.
OWNER:	MWH:
(name and address)	(name and address)
(Signature)	(Signature)
(Printed Name)	(Printed Name)
(Title)	(Title)
Date:	Date:

Attachment A - The Scope of Work
The Guaranteed Maximum Price ("GMP") PROPOSAL"

EXHIBIT D

PROJECT RATES AND INSURANCE REQUIREMENTS

MWH CONSTRUCTORS, INC. AUGUSTA CAPITAL IMPROVEMENTS PROGRAM PROJECT NO. 80130 J B MESSERLY WATER POLLUTION CONTROL PLANT CONSTRUCTION MANAGEMENT AT RISK AGREEMENT – CONSTRUCTION SERVICES

Date: As of January, 2006

MWHC will procure, hold and maintain the following project insurance types and coverage with one or more of our insurance carrier(s) who are authorized to do business in the state where the project is located, as provided in the Agreement. These rates are valid for a period of one year from the date of submission of this Exhibit D, and are subject to change by our insurance carriers after such time. The current project rates and standard coverages are as follows:

Type	Coverage	*Rate u	nder GMP
Commercial General Liability	\$1,000,000 per occurrence	\$4.75/\$1	,000 revenue
	\$2,000,000 aggregate		
	(\$0 deductible)		
Workers Compensation	Coverage A:		
	As statutorily required	\$1.93/\$1	00 billing rate
Employer's Liability	Coverage B: \$1,000,000 each accident	(construc	ction staff only)
\$1,000,000 disease-policy limit			
\$1,000,000 disease-each employ	yee		
Automotive Liability	\$1,000,000 combined single lim	nit S	\$1,200/vehicle/yr.
Professional Liability	\$5,000,000 per claim	9	\$1.96/\$1,000 revenue
\$5,000,000 aggregate			
(\$500,000 deductible)			
Excess Liability	\$10,000,000 occurrence	9	\$1.68/\$1,000 revenue
(CGL, Auto, E.L.)	\$10,000,000 aggregate		
Contractor's Pollution Liability	\$5,000,000 per claim		\$1.00/\$1,000 revenue
\$5,000,000 aggregate			
(\$25,000 deductible)			

NOTES:

Note: "Revenue" is defined as the total GMP for each Task Order(s).

Labor based insurance and revenue based insurance to be reimbursed under the GMP. Builder's Risk insurance provided and invoiced under GMP.

EXHIBIT E COMPENSATION SCHEDULE

MWH CONSTRUCTORS, INC. AUGUSTA CAPITAL IMPROVEMENTS PROGRAM PROJECT NO. 80130 J B MESSERLY WATER POLLUTION CONTROL PLANT CONSTRUCTION MANAGEMENT AT RISK AGREEMENT

Labor Classification	Base Rate ^{2, 3} (\$/hour)
Client Service Manager	\$146.00
Operations Director	\$146.00
Director of Quality	\$146.00
Construction Manager	\$135.00
QA/QC Manager	\$135.00
Procurement Leader	\$141.00
Health & Safety Manager	\$143.00
Startup & Training Manager	\$116.00
Project Accountant	\$87.00
Project Controls/Scheduler	\$116.00
Office Engineer	\$98.00
General Superintendent	\$111.00
Asst. Superintendent	\$88.00
Administrative Support	\$55.00
Estimating Director	\$185.00
Estimating Manager	\$150.00
Chief Estimator	\$144.00
Lead Estimator	\$144.00
Principal Estimator – Mechanical	\$136.00
Senior Estimator – Electrical	\$124.00
Senior Estimator – Concrete	\$117.00
Senior Estimator – Site	\$117.00
Senior Estimator – Buildings	\$127.00
Senior Estimator – Equipment	\$124.00
Estimating Technician I	\$38.00
Purchasing Agent – Equipment	\$92.00
Estimating Administrative Assistant	\$52.00

Notes:

- 1. Rates are effective through March 1, 2007.
- 2. Base hourly rate includes salary, overhead, G&A, and applied project cost (APC).
- 3. Costs serve as basis for determining Cost of Work.

CONSTRUCTION MANAGEMENT AT RISK CONTRACT James B. Messerly WPCP 2003 Master Plan Implementation – Phase I (80130)

TASK ORDER AGREEMENT NO. 1

This Task Order Agreement No. 1, ("Task	Corder") is made pursuant to and is part of the
Construction Management at Risk Contract between	the City of Augusta (the "Owner"), and MWH
Constructors, Inc., ("MWH"), dated	, 2006 for the James B. Messerly WPCP Master Plan
Implementation Project (the "Contract").	·

RECITALS

- A. In accordance with the Contract, MWH is to provide to the Owner certain Construction Management (CM) services on a task order basis with a separate scope of work, time for performance and price to be established for each task order; and,
- B. As contemplated by the parties, individual task orders are to be governed and developed in accordance with the terms and conditions of the Contract and developed Contract Documents, subject to approval by the Owner; and,
- C. The purpose of this Task Order is to establish the time for performance, price, and to provide Owner's authorization to proceed with the scope of work identified herein.
 - D. Work under this Task Order is performed under and as part of the Contract.

THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. SCOPE OF WORK

The Scope of Work for this Task Order is identified in Attachment A, based upon MWH's preconstruction phase services prepared under a separate contract. Any changes to the Scope of Work are subject to the changes clause of the Contract, any developed Contract Documents, and any other applicable provisions of the Contract.

2. TASK ORDER PRICE

Owner shall compensate MWH for the labor, materials and services for the scope of work under this Task Order in accordance with the terms and conditions of the Contract based on the cost of work plus fee. The Guaranteed Maximum Price ("GMP") for this Task Order is \$3,543,096.00 based upon the the Scope of Work in Attachment A and the Schedule in the GMP Proposal and established in accordance with the provisions of the Contract.

3. SCHEDULE AND COMPLETION

The schedule for the work is the attached, and shall be in accordance with the anticipated date for Substantial Completion for the entire work outlined in the attached, and as may be changed or amended from time to time by the Parties. The parties shall use their best efforts to coordinate concurrent or conflicting Task Order activities associated with this and other Task Orders, ongoing operational obligations of the Owner, or other matters which might impact or otherwise interfere with the schedule for this Task Order or the anticipated date for Substantial Completion of the Project.

Work under this Task Order shall commence within five (5) days of MWH's receipt of Owner's Notice to Proceed, unless otherwise agreed in writing by the parties.

4. PAYMENT

MWH will be paid under this Task Order in accordance with the Contract.

5. INTEGRATION

It is the intent of the parties that this Task Order, and applicable contract documents, schedules, drawings, or other related documentation or Work developed in conjunction with this Task Order which would reasonably be part of the overall Contract Documents for the Project shall be deemed to be integrated into the Contract.

6. OTHER PROVISIONS

Other provisions, if any are as follows: N/A

In executing this Task Order, the undersigned representatives on behalf of the Owner and MWH each individually represent that they have the necessary authority and approval to execute this Task Order, and perform the services described herein.

Dated this the day of	2006.
OWNER: Augusta, Georgia	MWH: MWH Constructors, Inc.
530 Greene Street	370 Interlocken Blvd. Suite 300
Augusta, Georgia 30911	Broomfield, Colorado, 80021
(name and address)	
(Signature)	(Signature)
David S. Copenhaver	
(Printed Name)	(Printed Name)
Mayor	
(Title)	(Title)
Date:	Date

Attachment A - The Scope of Work
The Guaranteed Maximum Price ("GMP") PROPOSAL"



Todd R. Larson, P.E. Vice President 303-261-6014

May 16, 2006

Augusta Utilities Administration 360 Bay Street, Suite 180 Augusta, Georgia 30901

Attn: Mr. Clifford Carey

RE: J.B. Messerly WPCP 2003 Master Plan Implementation – Task 12 Guaranteed Maximum Price for Construction Task Order #1

Dear Clifford:

In accordance with Task 12 of the Preconstruction Services Agreement, we are pleased to submit our Guaranteed Maximum Price proposal for Construction Task Order #1 "Early Construction Work". The GMP for this task order is Three Million Five Hundred Forty Three Thousand Ninety-six Dollars and No Cents (\$ 3,543,096.00).

Our proposal breakdown follows:

Construction Cost of Work

Work Packages	\$2,146,439.00
MWH General Conditions including job setup	\$ 350,302.00
Bonds and Insurance	\$ 81,809.00
Cost of Work contingency	\$ 95,958.00
Subtotal Construction Cost of Work	\$2,674,508.00

CM Fixed Fee	
G&A @ 4.0% of Cost of Work	\$ 106,980.00
Profit @ 3.5% of Cost of Work	\$ 93,608.00
Subtotal CM Fixed Fee	\$ 200,588.00

MWH CM Labor	\$ 441,670.00
Subtotal Guaranteed Maximum Price	\$3,316,766.00

Allowances

Mr. Clifford Carey May 16, 2006 Page 2

Well point dewatering (Pkg S-07)	\$ 161,845.00
Well point dewatering (Pkg S-02)	\$ 64,485.00
Subtotal Allowances	\$ 226,227.00

TOTAL Guaranteed Maximum Price

\$3,543,096.00

Clarifications:

1.) The GMP is based upon the apparent low bids as indicated below:

S01 Demolition Work Vastec

S02 Site Preparation & Storm DrainContract ManagementS03 Temp Site FacilitiesContract ManagementS04 Phinzy Swamp RoadContract Management

S06 FencingVastecS07 MechanicalADMIS08 Temp ElectricalVastecP20 Grit EquipmentEutek

All subcontractors appear to qualify as MBE/DBE business and would represent 100% participation in our subcontracted work efforts.

- 2.) The subcontractor bid for work package S-02 includes 2 acres of topsoil stripping and stockpiling which should be included in the total cost of that work. We have adjusted the bid amount upward by \$32,400 for a revised cost of work = \$339,655.00.
- 3.) The contingency has been adjusted to \$95,958.00 based on agreed percentages in our telephone conversation this morning. The contingency applies to the entire task order and there is no intent for this to be a line item contingency.
- 4.) The bond/insurance fees are based on quotations from our insurers and surety. The surety and insurance companies require bond/insurance fees to be based upon total contract, not just the cost of work. Therefore, pricing for these items are based upon the total fee and then marked up as part of the cost of work.
- 5.) An allowance for dewatering on work package S-07 (20-inch force main) in the amount of \$161,742.00 has been added. This includes subcontractor bid price plus 7.5% markup and bond/insurance fee. Adjustments to our bond and insurance costs would be required in the event we were to be directed by the Owner to do this work.
- 6.) An allowance for dewatering on work package S-02 (storm sewer) in the amount of \$64,485.00 has been added. This includes subcontractor bid price plus 7.5% markup

Mr. Clifford Carey May 16, 2006 Page 3

and bond/insurance fee. Adjustments to our bond and insurance costs would be required in the event we were to be directed by the Owner to do this work.

- 7.) Additional exclusions/clarifications have been noted in the Attachment A Scope of Services document.
- 8.) A clarification has been added to Attachment A Scope of Services to address QAC and Safety management in Task Order #1.

We believe the proposal meets the requirements of our agreement and look forward to your approval of the GMP so we may move forward with award and beginning of construction. Please make appropriate distribution within the Owner's group and feel free to call if you have any questions.

Sincerely,

Todd R. Larson, P.E.

Vice President

TRL

Enclosures:

GMP Proposal Volume 1 Revised May 12, 2006

cc: Richard Lewis

Mike Holt Blair Lavoie Henry West

ATTACHMENT A

Scope of Services J.B. Messerly WPCP Improvements Task Order No. 1 - Early Construction Work

1.0 GENERAL

Introduction

This scope of work generally defines the effort associated with early start construction of certain wastewater treatment facility expansion and improvements projects to serve the Augusta James B. Messerly WPCP. Preconstruction Services are included in a separate scope of work under separate contract. Task Order No. 1 early start Work items have been selected to meet the consent order date(s) for Spirit Creek and to allow potential improvement to the overall project schedule. This scope of work is based upon 90% Review Submittal Drawings and Specifications dated September and October 2005. Components of the Task Order No. 1 early start work will include:

- 1. Prepare aerial photograph and videotaping of site existing conditions in accordance with Section 01380 of the 90% specifications. This photography and videotaping will document the condition of the project site prior to starting any work. Aerial photograph will be updated monthly (for up to twelve consecutive months) to document progress of work, and shall be submitted with monthly pay applications. Further photographic and video documentation will be included in a future task order.
- 2. Demolish existing circular structure for grit facility. Disposal of demolition materials shall be offsite. Reference Sheet C-4 of the 90% Drawings.
- 3. Construct all-weather access road to Phinizy Swamp area as shown on Sheet C-6 of the Drawings. All-weather road shall be graded to slope and drain to south toward existing drainage ditch running parallel to alignment of road. Silt fence or other acceptable stormwater pollution prevention measures shall be installed at north top of existing ditch prior to disturbing any soil. Access road shall be 20-feet wide with a 4-inch graded aggregate surface course over geotextile fabric, and constructed to the layout shown on JB Messerly Easement Plat, Ingress Egress Easement dated 08 November 2005.

Exclusions/Clarifications:

- No existing utilities or subsurface structures are in the area.
- No road shoulders will be provided.
- No sub-base or base preparation other than grading to drain.
- No embankment or fills are required.
- Aggregate all-weather surface.
- No grading of existing ditches
- Fencing shall be 6-foot tall galvanized steel fencing.

- Upon completion and acceptance of road, maintenance and security for road shall be the responsibility of OWNER.
- 4. Furnish and install; a) 42-inch storm sewer from point 3 on Sheet C-14 to point 11 on Sheet C-15, b) 48-inch storm sewer from point 11 to point 12 on Sheet C-15, c) outfall at point 12 on Sheet C-15 including rip-rap and headwall, and d) outfall at point 3 on sheet C-14 including headwall and rip-rap. Stub-outs shall be provided at all locations along the storm sewer where other pipes are to connect in as shown on drawings. Reference Drawings C-14, C-15 and Detail 1 on CD-3. This work will allow continued storm drainage across site while work is ongoing for new Aeration Basins 3-6.

Exceptions/Clarifications:

- Dewatering, if required, shall be paid out of the storm sewer dewatering allowance item at a unit rate of \$74.18/lineal foot (\$69.00 sub quote + 7.5% markup).
- 5. Through a Geotechnical Engineering Subconsultant, perform additional geotechnical borings to support bidding efforts. MWH shall make no engineering interpretation of the data collected. The information shall be given to bidders as additional information for the preparation of their bids. This information shall also be made available to mass excavation contractor for their use in developing excavation and dewatering plans.
- 6. Furnish and install temporary power to the CM and Owner project trailers.
- 7. Perform underground potholing and investigation at selected pipe crossings within site to document actual elevations of existing piping where conflicts may occur with new piping. These investigations are being done to supplement the information available on the Contract Documents, however are not exhaustive in every respect. The objective is to add confidence to the Owner in the GMP, but not to relinquish MWH's right to time and compensation if these investigations reveal a conflict that requires additional time to resolve.
- 8. Furnish and install 20-inch diameter Spirit Creek force main starting at reference point 193 on Sheet C-24 and running through reference points 194, 195, 196, 197 and terminating at the inlet structure modification shown on Sheets C-25 and P-1. A temporary connection shall be made to the existing inlet structure. The temporary connection shall generally consist of PVC piping, piped to discharge into the top of the existing structure. Reference Drawing Sheets C-24, C-25, C-26, and C-27.

Exclusions/Clarifications:

- Owner shall supply force main piping, fittings, and material.
- Well pointing, if required, shall be paid from the 20-inch force main dewatering allowance at a unit price of \$197.80/lineal foot (\$184.00/lf sub quote + 7.5% markup).
- Existing plant roads cut and demolished for installation of force main shall be restored with temporary paving to provide traffic flow.
- 9. Furnish and install temporary access road to trailer area and to main entrance, parking area and office trailers for CONSTRUCTION MANAGER and OWNER. Owner's office trailer shall be a doublewide trailer. An 8-foot wide elevated wooden porch with two sets of stairs shall be provided between Construction Manager and Owner's trailer. The porch area shall be

covered with corrugated metal decking or corrugated fiberglass decking with gutters and downspouts to protect access stairs. Electric, telephone, high speed internet, potable water and sewerage connection to nearest sewer manhole shall be provided to all trailer offices. Office trailer area shall be provided with 6-foot chain link temporary security fencing with three-strand barbed wire at top and one lockable gate.

Exclusions/Clarifications:

- A total of 2 acres of topsoil stripping and stockpiling are included in the GMP.
- 10. Construct temporary staging area suitable for storage and security of materials and equipment received onsite. Staging area shall consist of fenced area paved with filter fabric and 6-inch thick crushed aggregate base. Existing lawn areas designated by OWNER to be returned to lawn areas later shall not be paved with aggregate.

Exclusions/Clarifications:

- Fencing shall be temporary galvanized fencing.
- 11. Initiate settlement-monitoring survey to establish baseline of site elevations. Elevation shot measurements shall be made bi-weekly and plotted on a trend graphic versus time and reviewed by Construction Manager and Owner regularly. Elevation shots shall be made at the the following locations at inscribed marks on the structure:
 - North and south top of wall at Secondary Clarifiers 1, 2, 3 and 4.
 - All four top of wall corners at Primary Clarifiers 1 through 4 and 5 through 8.
 - All four top of wall corners at Aeration Basins 1 and 2.
 - All four corners of RAW/WAS Bldg 2.
 - Northeast and southeast corners of Administration Building
 - This work will be performed over a 12-month period only. Additional survey will be included in future task orders.

Exclusions/Clarifications:

- CM will not make any interpretations of data collected. CM will review data with Owner and Owner will determine any mitigation measures required.
- GMP does not include any costs or allowances for mitigation measures.
- 12. Clear and grub site within limits shown on Sheets C-5 and C-6. Construction Manager shall dispose of roots, small trees, and debris.
- 13. Furnish and install measures required by Stormwater Pollution Prevention Plan for areas to be cleared and grubbed. This area to be protected shall the area within the clearing limits shown on Sheets C-5 and C-6.
- 14. Procure grit equipment as specified in 90% drawings. The grit facilities are a critical path item on the construction schedule. The dimensions of the structure to house the equipment cannot be finalized until equipment requirements are approved on submittals. The purpose of this early purchase is to obtain submittals early.

Exclusions/Clarifications:

- Scope includes receiving, unloading, care, custody and control. Any costs associated with revised design, or other out-of-scope items shall be considered Extra Work.
- 15. Prepare through an engineering subconsultant, a detailed design for two construction entrances. Plan shall be submitted to Georgia Department of Transportation for review and approval in association with GDOT permit. Owner shall provide design/construction of any traffic signal modifications or modifications to the public roads.
- 16. Construct two construction entrances in item 18 above. Modifications to public roads or traffic signals by others.

1.1 Project Management

All project management activities required for this task order will be conducted in accordance with the guidelines of the General Conditions. These activities are briefly described below:

- 1. A detailed project schedule will be prepared and will be updated and reviewed with the Owner monthly.
- 2. Monthly project progress meetings will be held and meeting summaries will be prepared.
- 3. Required project staffing commitments for the project will be verified and completed. Project roles, assignments and requirements will be communicated with all project team members.
- 4. Project filing system, list of contacts, project administrative procedures, project Intranet system and other administrative elements for the project will be established and maintained.
- 5. Control and management of all subcontractors and project personnel will be accomplished.
- 6. Quality management plan. (MWHC will begin implementation of the QA/QC procedures as identified in 3.3.1.7 Quality Review of the contract documents. The project field staff during TO-1 will monitor the quality of the work being preformed in strict accordance with the draft QA/QC plan being review by AUD and MWHC. During the later stages of TO-1 the MWHC QA/QC manager will take over these responsibilities and continue the program through project completion.)
- 7. Safety Management plan. MWHC will begin implementation of the Draft Site Specific Health & Plan dated March 7 2006. The MWHC field staff will administer and monitor this plan during TO-1 and TO-2 any addition or deletions during final review of the plan will be incorporated into the final plan.
- 8. The deliverable for these Project Management activities will be the Project Manual prepared under the Phase 1 Preconstruction Services.
 - Invoice format and procedure
 - Communication protocol
 - Work breakdown structure, work plan
 - Phase One schedule of tasks, staff assignments and deliverables

- Technical review schedule and participants
- Quality management plan
- Safety management Plan.

1.2 Construction Kickoff Meeting and Monthly Progress Meetings

In the kickoff meeting, the assembled team of Owner and MWH will define the primary goals of the project and identify direct and underlying concerns of all participants. Monthly progress meetings will be held to provide a progress update to the OWNER and address issues identified.

➤ Deliverable -Summary memo for the meetings

2.0 PROJECT IMPLEMENTATION

MWH will maintain an on-site staff for this Work including superintendent, construction manager and administrative person. Construction subcontractors will be released to begin construction based on anticipated equipment delivery dates. MWH will administer the work, including compliance with insurance and bonding requirements, construction safety requirements, construction scheduling, and coordination among all project participants. Additional tasks will include:

- Subcontractor coordination and management
- Pay estimate and cash flow projections
- Document control
- Procurement
- Scheduling
- Contract compliance
- Material storage
- Scheduling of vendor training for owner's maintenance staff
- Scheduling and coordination of material and equipment testing by OWNER

End of Attachment A

18-May-06

Monte Mont			MWHC Estimate				Sub-Contractor		Price Used					Job % and Cost Difference Vs MWHC Est		
Marche	WP#	Work Package Description				Third Party		Sub-Contractor			Total Price Used	Final Adjustments	TOTAL CARRIED		LESS MWHC REV	MWHC % Delta
The control of the	1	MWHC Geneeral Conditions Job Setup								\$241,981	\$241,981		\$241,981	7.30%	\$241,981	
Secondary Core & Standage	2	MWHC Geneeral Conditions Professional Services								\$108,321	\$108,321		\$108,321	3.27%	\$108,321	
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State Stat			s	111.273	\$ 111.273		\$103.867	Vastec	\$103.867		\$103.867		\$103.867	3.13%	(\$7.406)	-6.66%
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TO: Geri Sams

Director, Procurement Department

Max Hicks

Augusta Utilities Director

FROM: Yvonne Gentry, Coordinator

Disadvantaged Business Enterprise Department

SUBJECT: DBE REVIEW AND APPROVAL OF RECOMMENDED DBE GOAL

J.B. Messerly WPCP 2003 Master Plan Implementation-

Task 12 GMP for Construction Task Order #1

DATE: May 24, 2006

This memo is to transmit the review and concurrence of the recommended DBE Utilization goal of $\underline{35}\%$ for the above referenced project. The goal-setting methodology considered the following factors based on good faith efforts of the contractor:

- The project's total estimated cost is \$3,543,096.
- There is <u>32.65</u>% value of the scope of work where minority/ women businesses availability exists.
- There is $\underline{0}$ % value of the scope of work where **small** businesses availability exists.
- There is <u>9.99</u>% value of the scope of work where **local** businesses availability exists.

The contractor must prepare their proposed DBE Utilization Form submittal based on the total dollar value of their base bid. No further adjustments should be made.

The above recommendation is based on information provided at the time of review. If you have any questions, please feel free to contact me at (706) 826-1325.

YG:qlw



Engineering Services Committee Meeting 5/30/2006 1:30 PM Reed Scott Hudson

Department: Clerk of Commission Consider a request from Mr. Reed Scott Hudson regarding **Caption:** the repainting of the Sherman tank located at Pendleton King Park. **Background: Analysis: Financial Impact: Alternatives: Recommendation:** Funds are Available in the **Following Accounts: REVIEWED AND APPROVED BY:**

Clerk of Commission

Nancy Morawski

From:

Lena Bonner

Sent:

Tuesday, May 23, 2006 12:40 PM

To:

'Reed Scott'

Cc:

Nancy Morawski; Derek Vanover

Subject:

RE: Commission agenda

Dear Mr. Scott,

Your request will be placed on the May 30th Engineering Services Committee which has oversight responsibility of Pendleton King Park. The committee will convene its meeting at 1:30 p.m.in Room 802 in the Municipal Building.

Lena J. Bonner Clerk of Commission Room 806 Municipal Building 530 Greene Street Augusta, Ga. 30911 Office phone-706-821-1820 Fax - 706-821-1838

----Original Message----

From: Reed Scott [mailto:asureed@hotmail.com]

Sent: Friday, May 19, 2006 11:40 AM

To: Lena Bonner Cc: tkmills@aol.com

Subject: Commission agenda

Hello Ms. Bonner,

My Name is Reed Scott Hudson and I am trying to get the sherman tank at Pendleton King Park repainted. Right now the tank is in deplorable condition and I consider this to be disrespectful to our many veterans. I have volunteered to organise the repainting of the tank and I am using all of my resources to find other volunteers in this venture. I have been told that for the city to release any money for the paint and related materials that I must go before the commission and make a request. Therefore, I would like to respectfully ask that you add this effort to an upcoming agenda so that I may address the commissioners.

Thank you very much. Reed Scott Hudson

don't dream it, be it



Engineering Services Committee Meeting 5/30/2006 1:30 PM Solid Waste - Cart Contract

Department: Solid Waste

Caption: Award a contract to Cascade Engineering for the purchase,

delivery, public awareness, and asset management of carts

for the Solid Waste Department.

Background: The Solid Waste Department initiated a new contract with

three solid waste collection contractors to service the existing 53,896 carts currently serviced by the program. The commission approved to expand the service area to include areas not currently serviced by the program. A best estimate is that there are 9,000 additional units in those areas. The commission approved to use 64 gallon carts in place of 18 gallon bins for recycling. The contractors worked under the assumption that Augusta would be replacing those assets based on the contract negotiations. This allowed Augusta to

transition to a fully automated commingled recycling program. It makes the system more efficient as well as more user friendly to the citizens. By making it more user friendly, recycling participation should increase. The commission approved the concept of owning its own carts. This was done for several reasons. First, it provides long term benefits to the city, including running our own services in the future, should contractors cost increase dramatically. Second, by amending the billing system, a cart program will assist Augusta in auditing and locating all its assets, limiting billing discrepancies. Third, it ensures that the haulers charge us a fair price for the services provided. Finally, it will provide a

uniform look within the city.

Analysis: By approving this contract many positives can be identified

for Augusta. First, Augusta will own its own infrastructure. This allows Augusta to have more options at the end of this contract. Should Augusta choose to re-bid this contract, then only trucks will need to be moved. Under the existing

system, carts and trucks would need to be relocated, causing

disruption to all customers within Augusta-Richmond County. It further allows Augusta to enter the collection business should the contractors cost get out of hand in the future. This allows Augusta to spread its capital cost over several years, as well as mobilize assets efficiently. Second, a sound asset management program along with the new billing system should reduce, if not eliminate discrepancies between what Augusta bills the citizens versus what we get billed by the haulers. Currently Augusta bills for 52,800 units (15,957) urban and 36,843 suburban), and Augusta gets billed for 53,896 units. This is because we used to get billed by area not by unit. This discrepancy creates an annual difference of \$302,496. By correcting the inconsistencies, this is moneys that Augusta should be able to collect. This creates a potential revenue increase of \$1,512,480 within a 5 year period and \$2,117,472 over a 7 year period. This system ensures competitive pricing by contractors. Replacing the carts of some contractors saves Augusta money on the day the cart is replaced. Advanced disposal charges \$1.25 per cart per month, while Augusta Disposal Charges \$.75 per cart per month, and Inland Services charges \$.10 per cart per month. The cost per cart on a five year amortization schedule is \$1.05, a seven year amortization schedule is \$.77 and a ten year amortization schedule is \$.57 per cart per month. The above were factored with 3.5% interest. If Augusta simply replaced Advanced Disposals carts, the contract could save an instant \$318,232 on a 5 year amortization and \$1,052,651 on a 7 year amortization. Finally, the city gets an improved aesthetic appeal. Neighborhoods will have the same type, style and color of cart all put out on one day. This ads value back into neighborhoods. It also allows for active communications with the public. When the carts are delivered, an information packet goes along with it. This provides the customer with do's and don'ts as well as other key information about Augusta's solid waste program. The Solid Waste Department recommends replacing the cart system in a cost efficient, controlled manner. This will spread out the capital outlay of the program, as well as spread out the replacement schedule for the future, once a cart reaches the end of its usable life. It is proposed to replace all of Advanced Disposals carts (approximately 27,000) as soon as possible. This will create an instant savings to the program. We would further suggest placing new assets into the newly acquired sections (estimated at 9,000). The rest of the garbage carts should be replaced on an as needed basis. As current carts fail, we replace with a new city owned cart. As we proceed, it is recommended to replace at least 20% of the cart inventory per year so that by the end of the contract, the

city will own 100% of its carts. This should be done by replacing Augusta Disposals carts second and Inland Services carts last. This is due to the amount of money that these haulers bid on the project. The second recommendation of the department is to replace Augusta Disposals carts within the next year or two. Since the costs are almost identical, there is no impact to cash flow; however, it provides Augusta with a positive asset moving forward. The replacement of Inland services cans should be at the end of the contract. The way in which Inland bid, will in fact cost August cash flow. Overall though, the savings received throughout the life of the contract will pay for the carts of Inland Services. The department further recommends purchasing approximately 6,000 recycling carts for the program. These carts will be given to only those who actively participate in the recycling program and who request the service. As participation increase we will need to purchase more carts to meet the demand. The department finally recommends that we finance the carts over a 7 year period through a leasing company. A cart comes with a 10 year warranty, so financing over seven years does not exceed the actual life of the product. It also aligns cash flow with the proposed project.

Financial Impact:

To replace the entire garbage cart system, including the estimated new areas would cost \$3,626,583. (62,892 households x \$57.66) Adding in 6000 recycling bins adds a cost of \$339,540. (6000 x 56.59) By Augusta phasing in the program, it will only have an initial cost of \$2,039,953, (35379 x \$57.66) and an additional cost of \$ 313,140 (6000 x 56.59) if we allow the asset management person to cover the recycling cart delivery. This generates a total upfront cost of \$2,379,493. This cost will be offset in several ways. First, by replacing Advanced Disposals carts Augusta will save \$1,052,651 on a 7 year amortization. Second, since Advanced has all of the downtown, and this is a large area of unknown addresses. Augusta should be able to audit and find most of the account discrepancies. By correcting these problems could bring in an additional \$302,496 per year or \$1,512,480 over the life of the contract. Third, we must look at the asset itself. If Augusta depreciates its carts over a 10 year period, with an initial cost of \$2,379,493. At the end of the contract period the carts would have a value of \$1,189,746. The carts would have a value of \$713,848 at the end of the 7 year financing period. Simply put, by replacing Advanced carts first, purchasing the carts for the new areas and purchasing the recycling carts, it can be paid for by

reducing the amounts paid to the hauler, capturing additional revenues, and looking at the ending value of the carts. It stands to reason that Augusta would benefit approximately \$899,486. As we proceed forward with the asset replacements, we can identify that replacing Augusta Disposals cans is about an equal. They charge us \$.75 and on a seven year amortization our cost is \$.77. Augusta would need to budget asset management and media through the annual budget process on an annual basis.

Alternatives:

1. Award a contract to Cascade Engineering for the purchase, delivery, public awareness, and asset management of carts for the Solid Waste Department. 2. Replace 100% of all carts, to ensure billing accuracy.

Recommendation: Approve Alternative 1.

Funds are

Available in the

Following Accounts:

Funds to be reprogrammed from expenses to capital as the

cost of the contract will be reduced in fund 542.

REVIEWED AND APPROVED BY:

Finance.
Procurement.
Disadvantaged Business Enterprise.
Administrator.
Clerk of Commission

CONTRACT

OVERVIEW

1. Parties

This Contract by and between Cascade Engineering Inc. of Grand Rapids, Michigan, a Corporation herein and after known as "Contractor" and Augusta Richmond County, also known as "Augusta Richmond County", "County" or "Augusta" is entering a Contract for manufacturing, sale and delivery of Carts and services relating to collection of Garbage, Recycling, and Yard Waste for the Solid Waste Department of Augusta.

2. Independent Contractor Relationship

Contractor is an independent contractor of County. Contractor and its agents shall not be considered employees of the County for any purpose. Contractor shall be responsible for payment of taxes, including federal, state and municipal taxes chargeable or assessed with respect to its employees, such as Social Security, unemployment, Workers' Compensation, disability insurance, and federal and state withholding. Contractor shall also be responsible for providing such reasonable accommodations, including auxiliary aids and services, as may be required under the Americans With Disabilities Act, 42 U.S.C. 121 01 et seq., so as to enable any disabled person furnished by Contractor to perform the essential functions of the job. Contractor agrees to defend, indemnify, and hold harmless the County from and against any loss, cost, claim, liability, damage, or expense (including attorney's fees) that may be sustained by reason of Contractor's failure to comply with this paragraph.

3. Negotiation Costs

The Contractor shall bear its own cost of negotiating this Contract and developing all required materials. The County shall not be charged for any services or other work performed prior to the Start Date, herein defined.

4. Initial Contract Term; Extensions

This Contract is entered into on this _____ day of ______, 2006 ("Effective Date"). The services will begin on the date specified in the Notice to Proceed ("Start Date") and continue for a term of approximately five (5) years, ending at Midnight December 31, 2010. The County may extend this Contract for two (2) successive one (1) year periods. If the County extends this Contract, the same terms, conditions, and methods of payment shall apply during the extension period.

County's purchase obligation hereunder for succeeding fiscal periods shall be subject to availability and appropriation of funds.

The Contractor will commence work required by the Contract Documents on the Start Date specified in the written Notice to Proceed and will complete the initial phase within 90

calendar days unless the period for completion is extended by mutual agreement. See liquidated damages for non-compliance of terms.

5. <u>Incorporation of Exhibits</u>

- 5.1. The Contractor and the County acknowledge and agree that each of the following exhibits are attached to this Contract and is incorporated into and made a part of this Contract by reference:
 - Exhibit A: Product Price List
 - Exhibit B: Spare Parts Price List
 - Exhibit C: Service Price List
- 5.2. If there is a conflict between any exhibit and the Contract, the provisions of the exhibit shall prevail.

6. Contractor's Responsibilities

The Contractor shall be responsible for:

- 6.1. Furnishing all skilled labor, equipment, materials, supplies, supervision and utility services required for providing all services in accordance with this Contract unless otherwise noted within the Contract
- 6.2 All actions and activities of its subcontractors
- 6.3. Supplying all records, reports, and information required by this Contract.
- 6.4. Securing at Contractor's expense, all governmental permits and licenses and required regulatory approvals (including all required by County Ordinances).
- 6.5. Timely paying of all applicable taxes.
- 6.6. Complying with applicable laws and regulations.
- 6.7. Performing all work in a timely, professional manner.
- 6.8. All wages and expenses for Contractor's, sub contractors, or other employees, any benefits or added costs resulting from changes in technology, laws, regulations, labor, supplies, practices, availability of equipment, and other business risks that may affect the performance of this Contract.

7. Contractor Representations and Warranties

7.1. <u>Organization and Qualification.</u> The Contractor is duly incorporated or otherwise legally organized and, validly existing and in good standing under the laws of the State

of Georgia, and has all requisite power and authority to enter into and perform its obligations under this Contract.

7.2. Authority

- (a) The Contractor has the authority to execute this Contract, to make the representations and warranties set forth in it and is appropriately skilled, organized and financially able to perform the obligations of Contractor under this Contract in accordance with its terms
- (b) This Contract has been validly executed by the authorized representatives of the Contractor and constitutes a legally binding, enforceable obligation of Contractor.
- 7.3. Government Authorizations and Consents. The Contractor has or will obtain prior to the commencement date such licenses, permits, and other authorizations from federal, state, and other governmental authorities, as are necessary for the performance of its obligations under this Contract.
- 7.4. Compliance with Laws. The Contractor is not in violation of any applicable law, ordinance or regulation, the consequence of which will or may materially affect Contractor's ability to perform its obligations under this Contract. The Contractor is not subject to any order or judgment of any court, tribunal, or governmental agency which could materially and adversely affects its operations or assets in the State of Georgia, or its ability to perform its obligations under this Contract.
- 7.5. Accuracy of Information. None of the representations or warranties in this Contract and none of the documents, statements, certificates or schedules furnished or to be furnished by Contractor pursuant hereto or in connection with the performance of the obligations contemplated under this Contract, contains or will contain any untrue statement of a material fact or omits or will omit to state a material fact necessary to make the statements of fact contained therein not misleading.
- 7.6. <u>Independent Examination.</u> In accepting these responsibilities, the Contractor represents and affirms that it has made its own examination of all conditions, facilities, and properties affecting the performance of this Contract and of the quantity and expense of labor, equipment, materials needed, and of applicable taxes permits and laws

8. County Representations and Warranties

The County represents and warrants to the Contractor as follows:

8.1. <u>Organization and Qualification.</u> The County is a political subdivision of the State of Georgia and has all requisite corporate power and authority to enter into and perform its obligations under this Contract.

8.2. Authority

(a) The County has the authority to execute this Contract, to make the representations

and warranties set forth in it and to perform the obligations of the County under this Contract in accordance with its terms.

- (b) This Contract has been validly executed and constitutes a legally binding and enforceable obligation of the County.
- 8.3. Government Authorizations and Consents. The County has such licenses, permits and other authorizations, as are necessary for the performance of its obligations under this Contract, and no consent, approval, or authorization of or declaration, registration or filing with any governmental or regulatory body is required to be obtained or made by the County as a prerequisite to its execution of this Contract or its performance of its obligations contemplated hereby.
- 8.4. Compliance with Laws. The County is not in violation of any applicable law, ordinance or regulation, the consequence of which will or may materially affect the County's ability to perform its obligations under this Contract. The County is not subject to any order or judgment of any court, tribunal, or governmental agency which materially and adversely affects its operations or its ability to perform its obligations under this Contract.
- 8.5. <u>Accuracy of Information</u>. None of the representations or warranties in this Contract and none of the documents, statements, certificates or schedules furnished or to be furnished by the County pursuant hereto or in connection with the performance of the obligations contemplated under this Contract, contains or will contain any untrue statement of a material fact or omits or will omit to state a material fact necessary to make the statements of fact contained therein not misleading.

9. Traffic Laws, Noise Control

All Contractors vehicles shall operate in conformity with all federal, state and local laws, rules, or ordinances related to traffic and noise control.

10. Work on County Property

The Contractor will ensure that its employees shall, whenever on the County's property, obey all instructions and directions issued by the County to include posted signs. The Contractor agrees that its personnel and the personnel of its subcontractors will comply with all rules, regulations and security procedures of the County when on County property.

11. Contractor's Office

The Contractor shall maintain an office with telephone service and such staff as needed to receive and respond to requests and other coordination with County staff. Office hours shall be 8:00 a.m. to 5:00 p.m., Monday through Friday Eastern Standard Time.

12. Contract Area

The Contractor shall provide all services called for in this Contract within the boundaries of Augusta Richmond County unless otherwise mutually agreed to in advance.

13. Ownership of Carts

Contractor shall retain ownership of Carts until such time that an authorized agent from Augusta has received said Carts, receives a bill of lading, County reviews said shipment for damage and completeness, and signs acknowledgement of receipt.

County shall not be responsible for shipping charges for items not received by Augusta, damaged shipments, or incomplete shipments.

Contractor at their sole expense shall replace any damaged goods or shortages, as well as make up any shortages of parts or products.

14. Ownership of Carts with Assembly and Delivery

Contractor shall retain ownership of carts until the Assembly and Delivery crew shows documented proof that the container was delivered to storage area and properly received by a member of the delivery crew.

Properly Received shall mean, authorized agent for Augusta has received said Carts, receives a bill of lading, agent reviews said shipment for damage and completeness, and signs acknowledgement of receipt.

County shall not be responsible for shipping charges for items not received by Augusta, damaged shipments, or incomplete shipments.

Contractor at their sole expense shall replace any damaged goods or shortages, as well as make up any shortages of parts or products.

15. Wage Increases for Employees

All wages for any employees of the Contractor during the term of this Contract shall be the sole responsibility of the Contractor. Any benefits or added costs resulting from changes in technology, laws and regulations, labor practices, availability of equipment, and other foreseeable business risks that may affect the performance of this Contract shall be the Contractor's advantage or expense respectively, except noted herein.

16. Taxes, Permits, and Licenses

The Contractor will pay all sales, consumer, use, and other similar taxes required by the law of the place where the work is performed. The Contractor shall pay all applicable taxes levied by federal, state, and local governments and obtain all permits on any part of the work as required by law in connection with the work. It is understood and agreed that the cost of said

taxes is included in the contract price(s) for the work. The Contractor shall procure all temporary and permanent permits and licenses necessary and incidental to the due and lawful prosecution of the work and shall pay all charges and fees, and all costs thereof shall be deemed to be included in the contract price(s) for the work.

17. Withholding and Payment of Tax Liens and Judgments

The County may withhold and pay to the United States of America or to any federal court, or the State of Georgia or any state court, the amount claimed in a levy filed by the United States Internal Revenue Service or the Georgia State Department of Revenue, respectively, the amount directed by a writ of garnishment, writ of attachment, or writ of execution or by an order of a Bankruptcy Court, and/or by any court order, each for monies claimed from the Contractor. When presenting such an order, the County may in its discretion institute interpleading proceedings. The County may make a payment in conjunction with the interpleaded action to the appropriate court. Payments so made or deposited into the registry of the court shall be satisfaction of payment due to the Contractor.

CART SPECIFICATIONS

The following specifications represent the minimum standards required by Augusta.

- 1. The rollout cart is compatible with both standard American semi-automated bar-locking lifters (ANSI type B) as well as automated arm lifters (ANSI type G) (and per ANSI Z245.60-1999 and per ANSI Z245-30-1999.
- 2. The wheeled Carts are designed to contain recycling, yard waste and solid waste materials including paper, fibers, garbage, refuse, rubbish, and yard clippings.
- 3. The cart is designed to accommodate a load of three hundred thirty five (335) pounds for a 96 gallon cart, 200 for a 64 gallon cart, and 125 for a 35 gallon cart excluding the weight of the cart
- 4. The cart has wheels and axles that are designed to support the weight of the cart and its contents.
- 5. The cart is made with plastic material using hot melt compounding, that are specifically prepared to be colorfast so that they do not alter appreciably in normal use.
- 6. The carts will have a color as directed by County; these colors must be stabilized against ultraviolet light attack with not less than one half of one percent (1/2 of 1%) UV 531 or equivalent."
- 7. Vendor must provide a minimum of 3 differing colors of cart bodies as well as 3 differing colors of lids
 - Augusta will make specific color selections for the body and lids at the time of order.
- 8. The lid of the cart is designed to facilitate water run-off.
- 9. The lid is held closed by its weight only. No latches are used or required.
- 10. The lid is designed to allow opening without having to touch the bottom edge of the lid.
- 11. The cart, when empty, will not overturn when the lid is thrown fully open.
- 12. The cart will be hot stamped with a Logo as designed by County, on the side(s) of the cart. Stamping will be done in white. Serial Numbers shall be hot stamped on the cart body up to a maximum of seven digits. Serial numbers may be omitted by County if other tracking options are utilized.
- 13. The cart is provided with ten (10) inch wheels for the 96 and 64 gallon carts mounted on a 7/8 inch diameter hollow axle for the 96, 5/8" hollow axle for the 64, and eight (8) inch wheels will be mounted on a 5/8 inch diameter solid axle for the 35 gallon Carts. Handles

- will be such that the Cart can be pushed or pulled with little effort.
- 14. The body of the cart is composed of recyclable medium or high-density polyethylene that has been injection molded with a minimum thickness of 0.165 inches and a nominal wall thickness of .175 inches.
- 15. The capacity of the carts are 35, 64 and 96 U.S. gallons, excluding domed lid.
- 16. The design of the cart lid shall prevent the lid from being flung open by the wind.
- 17. The cart is designed to prevent being turned over by winds of up to 45 mph for a 96 gallon Cart, 40 mph for a 64 gallon Cart, and 27 mph for a 35 gallon Cart in any direction.
- 18. There will be a minimum of 33 pounds of plastic in a 96 gallon Cart, 24 pounds of plastic in a 64 gallon Cart, and 15 pounds of plastic in a 35 gallon Cart.
- 19. RF Id tags and a PSA with bar codes may be added to the Carts at Augusta's request as defined in the price documents with the warranty as defined in the Warranty section of this Contract.
- 20. In-mold graphics may be added to the Carts at Augusta's request as defined in the price documents with the same warranty as the Cart. The cost to create the custom graphic(s) is included in the cost per label.

WARRANTY

1. Cascade Standard Warranty:

Cascade Engineering, Inc. ("CE") warrants its residential refuse carts from functional failure due to defects in plastic materials or faulty workmanship or insufficient resistance to weathering while in normal use for a period of ten (10) years (120 months) from the date of shipment from the manufacturing facility to any purchaser ("Shipment Date"). Notwithstanding the above, CE shall provide purchaser with a spare parts supply of component parts, such as axles and wheels, which fail; purchaser shall be responsible for the labor cost incurred to install those replacement component parts and re-assemble the residential refuse cart.

For purposes of this warranty, "normal use" of a residential refuse cart is considered to be the collection of residential solid wastes in conjunction with an approved semi-automated or fully automated mechanical lifting device. If a dumping device other than one approved by CE is to be used for semi-automated or fully automated dumping, written approval of that brand and specific model of dumping device must be obtained from CE prior to use. Adjustments or modifications may be required for approval.

CE shall be promptly notified of any failures under warranty in order that such failures may be inspected. Residential refuse carts which fail shall be accumulated by the customer, but no accumulation of defective products shall exceed 20 residential refuse carts without written notification to CE.

Specifically excluded from this warranty are damages due to negligent or abusive use or normal wear and tear, including but not limited to, those items listed on Schedule A attached. Also specifically excluded are carts used as crew carts, dumped manually, or used for any purpose other than residential solid waste and curbside recyclables collection. Negligent, abusive, or specifically excluded use of carts voids this warranty after such use. This warranty is also voided upon the resale of the residential refuse carts.

THIS WARRANTY IS IN LIEU OF ANY OTHER WARRANTY, EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT SHALL CE BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES OR FOR ANY DELAY IN PERFORMANCE UNDER THIS WARRANTY.

RESIDENTIAL REFUSE CART SCHEDULE A

FOLLOWING ARE DESCRIPTIONS OF SEVERAL SITUATIONS WHERE THE WARRANTY DOES NOT APPLY BECAUSE OF IMPROPER USE, NEGLIGENCE, ETC. THESE SITUATIONS ARE GIVEN AS EXAMPLES ONLY AND EXCLUSIONS FROM WARRANTY COVERAGE ARE NOT LIMITED TO THESE SITUATIONS.

EXAMPLES OF NORMAL WEAR AND TEAR:

- o Scratches, cuts or scores from any source.
- o Accumulation of dirt or any other similar substance.
- o Normal deterioration of metal parts during services.
- o Normal discoloration due to atmospheric exposure or water conditions.
- o Appearance of rust on steel parts.

EXAMPLES OF NEGLIGENT OR ABUSIVE USE:

- o Exposure to heat which may result in burns, scorches, melting.
- o Exposure to chemicals such as solvents, petrochemicals, paints, or acids.
- o Major impacts such as being hit by a vehicle.
- o Improper storage such as storage in stacks, on lids, near heat or chemicals, outside uncovered without lid on, or in any area where damage may occur.
- Improper handling such as dropping stacks off delivery trucks, dragging over rough surfaces, stacking with wheels on, forcing through narrow openings, allowing packer mechanism to hit cart during dumping cycle.
- o Improper handling by automated arms such as any scratches, cuts, creases, scores, cracks or breaks from a maladjusted or improper automated lift arm or semi-automated lift arm or semi-automated dumper, including squeezing lid with arm and dropping cart into packer or possible wheel/axle damage and including excessive lift speed including any lift speed faster than six seconds for full lift-dump-down cycle.
- o Failure to properly open or secure lids when emptying or handling carts.
- o Improper use such as any use other than for storage, transport, and dumping normal single unit residential solid wastes, including such improper use as:
 - Construction, industrial, landscaping, liquid storage/transport, bulk solids storage/transport, recreational, commercial, food service and institutional applications.

2. Additional Warranty above the Standard Warranty.

The entire cart is covered by a minimum ten (10) year, full and non-prorated warranty.

Said warranty shall begin upon County Properly Receiving said Carts as defined by this Contract.

Any component or parts which fail to perform as specified in this warranty shall be replaced by the Contractor at No Charge to the County by delivering the items to the locations as specified by the County.

The County at its discretion may make minor or urgent repairs with its own labor. The County agrees to furnish, in writing, a list of Carts repaired with the nature of the repair.

Upon notification from the County, the Contractor shall make arrangements to make any warranty repairs. The Contractor shall supply all labor and parts for those repairs at no charge for transportation, parts, labor, or any other fees or charges. At least quarterly the Contractor shall provide reports to the County reflecting each repair made or other disposition.

The Contractor warrants components and parts from failure. Any component or part that becomes inoperable during the period stated herein will be replaced by the Contractor at no cost to the County. Warranty includes, but is not limited to, the factors listed below:

- 2.1. Failure of the lid to prevent rainwater from entering the container when closed on the container body.
- 2.2. Failure of the lid hinge to remain fully functional and continually hold the lid in the originally designed and intended positions when either opened or closed.
- 2.3. Damage to the container body, the lid, or any component parts caused by opening or closing the lids.
- 2.4. Failure of the axel or any other metal components to remain free of excess rust and corrosion to be determined by the County.
- 2.5. Failure of any plastic component to be resistant to damage in the event of contact with any common household or residential products or chemicals.
- 2.6. Failure of any portion of the bottom of the cart to remain impervious to damage or wear-through after repeated contact with rough and abrasive surfaces. At any time during this warranty's period, any Carts bottom becomes worn, torn, punctured, or fractured, whether through normal wear and tear or otherwise, so that it leaks when filled with water, such Cart body shall be replaced in its entirety and without charge under the warranty.

- 2.7. Failure of the plastic tire to remain in place and fully serviceable, as designed and intended on the wheels.
- 2.8. Failure of the Cart body, lid, hardware, or any component parts to remain their original shape.
- 2.9. Failure of the wheels, axles, tires or other components to provide continuous, easy mobility as originally designed and intended.
- 2.10. Failure of any Cart body, lid, wheels, or other component part to conform to the minimum standards specified herein; e.g., failure to use only first quality, high density, resin or parts.
- 2.11. Failure or damage to cart caused by incompatibility of the cart and the County's contracted private haulers cart lifters/dumpers provided that all equipment is maintained and operated within manufacturer's specifications for installation, operation, cycle times and maintenance.
- 2.12. Failure of any components that are designed to be wear points and need to be replaced.
- 2.13. Failure of in-mold graphics to retain their original color, clarity, and integrity.
- 2.14. Failure of any RF Id tag to remain attached to the Cart, be read by a proper RF Id tag reader, or other means of becoming inoperable.
- 2.15. In addition to other costs that may be recouped, the County may include costs of personnel and assets used to coordinate, inspect, and re-inspect items within this Contract as well as attorney fees if applicable.
- 2.16. Cascade reserves the right to inspect hauler/private hauler(s) equipment to determine suitability with carts and to assess if equipment is operated within manufacturer's specifications for cycle time and compatibility. Should incompatibilities be determined with hauler(s) equipment, CE will make a written request, indicating the appropriate adjustments to comply with manufacturer's specifications for the equipment. Should the hauler opt not to make adjustments, any damage occurring as a result of incompatibility will be deemed negligence and is not warrantable. Cascade will make a minimum of one inspection annually of hauler equipment.

2. Warranties/Guarantee

Contractor warrants that all materials, equipment, products, and/or services provided shall be fit for the purpose(s) for which they are intended, for merchantability, and shall conform with the specifications which are made an attachment and incorporate by reference to this contract. Contractor further warrants that all items shall comply with the applicable safety and health standards established for such products by the U.S. Occupational Safety and Health Act (OSHA) and/or Consumer Products Safety Act, and all other applicable federal laws or agency rules; all items are properly packaged; and all appropriate instructions or

warnings are supplied including any applicable MSDS sheets. Contractor further warrants that it has good title to goods supplied hereunder and that they are free of all liens and encumbrances. These warranties are in addition to those implied in fact or in law. All warranties included in this or the specification, unless expressly described otherwise, will cover labor, travel, time, mileage, or zone charge for the life of the warranty.

3. Guarantee

The Contractor shall guarantee all materials, products/services and equipment furnished and work performed for a period of ten (10) year from the date of acceptance by Augusta. The Contractor warrants and guarantees for a period of ten (10) year the completed system is free from all defects due to faulty materials or workmanship and the Contractor shall promptly make such corrections as may be necessary by reason of such defects including the repairs of any damage to other parts of the system resulting from such defects. The Augusta will give notice of observed defects with reasonable promptness. In the event that the Contractor should fail to make such repairs, adjustments, or other work that may be made necessary by such defects, the owner may do so and charge the Contractor the cost thereby incurred. The contract will be bonded by one year renewable bonds.

PUBLIC AWARENESS CAMPAIGN

- 1. The Contractor shall provide a public awareness campaign to educate the customers of dos and don'ts of using the Carts as well as key solid waste program information during the initial implementation phase of this Contract. This initiative shall include the following:
 - 1.1. Develop and implement an informational flier(s) specific to the solid waste program of the County to be delivered during the implementation phase.
 - 1.2. Develop and implement a video for public access channels.
 - 1.3. A direct mailing to residents who received Carts re-informing of do's and don'ts as well as other solid waste program information.
- 2. The contractor shall provide literature of the dos and don'ts of using the Carts as well as key solid waste program information as part of on ongoing public awareness campaign to educate the customers.
 - 2.1. Develop and implement informational flier(s) specific to the solid waste program of the County to be delivered every time a Cart is delivered, exchanged or touched for warranty purposes.
- 3. Items to be included shall include the following. This list many not be all inclusive.
 - 3.1. Materials to be collected and how such materials are to be prepared.
 - 3.2. Date that the customer shall begin using the new Cart that was delivered.
 - 3.3. Cart and material placement information.
 - 3.4. Days of Service by commodity.
 - 3.5. Telephone number of the County department that customers can call for additional information or for questions.
- 4. Augusta may wish to coordinate other facets of public awareness, education, communications, literature, etc via this Contract, called Media.
 - 4.1. Augusta has included an annual budget (not to exceed) amount for Media services in exhibit C, which are in addition to those aforementioned.
 - 4.2. Augusta and Contractor will work closely to determine the scope of work for Media services.
 - 4.3. Contractor shall charge the actual cost of said Media services plus an administrative fee of ten percent (10%) for those services.
 - 4.4. Augusta shall have input on any subcontractors working on this portion of the project, and Augusta must approve all said subcontractors prior to any work being performed.

The County shall approve all customer information materials, promotions, and educational activities, Media and materials developed by the Contractor in advance of their production, implementation, or distribution. All public information materials will conform to the County's guidelines and include the County's identity.

DELIVERY OF CARTS

1. Days of Delivery

The Contractor shall make all deliveries on the days of Monday through Saturday, or as otherwise required by County. Any deviations to this shall have prior written approval from the County, and the County shall have the final and sole decision.

2. Additional Carts

- 2.1. The residents of the Contract Area may request one or more additional Carts from the County.
- 2.2. All additional Carts must be approved by the County prior to being delivered.

3. Place of Delivery

- 3.1. The normal delivery point for Carts shall be at curbside or at the right of way. Special arrangements may be made by the County on a case-by-case basis to accommodate extraordinary situations.
- 3.2. The County on a case-by-case basis may require alley delivery.
- 3.3. The County shall monitor any delivery routes or a portion of a route on a regular basis to determine if the Contractor is placing Carts in the appropriate locations in a neat and orderly manner.
- 3.4. The Contractor shall provide special placement(s) for those individuals who are designated as Handicapped/Special Needs by the County.
- 3.5. If it would appear to a reasonable person that the Contractor is not placing Carts in a neat and orderly manner and the Carts upright, then the Contractor could face damages as stated within the liquidated damages section of this Contract.

4. County Liaisons

County shall provide personnel during the assembly and delivery process to respond to resident questions. This may be County personnel or hauler contractor personnel providing that there is route familiarity.

5. Delivery to Additional Locations

The County may add additional delivery points within the Contract Area at its sole option. This could include items such as County Cans, Bus Stops, Businesses, County Buildings, or any other locations as directed by the County.

6. Time of Delivery

The Contractor shall make delivery between dawn to dusk Monday through Saturday. Any other schedule must be approved in writing by the County.

7. Service Disruptions Due to Weather

Service disruptions due to weather shall occur when one (1) or more of the following events have occurred.

- 7.1. The County closes for a weather related issue.
- 7.2. The County notifies the Contractor of the County's wish to have the Contractor suspend services for weather related issues.
- 7.3. The Contractor notifies the County of the Contractors wishes to suspend assembly and delivery services for weather related issues. The County shall reasonably evaluate the situation, and make a determination of such conditions.

8. Service Disruptions – Non Weather

A number of impediments may require special efforts to accomplish under this Contract.

8.1. On-Street Parking

Certain neighborhood streets allow "on-street parking" which may present impediments. The Contractor shall perform services even if the curb is blocked.

8.2. Blocked Streets/Renovations/Construction

When closure of roadways providing access, blocked streets or other disruption beyond the Contractor's control prevents timely service on the scheduled day. If service was not possible, the Contractor shall provide service on the next business day.

9. Cart Storage

The Contractor shall coordinate storage space for Carts. Augusta will locate and provide suitable County owned property for storage purposes. Storage area(s) shall be secure and paved. The area must provide for access and adequate turn around for 53' trailers. A minimum of four (4) areas need to be provided for staging.

10. Meetings and Communication

In order to minimize problems during the implementation phase of the Contract, to provide a forum for discussing and resolving any operational questions or issues that may arise, and for updating the Operations Plan, the parties agree to meet on a regular basis as follows:

10.1. The period from the date the Contract is awarded until initial services have been

completed (or such earlier date as may be mutually agreed to by the parties) shall be referred to as the "Implementation Phase". During the implementation phase, meetings shall be held between representatives of the parties on a once a week basis The primary purpose of such meetings shall be to develop and/or refine the Operations Plan, to evaluate the Contractor's performance in implementing the Contract, to evaluate cart delivery progress or problems, to air and seek resolution of complaints, to discuss any actual or perceived problems with service, and to discuss promotion, public information and public relations.

- 10.2. After the Implementation Phase, meetings shall be held at least on a semi-annual basis, unless otherwise mutually agreed to.
- 10.3. Should the County utilize the asset management system of the Contractor, a monthly meeting may be required should Augusta request such meetings.
- 10.4. Meetings shall be held at the offices of the County unless otherwise agreed. Each party shall be available for at least 90 minutes per meeting, unless otherwise agreed in advance. Meetings shall be held during normal business hours.

11. Removal of Existing Carts

The Contractor may enter a separate agreement with Augusta's solid waste collection Haulers to remove their current carts. This agreement will be separate from this Contract, and Augusta shall not bear any cost for the removal of said used carts.

ASSET MANAGEMENT SYSTEM/INITIAL AUDIT

- 1. The Contractor shall provide a detailed initial audit associated with this Contract. The Contractor shall provide the following:
 - 1.1. A complete audit of the collection area including vacant lots, unimproved property, multifamily, multi unit, single family, and other property definitions as well as, number of cans delivered, can id's delivered, and other information as requested by Augusta.
 - 1.2. Must coordinate with Augusta's GIS, IT department(s) to ensure program success.
 - 1.3. Uploading data into a usable format for new billing software program.
 - 1.4. Provide a list of changes back in original format.
 - 1.5. Provide a list of exceptions from the original list.
 - 1.6. Providing the hardware and software to perform audit, install, and future maintenance.
- 2. The Contractor shall provide a detailed asset management system associated with this Contract. The Contractor shall provide the following:
 - 2.1. Deliver, collect, clean, remove and maintain carts for Augusta.
 - 2.2. Perform warranty repairs to carts as needed.
 - 2.3. Coordinate warranty claims on behalf of Augusta.
 - 2.4. Track and report on non-warranty claims and damages to carts, so Augusta may bill or recoup costs associated.
 - 2.5. Provide new customer welcome packets or other Media as carts are delivered.
 - 2.6. Attend community events to educate the public about Cart use, cleaning, do's and don'ts, etc.
 - 2.7. Work/educate haulers of proper use, maintenance, and care of cart tippers/dumpers to limit warranty and/or damage claims.
 - 2.8. Keep proper inventory of assets ensuring program success.
 - 2.9. Provide full history of all transactions and associated costs.
 - 2.10. Assign and maintain containers locations.
 - 2.11. Provide real time asset value.
 - 2.12. Provide real time asset location(s).

- 2.13. Ensure accurate inventory.
- 2.14. Provide real time route audits as well as possible annual audits.
- 2.15. Generate custom reports.
- 2.16. Provide a web site to Augusta to track and review aforementioned items.
- 2.17. Provide training on hardware and software utilization, reporting, etc.
- 2.18. Other tasks as assigned, relevant to asset management, placement of carts, warranty and auditing of assets.

3. Supplying Carts

- 3.1. The Contractor will supply the County with Carts for distribution to the Customer.
- 3.2. Carts for new customers shall be delivered within forty eight (48) hours of notification from the County. Carts will be delivered in a clean, sanitary, working condition.
- 3.3. The Carts shall be provided with instructions of proper use, including any customer actions that would void manufacturer's warranties, such as placement of hot ashes in the Cart causing the Cart to melt, and procedures to follow to minimize potential fire problems. A pamphlet explaining the dos and don'ts, program requirements, directions for placement of the Cart, and notification of the day of the week when the customer will receive collection will be provided with each Cart.
- 3.4. No other cans or Carts may be placed into service unless approved by the County or as otherwise noted in the Contract.
- 3.5. Should a customer require a replacement Cart due to loss, stolen or damage, the Contractor has forty eight (48) hours or the next garbage collection day, whichever is greater, to replace the Cart with a Cart in clean, sanitary, working condition. A list of lost or damaged Carts will be provided to the County with the Monthly Report, to include address so the County may bill the appropriate party.
- 3.6. The Contractor is responsible for all repairs to Carts. Only factory or approved parts may be used to repair said Carts. Any damaged Carts that can not be repaired by the Contractor shall be returned to the County so they may follow the warranty process.
- 3.7. If a customer discontinues service, the Contractor has forty eight (48) hours to collect the Cart.
- 3.8. All Carts physically returned to the County shall be clean, sanitary, and in working condition, unless being returned for damages beyond repair, then the Cart must be returned clean and sanitary.
- 3.9. This section is subject to the liquidated damages section of this Contract.

4. Cart Storage

The County shall provide storage space for Carts. The Contractor shall be responsible to keep said storage area neat and clean.

5. Minimum Cart/Bin Percentage

The Contractor shall work with the County to ensure a minimum inventory of Carts, and parts (lids, wheels, axels, spacers, dump bars, etc). The County and Contractor will work to establish minimum inventories required for success.

MANNER OF SERVICE

1. Employee Conduct

- 1.1. The Contractor is responsible for providing supervision necessary to ensure that employees are courteous, exercise due care, do their work without delay, minimize noise, avoid damage to private property, close and relock all gates and doors that they open, and if on private property, follow the regular pedestrian walkways and paths, and not cross flower beds, lawns or through hedges. Employees shall wear or carry identification supplied by the Contractor.
- 1.2. When the County identifies unsatisfactory conduct by an employee and the County notifies the Contractor of such conduct, the Contractor shall take remedial action. The remedial action shall be appropriate to the level of unsatisfactory conduct, provided that if the County requests of the Contractor that an employee be suspended from further work on the Contract for unsatisfactory conduct, the Contractor will permanently remove the employee from further work on the Contract.
- 1.3. The Contractor will notify the County of remedial action taken.
- 1.4. The County will cooperate with the Contractor by supplying to the Contractor the names and contact information, when known, of the complainant as well as known witnesses.
- 1.5. Through the process identified above, the County will have the sole right to require the removal and replacement of such employee(s) by the Contractor and/or subcontractors. The County shall exercise such right by providing written notice to the Contractor via U.S. Mail, fax or email. Such notice will include the County's reason for the request.
- 1.6. The Contractor will ensure that they and/or the subcontractor employ sufficient qualified persons to prosecute the work and complete this contract.
- 1.7. The term "personnel" shall include all staff provided by the Contractor or its subcontractors who work or perform services under this Contract.

2. Damage Claims

- 2.1. The Contractor shall be responsible for any damages to real property, personal property and personal injury to the extent caused by negligent or willful acts or omissions and is caused in whole or in part by the Contractor, its employees, agents, or subcontractors in performing work under this Contract.
- 2.2. The Contractor shall notify the County immediately of any damages and/or damage claims as set forth in the section above, and shall indemnify and hold harmless the County for same. Written notice of any damages and/or damage claims shall be provided to the County within three (3) business days of the date of incident, and shall include the name, address, telephone number, description of incident, witness

information and the description of the remedy. The Contractor shall actively work to resolve the claim in a timely manner. Timely shall mean, after the Contractor has received notice of damage: a) claims which are processed directly by the Contractor (not a claim submitted under insurance) shall be resolved within thirty (30) calendar of the day of incident; and, b) claims to be submitted to an insurance carrier, will be reported to the carrier within ten (10) business days and a position letter on the claim reported from said claim within thirty (30) calendar days. For extenuating circumstances, upon written request from the Contractor, the County at its sole option may extend the above mentioned time period. If the damage claim is deemed as Contractors responsibility and is not processed within the applicable period, the County may take any action it deems necessary to make the injured party whole and deduct the same from amounts due the Contractor.

3. Customer Grievances

The Contractor will designate a representative to adjudicate customer grievances. At the County's request, the representative will join the County in meeting with an aggrieved customer within 24 hours of notification to resolve a complaint.

4. Employee Uniforms/Identification

- 4.1. Employees who perform work under this Contract shall wear a uniform. Uniforms shall be of similar type and color for employees.
- 4.2. The uniform shirt shall be worn buttoned up within one button of the top button and tucked into the pants/shorts. The shirts must be kept in a clean professional manner. Shirts must remain free from rips, holes and stains. T-Shirts are allowed, so long as they meet all other Contract provisions. Tank tops and sleeveless shirts are not allowed.
- 4.3. The uniform pants/shorts shall be worn above the hips and should have a length not less than one (1) inch above the knees. Pants/shorts must be kept in a clean professional manner. Pants/Shorts must remain free from rips, holes and stains. All pants/shorts must be hemmed and have a finished look.
- 4.4. All uniform shirts and outerwear shall have the company name placed in a conspicuous place. In addition, supervisors shall have the word "supervisor" placed in a conspicuous place.
- 4.5. The Contractor shall carry identification indicating the name of the employee, the company name and contact information.

CONTRACT PRICING

1. <u>Increase or Decrease in Quantities</u>

The County reserves the right to increase or decrease the quantities of any item under this contract and pay according to the unit price, as listed. If the unit price does not compute to the total price the unit price shall govern.

2. Negotiation of Additional Services

Should services be required that are not called for in this Contract, the Contractor and the County may negotiate to provide said services at a negotiated service level and cost.

3. Taxes

Augusta, Georgia is exempt from Georgia Sales Tax and Federal Excise Tax. No prices charged should include these taxes under any circumstances.

4. Payment for Services

- 4.1. The County shall pay the Contractor after receiving products/services under this Contract. Payment shall be based on the products/services received multiplied by the appropriate rate.
- 4.2. The County shall deduct any assessments due from the payment owed to the Contractor.
- 4.3. The County shall add additional monies owed for additional products/services provided for under this Contract.

5. Contract Price(s)

See Exhibits: A through C

6. Adjustments

6.1. CMAI Adjustment

- (a) The Contractor shall be entitled to one hundred percent (100%) of the actual percentage change in the CMAI (as hereinafter defined).
- (b) The "CMAI" is the Commercial Market Associates, Inc. plastics index that reports current market costs for HDPE-injection grade resin as reported monthly in Plastics News from major petrochemical suppliers. The CMAI index is the industry standard for per pound resin costs.

(c) General conditions for adjustments

- 1. The CMAI Index percentage change will be determined from January 1st to December 31st of the previous year, with an implementation of the adjustment on June 1st, and every June 1st thereafter with the first increase starting in June of 2007.
- 2. The Contractor must notify the County in writing by March 31st of each year beginning March of 2007, of the amount and percentage of any rate adjustment allowed under this section. If timely notice is not received by the County, no increase will be allowed for that year.
- **3.** In any event, the adjustment(s) will be limited to a maximum increase amount of four percent (4%) annually and a maximum decrease amount of eight percent (8%) annually.
- **4.** Should there be an extraordinary change in the cost of resin used to manufacture Carts which are utilized by Augusta which impacts the true cost of the contract, the Contractor and/or the County shall have the right to petition for an equitable adjustment.

2. Payment Procedure

- **a.** The Contractor shall submit a monthly invoice to the County. The invoice shall be for products/services performed in the previous month at a price for that product/service as outlined in Exhibits A through C and other provisions in this Contract.
- **b.** The County shall pay the Contractor within thirty (30) days of receipt of an undisputed invoice.
- **c.** Payment requests shall be accompanied by:
 - 1. Data supporting the payment request.
 - 2. Certification from the Contractor that it has fully and properly performed all items of the work covered by the payment request, that all insurance and bonds required are in full force and in effect, and all subcontractors and suppliers have been paid from previous requests, and that the Contractor is not in default of any provision of the Contract.
 - **3.** Certification from the Contractor that is has evaluated all conditions as may relate to this Contracts "Most Favorable Customer" language, and can certify that it has met all said requirements thereof.
 - **4.** Certification from the Contractor that it has fully and properly met all obligations under the Contract, and has done so fully and honestly.

- **5.** Required DBE forms.
- **6.** Payment for services will not be paid until the above mentioned items have been received.
- **d.** Should the County dispute any portion of the invoice, it shall within thirty (30) days of receipt of the invoice, provide the Contractor with a detailed itemized list of such objections.

3. Most Favorable Customer

If Contractor, at any time during the Contract period enters into an agreement or contract with another customer (public or private), with a location in the Southeast region (NC/SC/TN/GA/AL/MS) and offers the same or substantially the same base product(s), service(s), or additional products or services that may be considered options offered to the County on a basis that provides prices, warranties, benefits and or terms more favorable than those provided to the County, Contractor shall notify Augusta of that offering on a quarterly basis. This Contract with Augusta shall be deemed to be automatically amended and effective retroactively to the effective date of the most favorable agreement or contract, wherein Contractor shall provide the same prices, warranties, benefits, or terms to Augusta. The County shall have the right and option at any time to decline to accept any such change, in which case the amendment shall be deemed null void. Augusta shall have the sole and final decision on what is considered the most favorable.

REPORTING REQUIREMENTS

1. Report/Information Specifications

Throughout the life of this Contract a series of reports and information will be required by the Contractor. These reports and information are called for throughout the Contract. The County reserves the right to dictate format, style and to the extent possible, standardization of all reports and information required under this Contract. The County may require reports in hard copy and/or electronic copy for any and all reports. This list may not be inclusive of the reports or information required by the Contractor under this Contract. The County further reserves the right to alter the reporting requirements from time to time.

- 1.1. Project time schedule
- 1.2. Weekly manufacture status
- 1.3. Weekly delivery status to County with attached manifesto
- 1.4. Phase delivery schedule
- 1.5. Daily status report recording number of deliveries per day
- 1.6. Audit results
- 1.7. Inventory
- 1.8. Cost tracking

SECURITY, LIABILITY, DAMAGES

1. **Indemnity**

Contractor shall defend, indemnify, and hold harmless the County (including its officers, employees, and agents) from all demands, damages, liabilities, costs, and expenses (including reasonable attorney's fees), judgments, settlements, and penalties of every kind arising out of its performance of products/services including, without limitation, damages for personal injury or death or loss or damage to property due, or claimed to be due, to the negligence or willful misconduct of Contractor including such portion thereof due, or claimed to be due, to the negligence of the County except that Contractor shall have no duty to hold harmless the County for such portion of the foregoing proximately caused by negligence or misconduct of the County, and if any suit, claim, or demand was defended by Contractor, then the County will reimburse Contractor for its pro-rata share of its costs, expenses (including reasonable attorney's fees), and damages. The County may elect to participate in the defense of any suit, claim, or demand by employing attorneys at its own expense, without waiving Contractor's obligations to indemnify, defend, or hold harmless. Contractor shall not settle or compromise any claim, suit, or action, or consent to entry of judgment without the prior written consent of the County and without an unconditional release of all liability by each claimant or plaintiff to the County.

2. <u>Limitation of Liability</u>

Each party's liability to the other for any loss, cost, claim, liability, damage, or expense (including attorneys' fees) relating to or arising out of any negligent act or omission in its performance of obligations arising out of this Contract, shall be limited to the amount of direct damage actually incurred. Absent gross negligence or knowing and willful misconduct which causes a loss, neither party shall be liable to the other for any indirect, special or consequential damage of any kind whatsoever.

3. Insurance

The Contractor shall purchase and maintain such insurance as will protect him from claims set forth below which may arise out of or result from the Contractor's execution of the work, whether such execution be by himself or by any other subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- 3.1. Claims under workman's compensation, disability benefit, and other similar employee benefit acts;
- 3.2. Claims for damages because of bodily injury, occupational sickness or disease, or death of his employees;
- 3.3. Claims for damages because of bodily injury, sickness or disease, or death of any person other than his employees;

- 3.4. Claims for damages insured by usual personal injury liability coverage which are sustained (1) by any person as a result of an offense directly or indirectly related to the employment of such person by the Contractor, or (2) by any other person;
- 3.5. Claims for damages because of injury to or destruction of tangible property, including loss of use resulting there from.

Certificates of Insurance acceptable to the Augusta shall be filed with the Augusta prior to commencement of the work. These Certificates shall contain a provision that coverage afforded under the policies will not be canceled unless at least thirty (30) days prior written notice has been given to the Augusta. The Contractor shall procure and maintain, at his own expense, during the contract time, liability insurance as hereinafter specified. The limits of liability the contract time, liability insurance as hereinafter specified.

Contractor's General Public Liability and Property Damage Insurance including vehicle coverage issued to the Contractor and protecting him from all claims for personal injury, including death, and all claims for destruction of or damage to property, arising out of or in connection with any operations under the contract documents, whether such operations be by himself or by any subcontractor under him, or anyone directly or indirectly employed by the Contractor or by a subcontractor under him. Insurance shall be written with a limit of liability of not less than \$1,000,000 for all damages arising out of bodily injury, including death, at any time resulting therefrom, sustained by any one person in any one accident; and a limit of liability not less than \$1,000,000 aggregate for any such damages sustained by two or more persons in any one accident. Insurance shall be written with a limit of liability of not less than \$1,000,000 aggregate for any such damage sustained by two or more persons in any one accident; and a limit of liability of not less than \$1,000,000 aggregate for any such damage sustained by two or more persons in any one accident.

The Contractor shall acquire and maintain, if applicable, Fire and Extended Coverage insurance upon the contract to the full insurable value thereof for the benefit of the Augusta, the Contractor, and subcontractor as their interest may appear. This provision shall in no way release the Contractor or Contractor's Surety from obligations under the Contract documents to fully complete the project.

The Contractor shall procure and maintain, at his own expense, during the contract time, in accordance with the provisions of the laws of the state in which the work is performed, Workmen's Compensation Insurance, including occupational disease provisions for all of the latter's employees unless such employees are covered by the protection afforded by the Contractor. In case any class of employees engaged in hazardous work under this Contract at the site of the project is not protected under Workmen's Compensation statute, the Contractor shall provide, and shall cause each subcontractor to provide, adequate and suitable insurance for the protection of his employees not otherwise protected. Each insurance policy shall be renewed 10 days before the expiration date thereof.

Insurance policies must be carried by a recognized insurance company licensed to do business in the state in which the project is constructed and approved by the Owner's Attorney.

The insurance certificates themselves must contain the naming of the aforestated special hazards

The Contractor shall not commence work under this Contract until he has obtained all of the insurance required and such insurance has been approved by the Owner, nor shall the Contractor allow any subcontractor to commence work on his subcontract until the insurance required of the subcontractor has been so obtained and approved.

In the event any insurance coverage should be canceled or allowed to lapse, the Contractor will not be permitted to work until adequate and satisfactory insurance is in effect. Failure to keep insurance policies in effect WILL NOT be cause for any claims for extension of time under this Contract.

4. Contract Security

The Contractor shall within ten (10) days after the receipt of the Notice of Award furnish the County with an annual Performance Bond and a Payment Bond in penal sums equal to the amount of the first year of the Contract price or one hundred thousand dollars (\$100,000), whichever is greater, conditioned upon the performance by the Contractor of all undertakings, covenants, terms, conditions, and agreement of the contract documents, and upon the prompt payment by the Contractor to all persons supplying labor and materials in the prosecution of the work provided by the contract documents. The performance and payment bonds will be renewed annually. The second and subsequent years of the contract will be bonded in the amount of 100% of the contract for each such year or one hundred thousand dollars (\$100,000), whichever is greater. Failure of Western Surety to renew or issue additional bonds on the project would not constitute default on any previously issued bond. Cascade Engineering will own the responsibility for ensuring that bonds are renewed annually. The performance bond provided by Western Surety Company will cover only the first year of warranty. The balance of the ten year warranty will be the sole responsibility of Cascade Engineering, Inc. Such bonds shall be executed by the Contractor and a corporate bonding company licensed to transact such business in the state in which the work is to be performed and named on the current list of "Surety Companies Acceptable on Federal Bonds" as published in the Treasury Department Circular Number 570. The expense of these bonds shall be borne by the Contractor. If at any time a surety on any such bond is declared a bankrupt or loses its right to do business in the state in which the work is to be performed or is removed from the list of Surety Companies accepted on Federal Bonds, Contractor shall within ten (10) days after notice from the Augusta to do so, substitute an acceptable bond (or bonds) in such form and sum signed by such other surety or sureties as may be satisfactory to the Augusta. The premiums on such bond shall be paid by the Contractor. No further payments shall be deemed due nor shall be made until the new surety or sureties shall have furnished an acceptable bond to the Augusta.

The attorney-in-fact or officer who signs the Performance Bond and the Payment Bond for a surety must file with such bond a certified copy of his power of attorney authorizing him to do so.

5. Liquidated Damages – Reasonable pre-estimate of Owners Damages

- 5.1. Augusta is committed to delivering quality solid waste disposal services to its citizens and maintaining clean streets and public areas. This Section establishes damages for failure to meet performance standards hereinafter set forth. This section is independent of the section addressing default under this Contract. The County and Contractor expressly agree that the potential harm or injury to the County caused by the following incidents of substandard performance are difficult or impossible to accurately estimate. The County and Contractor stipulate that the following damages are a reasonable preestimate of the probable loss to the County and the public. The parties agree that these provisions for liquidated damages are not intended to operate as penalties for breach of Contract.
- 5.2. This Section is independent of the default provision within this Contract. The amounts agreed to herein for each act or omission(s) are Liquidated Damages. Liquidated Damages may be set-off and deducted from the monthly payment to the Contractor.
- 5.3. This section will be effective on the Start Date.
 - (a) Performance

Standard

(Omission): Not placing Carts in the designated locations in a neat, upright and

orderly manner.

Damage: \$10 per incident

(b) Performance Standard

(Omission): Not completing the agreed upon implementation phase and or

manufacturing schedule within the specified period.

Damage: \$1000/for each consecutive calendar day

(c) Performance

Standard

(Omission): Not completing a delivery to an address within (48) hours or the next

garbage collection day, whichever is greater.

Damage: \$25 per incident per day (each Cart represents a separate

incident)

(d) Performance

Standard

(Omission): Failure to deliver educational package to each resident.

Damage: \$5/per incident.

(e) Performance Standard

(Omission): Failure to start the implementation phase on the agreed upon date.

Damage: \$1,000/for each consecutive calendar day.

5.4. The liquidated damages set forth above are not intended to compensate the County for any damages other than inconvenience and loss of use or delay in services. The existence or recovery of such liquidated damages shall not preclude the County from recovering other damages in addition to the payments made hereunder which the County can document as being attributable to the above referenced failures. In addition to other costs that may be recouped, the County may include costs of personnel and assets used to coordinate, inspect, and re-inspect items within this Contract as well as attorney fees if applicable.

EQUAL OPPORTUNITY/NON-DISCRIMINATION, DRUG FREE WORK PLACE

1. Good Faith Use of Disadvantaged Business Enterprises

It is an official policy of the Augusta-Richmond County Commission, other Augusta-Richmond officials, and employees, that all necessary and reasonable steps shall be taken to ensure that disadvantaged business enterprises including small business enterprises have the maximum opportunity to compete for and participate in all contracts and subcontracts. Further, the Augusta-Richmond County Commission has the option to establish incentives to promote business opportunities covered by Augusta-Richmond County Code§ 1-10-61.

To implement this policy, County encourages minority participation through subcontracting, joint ventures, or other methods in contracting for services. In order to expedite the evaluation process, we have attached is the Checklist for Good Faith Efforts, Proposed Disadvantaged Business Enterprise Participation, and Letter of Intent to Perform forms. The Contractor should complete the Proposed DBE Participation Form, indicating the percentage of participation for this Contract. Augusta-Richmond County's office of Disadvantaged Business Enterprise is available at (706) 826-1325 as a resource in identifying local Disadvantaged Business Enterprise (M/WBEs and SBEs).

2. **Definition(s)**

- 2.1. **Minority Person** A United States citizen or permanent resident alien (as defined by the Immigration and Naturalization Service) of the United States, who is Asian, Black, Hispanic, Native American, or female, also one who is economically and socially disadvantaged.
- 2.2. **Disadvantaged Business Enterprise (M/WBE and SBE)** A business which is owned or controlled by minority persons who have been deprived of the opportunity to develop and maintain a competitive position in the economy because of social and economic disadvantages. The ownership interest must be real and continuous and not created solely to meet the minority business or minority contractor provisions of this Policy. More specifically, disadvantaged business refers to any small business concern which:
 - (a) Is at least fifty-one 51% owned by one or more minority citizens of the United States who are determined to be socially and economically disadvantaged?
 - (b) Is a corporation, with fifty-one percent (51%) of all classes of voting stock of such corporation must be owned by an individual determined to be socially and economically disadvantaged.
 - (c) Is a partnership, with fifty-one percent (51%) of the partnership interest is owned by an individual or individuals who are socially and economically disadvantaged and whose management and daily business operations are controlled by individuals determined to be socially and economically disadvantaged. Such individuals must be involved in the daily management and operation of the business concerned.

- 2.3. **Women Business Enterprise (WBE)** A business which is owned and controlled by one or more females and who have been deprived of the opportunity to develop and maintain a competitive position in the economy because of social and economic disadvantages.
- 2.4. **Small Business Enterprise (SBE)** A local small business which has its principal office and place of doing business in Augusta-Richmond County which is not dominant in its field of operation and is regarded as small in size as measured by its annual gross receipts being less than \$500,000.

3. **DBE Utilization**

3.1. Obligation

(a) Contractors are required to make all possible efforts that are reasonable to ensure that M/WBEs and SBEs have full and fair opportunities to compete for performance by complying with the requirements of this clause. Included in these requirements is the achievement of a good faith effort to utilize Disadvantaged Business Enterprise under this Contract either directly or indirectly through work, services or supplies or other available means, and/or substantiation that there is a good faith effort to ensure that DBEs had the maximum opportunity to participate in the performance of work under this Contract. Contractors shall not discriminate on the basis of race, ethnicity, national origin or gender in the award and performance of the work under this contract.

3.2. Compliance

- (a) The Contractors participating in this contract are hereby notified that failure to fully comply with the County's DBE policy, as set forth herein, shall constitute a breach of contract which may result in termination of the Contract or such other remedy as deemed appropriate by the County.
- 3.3. Requirements and procedures subsequent to Contract award and prior to issuance of notice to proceed
 - (a) Upon approval of the required DBE utilization documentation, including but not limited to (Contractor's DBE Utilization Form; Proposed DBE Participation Form) the successful Contractor shall enter into a subcontract with each approved subcontractor. A copy of said sub-contract shall be provided to the County prior to the start date of the Contract. The Contractor, thereafter shall neither terminate nor significantly reduce the scope of work to be performed by, or significantly decrease the price to be paid to, the subcontractor there under, without, in each instance, prior written approval of the County. All requests are to be made in writing. An additional copy of said request shall be sent to:

Director of Disadvantaged Business Enterprise 501 Greene Street, Suite 304 Augusta, Georgia 30901 (b) DBE Substitutions – Failure to comply with the terms of the Contract, including required use of DBE's as indicated on the Contractor's Statement of the DBE Utilization form constitutes breach of contract, and may lead to the cancellation or termination of the Contract. The Contractor must notify the County, in writing of the necessity to substitute a new DBE in order to fulfill the DBE requirements prior to a substitution being made. The letter requesting approval of a substitution must give specific reasons for justifying release by the County of prior DBE commitments specified in the Contractor's proposal. An additional copy of said request shall be sent to:

Director of Disadvantaged Business Enterprise 501 Greene Street, Suite 304 Augusta, Georgia 30901

Actual substitution or replacement of DBEs to fulfill the DBE Contract requirements shall not be made before the County's written approval is given as the acceptability of the substitute DBE.

(c) After award of the Contract, no waiver of the DBE requirements will be granted except in exceptional circumstances. Requests for complete or partial waiver of the DBE requirements of this Contract must be submitted in writing to the County, stating all details of the request, the circumstances, and any additional relevant information. The request must be accompanied by a record of all efforts taken by the Contractor to locate specific DBEs, to solicit DBE bids, and to seek assistance from the Office of the Disadvantaged Business Enterprise, (706) 826-1325. An additional copy of said request shall be sent to:

Director of Disadvantaged Business Enterprise 501 Greene Street, Suite 304 Augusta, Georgia 30901

- (d) In cases, where an enterprise was previously considered to be DBE is found not to be bona fide, the County will consider the following special criteria in evaluating a waiver request.
 - (1) Whether, the prime contractor was reasonable in believing the enterprise to be a bona fide DBE; and
 - (2) Whether reasonable efforts were taken to substitute the DBE involved.

4. Reporting Requirements and Post Award Compliance

To assist the County in determining the responsibility of the Contractor in adhering to the DBE requirements of the Contract, the successful Contractor shall submit the DBE validating information.

4.1. Attachment "A" and Attachment "B" shall be completed and submitted with proposal in a separate sealed envelope, indicate N/A if no participation.

- 4.2. All firms must have a valid and current certification awarded by the Office of the DBE; Department of Transportation; GDOT; or other recognized certification entity.
 - (a) Any Contractor found to have knowingly engaged in or participated in any attempt, directly or indirectly, to evade the requirements of this DBE Contract clause may be declared ineligible for any future contracts paid for, in whole or in part by the County. Furthermore, the Contractor may be held liable to the County for any forfeiture of funds or damages caused by a delay in the award or performance of the Contract resulting from the Contractor's non-compliance.
 - (b) During the performance of the work under this contract, the Contractor shall keep such records as are necessary to determine compliance with its DBE utilization obligations. Records to be kept by the Contractor will indicate the actual DBE and non-DBE contractors, types of work being performed, actual dollar value of work, services, and procurement (See Attachment C). Notice shall be made in writing, and include a copy to the Office of Disadvantaged Business Enterprise, any time during the contract period that the Contractor anticipates the established DBE requirements on the Contract will not be achieved. In the event the Contractor does not achieve the established requirement, the records shall also include the following: (i) the progress and efforts being made in seeking out disadvantaged contractors for work on this project; and (ii) documentation of all correspondence, contacts, telephone calls, etc., to obtain the services of disadvantaged business enterprises on this project.
 - (c) During the Contract period, the Contractor shall submit reports (See Attachment C) monthly on contracts and other business transactions executed with DBEs with respect to the records cited to exact provision the records are referred to. The reports shall be in such a form, manner, and content as prescribed by the County. The report (See Attachment C) shall be submitted with each request for payment, no later than five (5) business days from the end of the month with a copy going to both the Solid Waste Department as well as to the Office of Disadvantaged Businesses Enterprise.

5. Non-discrimination

Pursuant to IC 22-9-1-10 and the Civil Rights Act of 1964, Contractor shall not discriminate against any employee or applicant for employment in the performance of this contract. The Contractor shall not discriminate with respect to hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of race, color, religion, sex, disability, national origin or ancestry. Breach of this covenant may be regarded as a material breach of contract. Acceptance of this contract also signifies compliance with applicable Federal laws, regulations, and executive orders prohibiting discrimination in the provision of services based on race, color, national origin, age, sex, disability or status as a veteran.

6. Non-Discriminatory Service

The Contractor will not discriminate against any customer or County resident in the provision of service or quality of service on account of race, religion, creed, color, sex, marital status, sexual orientation, political ideology, ancestry, national origin, or the presence of any sensory, mental, or physical handicap, unless based upon a bona fide qualification to or for service. The Contractor shall provide the same good quality service without regard to racial, ethnic, or cultural characteristics or relative standard of living of the neighborhood.

7. <u>Drug – Free Workplace</u>

- 7.1. The County is a drug-free workplace employer. The Contractor hereby certifies that it has or it will within thirty (30) days prior to the Start Date of the Contract;
- 7.2. Notify employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the workplace and specifying actions that will be taken for violations of such prohibition;
- 7.3. Establish a drug-free awareness program to inform employees about (i) the dangers of drug abuse in the workplace, (ii) the Contractor's policy of maintaining a drug-free workplace, (iii) any available drug counseling, rehabilitation, and employee assistance programs, and (iv) the penalties that may be imposed upon employees for drug abuse violations;
- 7.4. Notify each employee that as a condition of employment, the employee will (i) abide by the terms of the prohibition outlined above, and (ii) notify the Contractor of any criminal drug statute conviction for a violation occurring in the workplace not later that five (5) days after such conviction;
- 7.5. Impose a sanction on, or requiring the satisfactory participation in a drug counseling, rehabilitation or abuse program by, an employee convicted of a drug crime;
- 7.6. Make a good faith effort to continue to maintain a drug-free workplace for employees; and require any party to which it subcontracts any portion of the work under the Contract to comply with the above provisions;
- 7.7. A false certification or the failure to comply with the above drug-free workplace requirements during the performance of the Contract shall be grounds for suspension, termination or debarment.
- 8. The Foregoing Provisions will be Inserted in All Subcontracts for Work Covered by this Contract

OPERATIONS PLAN

1. Operations Plan

- 1.1. After the Contract has been awarded and a minimum of (30) days prior to the implementation phase, the Contractor shall prepare and submit to the County a comprehensive and detailed Operations Plan, which describes in detail all tasks, procedures and resources associated with this contract. The Operations Plan, once approved by the County, will become a part of this Contract.
- 1.2. The Operations Plan shall spell out in detail all tasks, activities, events, procedures and resources necessary for the Contractor to provide for a smooth and efficient transition with minimum disruption to the County's Customer. The Operations Plan will further contain a time line and completion date for all such tasks and activities. The Contractor will ensure that certain essential operations as set forth in the Operations Plan will not be interrupted by any part of the transition. The Contractor shall seek the County's input in developing the Operations Plan, and the Operations Plan shall not be deemed final until accepted in writing by the County.
- 1.3. The Operations Plan shall be maintained by the Contractor, and shall be updated and submitted to the County on a weekly/daily basis throughout the implementation phase to reflect the current status of all work. Aside from updates to show tasks accomplished, no changes to the Operations Plan shall be made without the prior written approval of the County.
- 1.4. The County shall have the right to audit, on its own behalf or through agents, the Operations Plan and the progress of all work throughout the implementation. The County or its agents shall be entitled to conduct audits as it sees fit.
- 1.5. The Contractor will adhere to the schedule set forth in Operations Plan regarding the implementation and delivery of the containers. There shall be no extensions of the time periods or completion dates set forth in the Operations Plan without the County's written consent.
- 1.6. When stating days in the Operations Plan, it shall be based on Calendar Days.
- 1.7. Throughout the implementation phase weekly/daily reports will be made to the County regarding the progress of the transition.

ANCILLARY PROVISIONS

1. Audit and Inspections

- 1.1. During the term of the Contract and for a period of three (3) year after the termination or expiration of the Contract for any reason, the County shall have the right to audit, either itself or through an agent, the books and records (including but not limited to technical records) of the Contractor to ensure the Contractor's compliance with all the terms and conditions of the Contract. Copies thereof shall be furnished at no cost to the County if requested.
- 1.2. During the term of the Contract, the County shall have the right to inspect any item deemed necessary to ensure that Contract provisions are/were being met. This can include, but is not limited to; site visits to the office or other locations used under this Contract, field, shop inspections or equipment, etc.
- 1.3. The Contractor shall maintain all books, documents, papers, accounting records, and other evidence pertaining to the cost incurred. They shall make such materials available at their respective offices at all reasonable times during the contract period and for three (3) years from the date of final payment under the contract for inspection by the County or by any other authorized representative of County government. Copies thereof shall be furnished at no cost to the County if requested.

2. **Data**

The Contractor will treat as confidential information, all data, collected and processed in connection with the Contract ("Data"). Data processed by the Contractor shall remain the exclusive property of the County. Notwithstanding the foregoing, the County provides its consent to allow the Contractor to analyze, summarize and utilize Data, in the aggregate. The Contractor will not reproduce, copy, duplicate, disclose or in any way treat the Data supplied by the County in any manner except as contemplated by this Contract.

Contractor understands and agrees that Data, materials, and information disclosed to Contractor may contain confidential and protected Data. Therefore, the Contractor promises and assures that Data, material, and information gathered, based upon or disclosed to the Contractor for the purpose of this contract, will not be disclosed to others or discussed with other parties without the prior written consent of the County, except as contemplated above.

3. Confidentiality of Data, property Rights in Products and Copyright Prohibition

Contractor further agrees that all information, data findings, recommendations, proposals, etc. by whatever name described and by whatever form therein secured, developed, written or produced by the Contractor in furtherance of this contract shall be the property of the County. The Contractor shall take action as is necessary under law to preserve such property rights in and of the County while such property is within the control and/or custody of the Contractor. By this contract the Contractor specifically waives and/or releases to the County any cognizable property right of the Contractor to copyright, license, patent or other wise use such information, data findings, recommendations proposals, etc., except as contemplated above.

4. No Publicity

No advertising, sales promotion or other materials of the Contractor or its agents or representatives may be distributed to customers without prior written approval of the County. The Contractor, its agents or representatives shall not reference this Contract or the County in any manner without the prior written consent of the County.

5. Contract Rights

- 5.1. The parties reserve the right to amend this Contract from time to time by mutual agreement in writing.
- 5.2. Rights under this Contract are cumulative, and in addition to rights existing at common law.
- 5.3. Payment by the County and performance by the Contractor do not waive their Contract rights.
- 5.4. Failure by either party on any occasion to exercise a Contract right shall not forfeit or waive the right to exercise the right of another occasion. The use of one remedy does not exclude or waive the right to use another.

6. Open Records Act

Contractor acknowledges that County records including this Contract are subject to Georgia's Open Records Act.

7. **Interpretation**

- 7.1. This Contract shall be interpreted as a whole and to carry out its purpose. This Contract is an integrated document and contains all the promises of the parties; no earlier oral understandings modify its provisions.
- 7.2. Captions are for convenient reference only. A caption does not limit the scope or add commentary to the text.

8. Compliance with Laws

Contractor warrants that all sales and transport of products to the County shall be in strict conformity with all applicable local, state and federal laws including, but not limited to, the standards promulgated by the occupational Safety and Health Act, Executive Order 11246, as amended, relative to Equal Employment Opportunity and all other applicable laws, rules, and regulations, including the Civil Rights Act of 1964 pertaining to equal opportunity, Section 503 of the Vocational Rehabilitation Act of 1973, the American with Disabilities Act, and Section 402 of the Vietnam Era Veterans Readjustment Assistance Act of 1974. Contractor agrees to indemnify and hold harmless the County from and against any loss, cost, claim, liability, damage, or expense (including attorney's fees) that may be sustained because of Contractor's breach of such warranty.

9. **Dispute Resolution**

Any controversy or claim arising out of or relating to this Contract shall be settled by mediation in accordance with the commercial rules of JAMS. Any such controversy or claim shall be mediated on an individual basis and shall not be consolidated in any mediation with any claim or controversy of any other party. Any mediation shall be conducted in Richmond County, Georgia.

10. Law; Venue

The laws of the State of Georgia shall govern the validity, construction and effect of this Contract. The venue for any claims, litigation or causes of action between the parties shall be in the Superior Court of Richmond County, Georgia.

11. Discretionary Waiver of Right to a Jury Trial

The Contractor and County may waive all rights to have a trial by jury in any action, proceeding, claim, or counterclaim brought by either of them against the other on any matter whatsoever arising out of or in any way related to or connected with the Contract.

12. Specific Performance and Injunctive Relief

The Contractor agrees that the Carts are critical to the County's operation and that monetary damages are not an adequate remedy for the Contractors failure to provide product/services as required by the Contract, nor could damages be the equivalent of the performance of such obligation. Accordingly, the Contractor hereby consents to an order granting specific performance of such obligations of the Contractor in a court of competent jurisdiction within the State of Georgia. The Contractor further agrees that a failure by it to perform the services in the manner required by the Contract will entitle the County to injunctive relief.

13. Notices

13.1. All official notices or approvals shall be in writing. Unless otherwise directed, notices shall be delivered by messenger, by certified or registered mail, return receipt requested, or by fax to the parties at the following respective addresses:

To the County:

Director of Solid Waste 4330 Deans Bridge Road Blythe, GA. 30805 (706) 592-9634 Phone (706) 592-1658 Fax

To the Contractor:

Cascade Engineering Inc. 3400 Innovation Court SE Grand Rapids, MI 49512 (616) 975-4800 Phone (616) 254-4174 Fax

13.2. Either party may from time to time designate a new address for notices. Unless a return receipt or other document establishes otherwise, a notice sent by U.S. Mail shall be presumed to be received the third business day after its mailing.

14. Severability

Should any term, provision, condition, or other portion of this Contract or its application be held to be inoperative, invalid, or unenforceable, and the remainder of the Contract still fulfills its purposes, the remainder of this Contract or its application in other circumstances shall not be affected thereby and shall continue in force and effect.

15. Interest of the Parties

The Contractor covenants that its officers, employees and shareholders have no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner of degree with the performance of services required under the Contract.

16. No Bribery

The Contractor certifies that neither it, any of its affiliates or subcontractors, nor any employees of any of the forgoing has bribed or attempted to bribe an officer or employee of the County in connection with the Contract.

17. Conflict of Interest

Contractor certifies and warrants that neither it nor any of its directors, officers, agents, representatives, employees, or subcontractors which will participate in any way in the performance of the Contractor's obligations hereunder has or will have any conflict of interest, direct or indirect, with Augusta Richmond County or any of its departments, divisions, agencies, officers, directors or agents.

18. Change in Control – Legal Counsel

18.1. In the event of a change in "Control" of the Contractor (as defined below), the County shall terminate the Contract for default unless the County has granted prior written approval. Such approval shall be at the sole discretion of the County. Any approval by the County for transfer of ownership or control shall be contingent upon the perspective controlling party becoming a signatory to the Contract and otherwise complying with

the terms of the Contract. The Contractor shall notify the County within ten (10) days after it becomes aware that a change in Control will occur. As used in the Contract, the term "Control" shall mean the possession, direct or indirect of either;

- (a) The ownership of or ability to direct the voting of, as the case may be fifty one (51%) or more of the equity interest, value or voting power of the Contractor; or
- (b) The power to direct or cause the direction of the management and policies of the Contractor whether through the ownership of voting securities, by Contract or otherwise.

19. Assignment

Any assignment, in whole or in part, of Contractor's rights or obligation under this Agreement without the prior written consent of the County shall be void.

In a case where the Contractor is allowed to assign all or any part of any money due or to become due under this Contract, the instrument of assignment shall contain a clause substantially to the effect that it is agreed that the right of the assignee in and to any money due or to become due to the Contractor shall be subject to prior claims of all persons, firms, and corporations for services rendered or materials supplied for the performance of the work called for in these Contract documents.

20. **Default**

In the event that (a) Contractor breaches any warranty contained herein; (b) Contractor or Contractor's insurance carrier fails to defend, indemnify, or hold harmless the County as required herein; (c) Contractor's performance under this contract violates applicable law; (d) Contractor admits insolvency, makes an assignment for the benefit of creditors, or has a trustee appointed to take over all or a substantial part of its assets; or (e) Contractor fails to perform under (deliver conforming products/services) or comply with any other provision of this Contract, such failure, breach, or violation shall constitute a default under this Agreement.

21. Termination for Convenience

In the event of default by Contractor under this Contract, the County reserves the right without liability, in addition to its other rights and remedies, to terminate this Agreement with sixty (60) days notice to Contractor as to the portion of the products/services not yet delivered and to purchase substitute goods at the Contractor's expense. Contractor shall reimburse the County for the cost of such substitute goods upon Contractor's receipt of an invoice therefore.

22. Cancellation

County may at any time cancel this Contract in whole or in part for its sole convenience upon sixty (60) days written notice to Contractor, and Contractor shall stop performing under this Contract on the date specified in such notice. The County shall have no liability as a result of

such cancellation, except that the County will pay Contractor for delivered products/services and the actual incurred cost to the Contractor for product delivery in progress. These payments shall not exceed the aggregate price.

23. Force Majeure

- 23.1. The Contractor shall not be liable for any failure or delay in the performance of its obligations pursuant to this Contract (and such failure or delay shall not be deemed a default of this Contract or grounds for termination hereunder if all of the following conditions are satisfied.
 - (a) If such failure or delay
 - (1) could not have been prevented by reasonable precaution, and
 - (2) cannot reasonably be circumvented by the non-performing party through the use of alternate sources, work around plans, or other means, and
 - (b) If and to the extent such failure or delay is caused, directly or indirectly by fire, flood, earthquake, hurricane, elements of nature or acts of God, acts of war, terrorism, riots, civil disorders, rebellions, or revolutions, or court order.
- 23.2. Upon the occurrence of an event which satisfies all of the conditions set forth above, the Contractor shall be excused from any further performance of those obligations pursuant to this Contract affected by the Force Majeure for as long as
 - (a) Such Force Majeure event continues and,
 - (b) The Contractor continues to use commercially reasonable efforts to recommence performance whenever and to whatever extent possible without delay.
- 23.3. Upon the occurrence of a Force Majeure event, the Contractor shall immediately notify the County by telephone and confirmed in writing within three (3) business days of the occurrence of a Force Majeure and shall describe in reasonable detail the nature of the Force Majeure. If any Force Majeure prevents the Contractor from performing its obligations for more than thirty (30) calendar days, the County may terminate this Contract. For the interim Force Majeure period, in which the Contractor is unable to perform its obligations, the County may, at its discretion, secure Carts and services from an alternate interim supplier, to ensure continuity to the County's customers.
- 23.4. Strikes, slow-downs, walkouts, lockouts and individual disputes are not excused under this provision.

24. Miscellaneous

If any provision of this Contract is held to be invalid or unenforceable, the validity and enforceability of the remaining provisions shall not be affected. This Contract shall be governed by the laws of the state of Georgia and shall be subject to the exclusive

jurisdiction of the courts therein. This Contract embodies the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements and understanding, whether written or oral, and all contemporaneous oral agreements and understandings relating to the subject matter hereof. No agreement hereafter made shall be effective to modify or discharge this Contract, in whole or in part, unless such agreement is in writing and signed by the party against whom enforcement of the modification or discharge is sought. The paragraph headings are for convenience only and are not intended to affect the interpretation of the provisions hereof. This Agreement shall be binding on the parties hereto and their respective personal and legal representatives, successors and assigns.

Wherefore in consideration for the services caused this contract to be signed this	to be rendered and monies paid, the parties have day of 2006.
	Augusta, Georgia (Augusta-Richmond County, Georgia)
	By: David S. Copenhaver As its Mayor
Attest:	
Clerk of Commission Seal	
	Contractor: Cascade Engineering Inc.
	By:
	As its:
Sworn to and subscribed before me this, 2006.	_ day of Seal_
Notary Public	
My Commission Expires:	

EXHIBIT A – PRODUCT PRICE LIST

	<u>Products</u>	Unit Price	<u>Other</u>
1 2 3 4	Carts 35-gallon 64-gallon 96-gallon Waste-Mate	\$33.51 \$43.94 \$48.71 \$350.00	Price(s) includes:1. Garbage and recycling brochure with hang bags2. Video for local access channels3. One time mass mailing to 70,000 residents
1 2 3 4	Bins 14-gallon 18-gallon 21-gallon 24-gallon	\$5.34 \$6.51 \$8.14 \$8.88	Per Bin Per Bin Per Bin Per Bin
1 2 3 4 5 6	Containers 2-yard commercial container 3-yard commercial container 4-yard commercial container 6-yard commercial container 7-yard commercial container 8-yard commercial container	\$430.00 \$445.00 \$650.00 \$750.00 \$800.00 \$850.00	Per Container
1 2 3 4 5	In-Molded Graphics Lid Label (3" x 13") One color Lid Label (3" x 13") Two color Lid Label (3" x 13") Three color Lid Label (3" x 13") Four color Lid Label (3" x 13") Five color	\$1.85 \$1.90 \$1.95 \$2.00 \$2.05	Per Label - Installed
6 7 8 9 10	Lid Label (9.5" x 14.5") One color Lid Label (9.5" x 14.5") Two color Lid Label (9.5" x 14.5") Three color Lid Label (9.5" x 14.5") Four color Lid Label (9.5" x 14.5") Five color	\$3.00 \$3.20 \$3.35 \$3.50 \$3.70	Per Label - Installed
11 12 13 14 15	Cart Label (10.5" x 10.5") One color Cart Label (10.5" x 10.5") Two color Cart Label (10.5" x 10.5") Three color Cart Label (10.5" x 10.5") Four color Cart Label (10.5" x 10.5") Five color	\$2.50 \$2.60 \$2.70 \$2.80 \$2.90	Per Label - Installed

	<u>Products</u>	Unit Price	<u>Other</u>
1 2	Cart Identification In-molded bar code label RFID/Bar code label	\$3.60 \$4.55	Per Cart Per Cart
	RFID Readers/Software		
1	RFID reader/PC/data collection and installation (single system)	\$12,700.00	Per Truck
2	RFID reader with interactive driver display (batch system)	\$21,000.00	Per Truck

EXHIBIT B - SPARE PART PRICE LIST

EXHIBIT C - SERVICE PRICE LIST

	<u>Services</u>	Unit Price	<u>Other</u>
	Assembly and Delivery		
1	Account Verification/Audit	\$1.25	per cart
2	Assembly and Delivery	\$3.15	per cart
	<u>Media</u>		
1	Annual Budget-not to exceed	\$150,000.00	annually

 $^{^{\}star}$ The annual budget for media will not be increased by any cost adjustment, the amounts stated are "not to exceed amounts". *

Asset Management

1	Flat Fee	\$79,000.00	Annually
2	Monthly/per cart	\$0.12	monthly per cart year one
		\$0.11	monthly per cart year two
		\$0.10	monthly per cart year three
		\$0.08	monthly per cart year four
		\$0.08	monthly per cart year five
3	Software	\$995.00	Monthly

^{*} Augusta will be charged the lesser of the annual flat fee or the monthly per cart rate plus the monthly software charge*

DBE Forms

Form A

(Letter of Intent to Perform)

Complete an individual form identifying each DBE sub-contractor/supplier used for this contract. Forms must be signed by sub-contractor. Form \underline{A} should be completed and submitted with your bid in a separate sealed envelope. If there is no participation, indicate N/A.

Form A

PROJI	ECT
LETTE	R OF INTENT TO PERFORM AS A SUBCONSULTANT/SUBCONTRACTOR/SUPPLIE
ТО:	(NAME OF PROPOSER)
	The undersigned intends to perform work in connection with the above project in the following capacity (check one):
	An individual A corporation A partnership A joint venture
B.	The DBE status of the undersigned is confirmed as follows:
	By attachment of a current Certificate of Certification issued by the Department of Transportation By attachment of a current Certification issued by the Disadvantaged Business Enterprise Office
C.	The undersigned is prepared to perform the following work in connection with the above project
D.	The undersigned states that they will be performing% of the total project.
E.	The undersigned will sublet and/or award% of this subcontract to non-DBE contractors and /or non-DBE suppliers.
Propos	dersigned will enter into a formal agreement for the above described work with the ser cited above conditioned upon the execution of a contract for the project cited between the <i>Proposer</i> and Augusta-Richmond County.
	Date:
(DB	E Contractor Firm Name)
Ву:	(Signature of Authorized Representative)

Form B

(Proposed DBE Participation Form)

Complete an individual form identifying each DBE sub-contractor/supplier used for this contract. Forms must be signed by sub-contractor. Form B should be completed and submitted with your bid in a separate sealed envelope. If there is no participation, indicate N/A

Form B

PROPOSED DBE PARTICIPATION

DBE FIRM	PRINCIPAL OFFICIAL	ADDRESS/PHONE NO.	TYPE OF WORK	Dollar Value of Work
Tot	al Price:		\$	
Tot	al DBE value:		\$	
Tot	al DBE percent:			
ed By:			_	
:				

Form C

(Contractors Statement of DBE Utilization Form)

Complete form indicating the DBE's utilization for the requested pay period. This information identifies the actual DBE sub-contractors/suppliers, types of work performed, actual dollar value of work/services and suppliers. To avoid delay of payments this form must accompany all pay requests.

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Form C

AUGUSTA-RICHMOND COUNTY DISADVATAGED BUSINESS ENTERPRISE DEPARTMENT CONTRACTOR'S STATEMENT OF DBE UTILIZATION

).		(18) % OF CONTRAC COMPLETE TO DATE					ı	
	(6) CONTRACT NO.		(17) AMOUNT RETAINED TO DATE					(22) DATE	
TO	(9)		(16) AMOUNT RETAINED THIS PERIOD					(22)	
FROM	E BID \$	%	(15) AMOUNT EARNED TO DATE						
(2) REPORT PERIOD FROM	(5) BASE BID §	NO NO	(14) AMOUNT EARNED THIS PERIOD					GNATURE	
	0.	BE UTILIZATIC	(13) REVISED CONTRACT AMOUNT					(21) AUTHORIZED SIGNATURE	DAIE.
(1) PAY REQUEST NO	(4) PROJECT NO.	(8) PROPOSED DBE UTILIZATION	(12) CONTRACT ABJUST- MENTS					(21) AI	MITELIED IODALE.
(1) PAY		%	(11) CONTRACT AMOUNT					SO TO A CITING O	CUNIRACICA
íz.	TE	E UTILIZATI	(10) CLASS OF WORK					.R.:	E OF IVIAL
SHEET	(3) PROJECT NAME	(7) REQUIRED DBE UTILIZATION	(9) DBE NAME REPRESENTATIVE NAME & TELEPHONE NUMBER				(19) DBE TOTALS	(20) CONTRACTOR:	(23) FERCENTAGE OF TOTAL CONTRACT COMPLET

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Good Faith Effort Checklist

Complete – The purpose for the Good Faith Effort Checklist is to indicate all necessary and reasonable steps taken to ensure that DBEs, including local small business enterprises, have the maximum opportunity to compete for and participate in all contracts and sub-contracts.

Augusta-Richmond County CHECKLIST FOR GOOD FAITH EFFORTS

A bidder's good faith efforts must be those that could reasonably be expected from a bidder who was actively and aggressively seeking to meet the Disadvantaged Business Enterprise (DBE) goal. Good faith efforts may include, but are not limited to:

	Yes	No	
1.			Soliciting through all reasonable and available means, the interest for all certified DBEs who have the capability to perform the work
			of the contract. Such solicitations must be in sufficient time to
2.			allow DBEs to participate effectively. Confirming attendance at any pre-solicitation or pre-bid meetings.
3.			Providing proof of any advertisements in general circulation, trade
			association, and minority or woman focused media.
4.			Documenting the follow-up to the initial solicitation with DBEs.
5.			Documenting how portions of the work were selected to solicit
			DBE participation and how the selection was made in order to
			increase the likelihood of meeting the DBE goals. This would
			include, where appropriate, breaking down contracts into
			economically feasible units to facilitate DBE participation.
6.			Providing information on any negotiations with DBEs including bid
			item adjustments, terms and conditions of the contract, bonding
_			and insurance requirements and etc.
7.			Documenting efforts to assist DBEs in obtaining bonding, lines of
0			credit, or insurance.
8.			Providing copies of the information supplied to DBEs to solicit their
			bids. Such information should include adequate information about
			the plans, specifications, and requirements of the contract to
9.			enable the DBE to supply a complete and competitive bid.
9.			Providing information regarding the services/assistance secured from minority and women community organizations, contractors'
			groups, local minority and women business assistance offices and
			other organizations that provides assistance in the recruitment and
			placement DBEs.
10.			Negotiating in good faith with interested DBEs. It is the bidder's
10.			responsibility to make a portion of the work available to DBE
			subcontractors and suppliers. The bidder must provide documentation that
			consideration was given when selecting portions of the work or material
			needs on the contract to the availability of DBE firms in those areas when
			soliciting for DBE participation.
11.			Documenting the basis for rejecting DBE bids. In cases where the
			bidder determines the DBE to be unqualified, supporting evidence
			used to make the determination must be provided.

CORPORATE CERTIFICATE

I,			certify that I am the Secre	etary of the corporation namedwho signed
as Con	tractor in	the attached Cont	ract; that	who signed
said Co	ntract on b	ehalf of the Contra	actor was then	of said corporation;
that sai	d proposal	was duly signed for	or and in behalf of said corpor	ration by authority of its Board
				t said corporation is organized
under ti	ne laws of 1	the State of	·	
	This	day of	,2006	
		Corpo	rate	
		-	ary:	
			(name signed)	
			(name printed or type	
			(manne primited or type	- '
			(SE	AL)

NONCOLLUSION AFFIDAVIT OF PRIME BIDDER

State of		County of		
I,	being first duly sworn, deposes and says that:			
He or she issubmitted the attached Bid:	of	, the Bidder that has		
He or she is fully informed respecting pertinent circumstances respecting su		and contents of the attached Bid and of all		
Such Bid is genuine and is not a collu	isive or sham Bid			

Neither the said Bidder nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this Affiant, has in any way colluded, conspired, connived or agreed, directly or indirectly with any other Bidder, firm or person to submit a collusive or sham Bid in connection with the Contract for which the attached Bid has been submitted or to refrain from bidding in connection with such Contract, or has in any manner, directly or indirectly, sought by agreement or collusion or communication or conference with any other Bidder, firm or person to fix the price or prices in the attached Bid or of any other Bidder, or to fix any overhead, profit or cost element of the Bid price or the Bid price of any other Bidder, or to secure through any collusion, conspiracy, connivance or unlawful agreement any advantage against the City of Augusta or any person interested in the proposed Contract; and

Continued to the next page

The price or prices quoted in the attached Bid are fair and proper and are not tainted by any collusion, conspiracy, connivance or unlawful agreement on the part of the Bidder or any of its agents, representatives, owners, employees, or parties in interest, including this Affiant.

	BIDDER:	
	By:(name s	igned)
	(name p	rinted or typed)
	Date:	
Subscribed and sworn to me this	day of	, 2006
NOTARY PUBLIC:		
(name sign	ned)	
(name prin	nted or typed)	
Commission Expires:		
		(SEAL)

NONCOLLUSION AFFIDAVIT OF SUBCONTRACTOR

St	ate of				
C	ounty of				
I,	being first duly sworn, deposes and says that:				
1.	He or she is(Owner, Partner, Officer. Representative, or Agent) of, hereinafter referred to as the "Subcontractor";				
2.	He or she is fully informed respecting the preparation and contents of the Subcontractor's Proposal submitted by the Subcontractor to the Contractor for certain work in connection with the Contract pertaining to the Project in				
3.	Such Subcontractor's Proposal is genuine and is not a collusive or sham Proposal;				
4.	4. Neither the Subcontractor nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this affiant, has in any way colluded, conspired, connived or agreed, directly or indirectly with any other Bidder, firm or person to submit a collusive or sham Proposal in connection with such Contract or to refrain from submitting a Proposal in connection with such Contract, or has in any manner, directly or indirectly, sought by unlawful agreement or connivance with any other Bidder, firm or person to fix the price or prices in said Subcontractor's Proposal, or to secure through collusion, conspiracy, connivance or unlawful agreement any advantage against Augusta-Richmond County or any person interested in the proposed Contract; and				
5.	The price or prices quoted in the Subcontractor's Proposal are fair and proper and are not tainted by any collusion, conspiracy, connivance or unlawful agreement on the part of the Bidder or any of its agents, representatives, owners, employees, or parties in interest, including this affiant.				
	(Signed)				
	(Title)				
Sı	abscribed and Sworn to before me this day of, 2006				
	(Title)				
M	(y commission expires (Date) (SEAL)				

NOTICE OF AWARD

To: Cascade Engineering 4950 37th Street SE Grand Rapids, MI 49512

Project Description: Manufacture, Sale, and Delivery of Carts and Services Relating to Collection of Garbage, Recycling, and Yard Waste for the Solid Waste Department of Augusta

The Owner has considered the Bid submitted by you for the above-described work in response to its Invitation to Bid and Information from Bidders.

You are hereby notified that your Bid has been accepted for items in the amount determined by the contract based on the financial bids submitted for this contract, which will become a part of this Contract as Exhibit A through C.

You are required by the Information for Bidders/Contract Documents to execute the Agreement and furnish the required Contractor's Performance Bond, Payment Bond, and certificates of insurance within fifteen (15) calendar days prior to the start date of the contract. However, in any case a "Notice to Proceed" will not be given until the above mentioned items are received. Early delivery of said documents will expedite the contracting process. Augusta recommends submission of the required bonds and insurance with the executed "Notice of Award". These items may have an effective date of January 1, 2006.

If you fail to execute said Contract within thirty (30) days from the date of this Notice, Augusta will be entitled to consider all your rights arising out of the Counties acceptance of your Bid as abandoned and such other rights as may be granted by law.

You are required to return an acknowledged copy of this Notice of Award to the County.

Dated this	day of	, 2006.	
	Augusta-Richr	mond County	
	By: Name and Title	e: Geri Sams, Director of Procurement	
	ACC	EPTANCE OF NOTICE	
-	bove Notice of Award i	is hereby acknowledged by006.	this the
	By: Name and Title		

NOTICE TO PROCEED

Cascade Engineering 4950 37th Street SE To: Grand Rapids, MI 49512 Project Description: Manufacture, Sale, and Delivery of Carts and Services Relating to Collection of Garbage, Recycling, and Yard Waste for the Solid Waste Department of Augusta You are hereby notified to commence work in accordance with the contract dated _____, 2006, on or before ______, 2006 and you are to comply with all terms, conditions, provisions, etc. as identified in the executed Contract. Dated this ______day of _________, 2006. Augusta Richmond County By: ____ Name and Title: ACCEPTANCE OF NOTICE Receipt of the above Notice to Proceed is hereby acknowledged by______ this _____ day of ______, 2006. Name and Title:

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS: that	
a corporation of the State of	, the
"Principal," and	~
Name and Address of Surety	
the payment of which sum in lawful money of the United States well and thereby bind ourselves, our heirs, executors, administrators, successors, and	f the United States, for ruly to be made we do
The condition of this obligation is such that whereas Princip	oal has entered into a
certain Contract with the Owner, dated as of the day of which is by reference incorporated in and made a part hereof as fully as if for the following work:	
"Manufacture, sell and deliver Carts for solid waste and recycl	ing collection"
WHEREAS, the obligee has agreed to accept a bond guaranteeing the perfector of a period of only one year for the term beginning	formance of said
and ending	

NOW, THEREFORE, if the Principal shall in all respects comply with and perform all the terms and conditions of the Contract (which includes the Drawings, Specifications, and Contract Documents) and such alterations as may be made in said contract as the documents therein provide for, with or without notice to Surety, and during the one year warranty period, and if Principal shall satisfy all claims and demands and shall indemnify and save harmless the Owner against and from all costs, expenses, damages, injury, or conduct, want of care, skill, negligence, or default, including compliance with performance guarantees and patent infringement by the Principal, then this obligation shall be void; otherwise, Principal and Surety jointly and severally agree to pay to Owner any difference between the sum to which the Principal would be entitled on completion of the contract and that which the Owner may be obliged to pay for the completion of the work by contract or otherwise, together with any damages, direct or indirect, or consequential, which Owner may sustain on account of such work, or on account of the failure of the Principal to keep and execute all provisions of the Contract.

Principal and Surety further bind themselves, their heirs, executors, administrators, and assigns, jointly and severally, that if the Principal shall keep and perform its agreement to repair or replace defective work or equipment during the warranty period of one (1) year as provided, then this paragraph shall be void; but if default shall be made by Principal in the performance of its contract to so repair or replace said work, then this paragraph shall be in effect and Owner

shall have and recover from Principal and its Surety damages for all defective conditions arising by reason of defective materials, work, or labor performed by or on the account of Principal and it is further understood and agreed that this obligation shall be a continuing one against the Principal and Surety hereon, and that successive recoveries may be had hereon for successive breaches until the full amount shall have been exhausted; and it is further understood that the obligation therein to maintain said work shall continue throughout said Contract period, and the same shall not be changed, diminished, or in any manner affected from any cause during said time; and to fully save and hold the Owner harmless for any damages it may be caused to pay on account of injury to person, loss of life or damage to property.

And the Surety, for value received, hereby stipulates and agrees that the obligations of the Surety and this Bond shall in no way be impaired or affected by any modification, omission, addition, or change in or to the contract, the work to be performed there under, or by any payment there under before the time required therein, or by any waiver of any provision thereof, or by any assignment subletting or other transfer thereof, or of any part thereof, of any work to be performed, or of any moneys due to become due there under, as long as these modifications, omissions, additions, or changes do not affect the bond term, or the one year limit on the bond coverage of the warranty; and the said Surety does hereby waive notice of any and all such modifications, omissions, additions, changes, payments, waivers, assignments, subcontracts, and transfer, and hereby stipulates and agrees that any and all things done and omitted to be done by and in relation to executors, administrators, successors, assignees, subcontractors, and other transferees shall have the same effect as to said Surety as though done or omitted to be done by and in relation to the Principal.

This bond may be extended for additional terms at the option of the Surety, by continuation certificate executed by the Surety and the Principal.

causing their respective names to be hereur	Principal and Surety have executed this Bond nto subscribed and their seals to be hereunto affix day of, 200	kec
	Contractor - PRINCIPAL:	
	By:	
	Name: (Please Print or Type)	
	Title:	

ATTEST:

	_
Name	
Name(Please Print or Type) Title	(SEAL)
Note: Attest for a corporation must be by partner; for an individual by a Notary.	y the corporate secretary; for a partnership by another
	SURETY:
	By:
	Name:(Please Print or Type)
	Title:
	Agency:
	Address:
WITNESS:	
Name(Please Print or Type)	<u> </u>
(Please Print or Type)	
Title	(SEAL)

Note: Surety companies executing Bonds must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the state where the project is located.

PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS: that

corporation of the State of	the "Principal," and
Name and Address of Surety	<i>y</i>
the "Surety," are held and firmly bound unto Augusta-Ric	chmond County (the "Owner") existing
under and by virtue of the laws of the State of Georgia, in	the sum
of	in lawful money of the
United States, for the payment of which sum in lawful more to be made we do hereby bind ourselves, our heirs, exe assigns jointly and severally.	
The condition of this obligation is such that certain Contract with the Owner, dated as of the which is by reference incorporated in and made a part her for the following work:	day of 2006,
"Manufacture, sell and deliver Carts for so	olid waste and recycling collection"
WHEREAS, the obligee has agreed to accept a said contract for a period of only one year for the term beg and ending	

NOW, THEREFORE, if the Principal shall fully pay for all the labor and materials used by said Principal or any immediate or remote subcontractor or furnisher of labor or materials under him in the performance of the work in lawful money of the United States as the same shall become due, including all amounts due for materials, lubricants, oil, gasoline, electricity, coal and coke, repairs on machinery, equipment, and tools, consumed or used in connection with performance of the work and all insurance premiums and other charges incurred under said contract, then this obligation shall be void; otherwise to remain in full force and effect.

Principal and Surety further bind themselves, their heirs, executors, administrators, and assigns, jointly and severally, that they shall promptly make payments of all taxes, licenses, assessments, contributions, penalties, and interest thereon, when, and if, the same may be lawfully due the State of Georgia or any County, Municipality, or political subdivision thereof by reason of and directly connected with the performance of the Contract, or any part thereof.

And the Surety, for value received, hereby stipulates and agrees that the obligations of the Surety and this Bond shall in no way be impaired or affected by any modification, omission, addition, or change in or to the contract, the work to be performed there under, or by any payment there under before the time required therein, or by any waiver of any provision thereof, or by any assignment subletting or other transfer thereof, or of any part thereof, of any work to be performed, or of any moneys due to become due there under, as long as these modifications,

omissions, additions, or changes do not affect the bond term, or one year limit on the bond coverage of the warranty; and the said Surety does hereby waive notice of any and all such extensions, modifications, omissions additions, changes, payments, waivers, assignments, subcontracts, and transfer, and hereby stipulates and agrees that any and all things done and omitted to be done by and in relation to executors, administrators, successors, assignees, subcontractors, and other transferees shall have the same effect as to said Surety as though done or omitted to be done by and in relation to the Principal.

This bond may be extended for additional terms at the option of the Surety, by continuation certificate executed by the Surety and the Principal.

		nd Surety have executed this Bond	
causing their respective names to be herei			
by their duly authorized officers, on this the	e da	ay of,2006)
	Contractor	- PRINCIPAL:	
	Ву:		
	Name:		
		(Please Print or Type)	
A TOTAL COLUMN	Title:		
ATTEST:			
Name			
(Please Print or Type)			
Title			
		(SEAL)	

Note: Attest for a corporation must be by the corporate secretary; for a partnership by another partner; for an individual by a Notary.

	SURETY:
	By:
	Name: (Please Print or Type)
	Title:
	Agency:
	Address:
	,
WITNESS:	
Name (Please Print or Type)	
Title	(SEAL)

Note: Surety companies executing Bonds must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the state where the project is located.

End of Contract

- Home
- My DemandStar
- Buyers
- Suppliers
- Account Info

Planholders List

Member Name City of Augusta, GA

Bid Number RFP-05-143-0-2005/PJM

Bid Name Purchase & Delivery of Refuse Recycling Carts

Help

15 Planholder(s) found.

Supplier Name	City	State	Phone	<u>Fax</u>
Cascade Engineering	Grand Rapids	MI	6169754879	6169754902
Fulton Supply Company	Aiken	SC	8036480464	8036495888
Grainger	Northbrook	IL	8778756929	8779941969
Heil Environmental	Chattanooga	TN	8006244345	8005005555
Home Depot Supply	San Diego	CA	8588312588	8588312687
IPL Inc	St. Damien	QC	6044185670	6042331146
IPL Products	Saint-Damien	QC	8004630270	4187893388
Maintenance Unlimited Inc.	St Louis	MO	3143818585	3143818648
McGraw-Hill Construction Dodge	Fort Myers	FL	2399392525	2399392331
Nordic Services LLC	Baraboo	WI	6083562130	6083565773

Page 1 of 2 first | previous | next | last

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Request For Proposal

RFPs will be received at this office until 3:00 p.m., Tuesday, October 25, 2005 FOR FURNISHING:

RFP #05-143 Purchase and Delivery of Refuse and Recycling Carts for Augusta-Richmond County

Solid Waste Department

RFPs will be received by Augusta, GA Commission hereinafter referred to as the OWNER at the offices of:

Geri A. Sams Procurement Department 530 Greene Street - Room 605 Augusta, Georgia 30911 706-821-2422

RFP documents may be obtained at the office of Augusta, GA Procurement Department, 530 Greene Street - Room 605, Augusta, GA 30911 for \$25 non refundable. A mandatory Pre-Proposal Conference will be held on Friday, October 7, 2005 @ 10:00 a.m. in the conference room of the Procurement Department, Room 605. The last day for questions will be Tuesday, October 11, 2005 @ 4:00 p.m. All questions must be submitted in writing to the office of the Procurement Department by fax at 706 821-2811 or by mail. No RFP will be accepted by fax, all must be received by mail or hand delivered.

It is the wish of the Owner that minority businesses are given the opportunity to submit on the various parts of the work. This desire on the part of the Owner is not intended to restrict or limit competitive bidding or to increase the cost of the work. The Owner supports a healthy free market system that seeks to include responsible businesses and provide ample opportunity for business growth and development.

No RFP may be withdrawn for a period of 90 days after time has been called on the date of opening. A 10% Bid Bond is required to be submitted in a separate envelope so marked along with the bidders' qualifications; a 100% performance bond and a 100% bond will be required for award.

Bidders will please note that the number of copies requested; all supporting documents including financial statements and references and such other attachments that may be required by the bid invitation are material conditions of the RFP. Any package found incomplete or submitted late shall be rejected by the Procurement Office. Any bidder allegedly contending that he/she has been improperly disqualified from bidding due to an incomplete RFP submission shall have the right to appeal to the appropriate committee of the Augusta Commission. Please mark RFP number on the outside of the envelope.

Bidders are cautioned that sequestration of RFP documents through any source other than the office of the Procurement Department is not advisable. Acquisition of RFP documents from unauthorized sources places the bidder at the risk of receiving incomplete or inaccurate information upon which to base his qualifications.

Augusta has a Link Deposit program designed to provide loans to eligible local Small, Minority and Women Owned Businesses. For more information about this program, please contact the Office of Disadvantaged Business Enterprises at 706-826-1325.

GERI A. SAMS, Procurement Director

Publish:

Augusta Chronicle September 15, 22, 29, October 6, 2005

Metro Courier September 21, 2005

Tameka Allen Augusta, GA Interim Deputy Administrator cc:

Augusta, GA Solid Waste Department Mark Johnson Augusta, GA DBE Coordinator Yvonne Gentry

FAX TRANSMISSION

AUGUSTA-RICHMOND COUNTY CONSOLIDATED GOVERNMENT

530 Greene Street - Room 605 Augusta, Georgia 30911 706 821-2422 Fax: 706 821-2811

To: Metro Courier Date: September 7, 2005

Fax #: 706-722-7104 Pages: 2, including this cover sheet.

From: Geri A. Sams

Subject: LEGAL NOTICES FOR RFP Item: #05-143

COMMENTS:

Please print the above RFP Item(s) on the following dates:

September 21, 2005

REQUISITION #43711B

TO: Geri Sams

Director, Procurement Department

Mark Johnson

Assistant Director, Solid Waste Department

FROM: Yvonne Gentry, Coordinator

Disadvantaged Business Enterprise Department

SUBJECT: DBE REVIEW AND APPROVAL OF RECOMMENDED DBE GOAL

Bid Item #05-143 - Purchase & Delivery of Refuse &

Recycling Carts

DATE: May 24, 2006

This memo is to transmit the review and concurrence of the recommended DBE Utilization goal of 6.92% for the above referenced project. The goal-setting methodology considered the following factors based on good faith efforts of the contractor:

- The project's total estimated cost is \$2,379,493.
- There is <u>6.92</u>% value of the scope of work where **minority/** women businesses availability exists.
- There is $\underline{\mathbf{0}}$ % value of the scope of work where **small businesses** availability exists.
- There is $\underline{0}$ % value of the scope of work where **local** businesses availability exists.

The contractor must prepare their proposed DBE Utilization Form submittal based on the total dollar value of their base bid. No further adjustments should be made.

The above recommendation is based on information provided at the time of review. If you have any questions, please feel free to contact me at (706) 826-1325.

YG:qlw

	en e
Initial Cost	
Garbage Carts (Advanced and new area)	\$2,039,953
Recycling Carts	\$339,540
<u>Total</u>	\$2,379,493
Covingo	
Savings	
84 Month (Cost)/Benefit to replace Advanced Carts	
	Billed for Customer Count
Advanced	26379
<u>Totals</u>	<u>26379</u>
Net Value Cost/Benefit to replace Advanced Carts	\$1,052,651.09
Billing Discrepancies	
	Billed for Customer Count
Advanced	Billed for Customer Count 26379
Augusta Disposal	26379 11260
	26379
Augusta Disposal	26379 11260
Augusta Disposal Inland Services	26379 11260 16257
Augusta Disposal Inland Services Totals	26379 11260 16257 <u>53896</u>
Augusta Disposal Inland Services Totals Billing Discrepancy (units) Annual Bill Rate	26379 11260 16257 <u>53896</u> 1096 \$276
Augusta Disposal Inland Services Totals Billing Discrepancy (units)	26379 11260 16257 <u>53896</u> 1096
Augusta Disposal Inland Services Totals Billing Discrepancy (units) Annual Bill Rate Potential Revenue Gain (per year)	26379 11260 16257 <u>53896</u> 1096 \$276
Augusta Disposal Inland Services Totals Billing Discrepancy (units) Annual Bill Rate Potential Revenue Gain (per year)	26379 11260 16257 <u>53896</u> 1096 \$276
Augusta Disposal Inland Services Totals Billing Discrepancy (units) Annual Bill Rate Potential Revenue Gain (per year) Potential Revenue Gain (60 months) Asset Values	26379 11260 16257 <u>53896</u> 1096 \$276 \$302,496 \$1,512,480
Augusta Disposal Inland Services Totals Billing Discrepancy (units) Annual Bill Rate Potential Revenue Gain (per year) Potential Revenue Gain (60 months)	26379 11260 16257 <u>53896</u> 1096 \$276
Augusta Disposal Inland Services Totals Billing Discrepancy (units) Annual Bill Rate Potential Revenue Gain (per year) Potential Revenue Gain (60 months) Asset Values Garbage Carts (Advanced and new area)	26379 11260 16257 <u>53896</u> 1096 \$276 \$302,496 \$1,512,480
Augusta Disposal Inland Services Totals Billing Discrepancy (units) Annual Bill Rate Potential Revenue Gain (per year) Potential Revenue Gain (60 months) Asset Values Garbage Carts (Advanced and new area) Recycling Carts	26379 11260 16257 <u>53896</u> 1096 \$276 \$302,496 \$1,512,480 \$611,986 \$101,862
Augusta Disposal Inland Services Totals Billing Discrepancy (units) Annual Bill Rate Potential Revenue Gain (per year) Potential Revenue Gain (60 months) Asset Values Garbage Carts (Advanced and new area) Recycling Carts	26379 11260 16257 53896 1096 \$276 \$302,496 \$1,512,480 \$611,986 \$101,862

Garbage Carts	(Advanced and new area)	

\$2,039,953 \$339,540 Recycling Carts

Cart Replacement Cost

Cost @ 3.5% for 84 months

Cost of Rental for 84 Months

\$1,521,013

\$1,717,144

\$2,769,795

<u>\$1,521,013</u>

\$1,717,144

\$2,769,795

Augusta Bills Customer Count

Urban Suburban 15957 36843

<u>52800</u>

84 Monthly Cost/Benefit \$1,052,651.09 **\$1,052,651.09**

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Count	Urban Suburban Suburban Suburban Suburban Suburban Sulat Rental Fee Iper Month 1 1 2 5 80,75 80,75 80,10 Augusta Disposal Inland Services Totals	15957 38843 52800 52800 52800 528.00 532.974 58.45 51.626 51.626 51.626 11.250 11.250 11.250 11.250 53866	Cost of Rental for 60 Months \$1,978.425 \$506,700 \$97,542 \$2,592,667 \$2,592,667 \$2,592,667 \$2,592,667 \$43,107,642 \$3,107,642	Cost of Rental for 60 Months Cost of Rental for 84 Months \$1,978,425 \$7.08,706 300 \$97,542 \$1.06,709 300 \$97,542 \$1.06,704 \$1.06,724 \$1.06,193 \$1.00,103 \$1.	Cost @ 3.5% for 84 months \$1.777,144 \$1.73.977 \$1.08.261 \$3.508.365
\$2896 1096 \$276 \$1032.490 \$1.513.490 \$1.513.490 11250 16257 \$3896 \$4.55 \$4.40 \$53.70 \$4.55 \$4.40 \$53.70 \$11250 11250 11250 11250 11250 11250 11250 11250 11250 11250	art Rental Fee foer Month) \$1.25 \$0.76 \$0.10 yeta Disposal and Services	\$2800 Monthly Carl Rental \$32.274 \$3.445 \$1.626 \$4.504 Billed for Customer Count 28379 11250 11250 11257	\$1.978.475 \$1.978.475 \$5.06.700 \$57.642 \$2.582.667 \$42.582.667 \$43.582.667 \$5.83.2013 \$56.49.252 \$597.379 \$537.379	Cost of Ranial for 84 Months \$2,769,795 \$709,380 \$1709,380 \$3,615,734 \$3,660,193 \$7,660,193 \$7,060,193 \$1,023,153 \$1,023,153 \$1,023,153	Cost @ 3.5% for 84 months \$12.77.744 \$12.971 \$1.08.261 \$3.508.366
\$276 \$202.496 \$1.517.490 \$2.111.677 \$23379 \$23379 \$23379 \$238.56 \$4.40 \$4.40 \$4.40 \$4.40 \$4.40 \$4.40 \$4.50 \$1.1260 \$1.	art Rental Fee (per Month) \$1.25 \$0.75 \$0.75 \$0.70 anced use Disposal nd Services	Monthly Cart Rental \$32.974 \$34.45 \$1,626 \$43.04 \$43.04 [1280] 17.280 17.280 53389	Cost of Rental for 80 Months \$1,978,425 \$506,700 \$87,542 \$2,892,867 \$2,892,867 \$1,542 \$4,925 \$81,521,013 \$649,252 \$837,379 \$43,107,649	Cost of Rental for 84 Months \$2,769,795 \$1703,380 \$1703,380 \$13,659 \$13,659 \$13,659 \$1,660,193 \$1,660,193 \$1,023,153 \$13,392,007	Cost @ 3.5% for 84 months \$1,777,144 \$722,977 \$1,068,281
\$102.496 \$1.572.496 \$1.572.496 \$2.171.472 \$253.79 \$11250 \$152.77 \$4.55 \$4.40 \$57.66 \$11250 \$11250 \$11250 \$11250 \$1257 \$2896	art Renial Fee Iper Month) \$1.25 \$0.75 \$0.10 solution	Monthly Carl Rental \$32.274 \$3.445 \$1.626 \$43.044 Billed for Customer Count 28379 11250 11250 53896	\$1.976.475 \$1.976.475 \$5.06.700 \$97.542 \$2.592.667 \$42.592.667 \$43.592.667 \$5.393.692 \$5.3107.642	5.20 of Rantal for 84 Months \$2,769,795 \$709,380 \$709,380 \$3,615,734 \$1,660,193 \$7,08,61 \$1,023,153 \$1,023,153 \$1,023,153	Cost @ 3.5% for 84 months \$12.77.744 \$12.971 \$1.08.261 \$3.508.366
Billed for Customer Count 26379 11260 16257 53896 844,71 84 55 84,40 857,66 11260 11260 11260 11260 11260	art Rental Fee Iper Month) 31.25 \$0.75 \$0.10 \$0.10 wata Disposal and Services	Monthiv Cart Rental \$32,974 \$83,445 \$1,626 \$43,044 Billed for Customer Count 26379 11280 16257 53886	Cost of Rental for 60 Months \$1.978.425 \$5.06.700 \$97,542 \$2.592.667 \$1.527.013 \$6.49.252 \$537,379 \$337,379	Cost of Rantal for 84 Months \$7,769,795 \$709,380 \$136,559 \$3,615,724 \$1,660,193 \$7,060,193 \$70,053,153 \$3,392,007	Cost @ 3.5% for 84 months \$1.777.14 \$1.08.297 \$1.08.265
### Sample County ### Sample ### Sam	art Rental Fee (per Month) \$1.25 \$0.75 \$0.76 \$0.10 wata Disposal and Services	Monthly Carl Rental \$32.274 \$34.45 \$1,626 \$43.044 \$23.044 [253.76] [17.500 17.500 17.500 17.500 53.866	\$1.978.425 \$1.978.425 \$5.06.700 \$97.542 \$2.582.667 \$2.582.667 \$1.557.013 \$649.252 \$937.379 \$3.107.642	Cost of Rantal for 84 Months \$7.2 / 69,795 \$7.96,795 \$1.96,559 \$3.615,734 \$1.660,193 \$7.08,661 \$1,023,153 \$3.982,007	Cost @ 3.5% for 84 months \$1,777,144 \$122,971 \$1,08,281
26379 11260 16257 53896 Cost \$4.62 \$4.65 Aug \$4.55 Inia \$57.66 I.04 Eanerit by Hauler 26379 11260 11260 11260 11260 11260 11260 11260	\$1.25 \$0.75 \$0.10 \$0.10 anced usta Disposal als	\$32.974 \$3.445 \$1,626 \$43.044 \$33.04 \$33.79 \$33.79 \$12.80 \$12.80 \$18.80	\$1,978,425 \$506,700 \$87,542 \$2.582,867 \$2.582,867 \$1,521,013 \$649,252 \$337,379 \$3,107,642	\$2,769,795 \$709,380 \$1709,380 \$3.615,734 \$3.650,193 \$7.06,0193 \$7.06,0193 \$7.06,0193 \$7.06,0193 \$7.06,0193 \$7.06,0193 \$7.06,0193 \$7.06,0193 \$7.06,0193 \$7.06,0193	Cost @ 3.5% for 84 months \$1,777,14 \$723,977 \$1,058,251
53896 Cost 548.71 Adv 44.55 Aug 44.55 Inia 857.66 Ioi 1050 11050 11050 11050 11050 11050 11050 11050 11050	anced justa Disposal nd Services	Billed for Customer Count 11260 16257 53896	\$2.592.667 Cart Replacement Cost \$1,621,013 \$649.252 \$937,379 \$3.107.642	\$3.615.734 Cost @ 3.5% for 90 months \$1,660,193 \$708.661 \$1,023,153 \$3.392.007	Cost @ 3.5% for 84 months \$1,77,144 \$722,971 \$1,058,254
Cost \$48.77 Ach \$4.55 Aug \$4.40 Inta \$57.86 Iou \$57.86 Iou Benefit by Hauler Billed for Customer Count 76379 11250 11250 53886	ranced usta Disposal nd Services	Billed for Customer Count 28379 11280 16257 53866	Cart Replacement Coat \$1,527,013 \$649,252 \$937,379	Scort @ 3.5% for 60 months \$1,660,193 \$708,661 \$1,023,153 \$3.392,007	Cost @ 3.5% for 84 months \$1.777.14 \$722.977 \$1.058.251 \$3.508.365
\$4.55 Aug \$4.55 Aug \$4.56 Inia \$57.66 Ioia Benefit by Heuler 26379 11060	ranced justa Disposal and Services	28379 11260 16257 53896	\$1,521,013 \$649,252 \$937,379	\$1,660,193 \$708,661 \$1,023,193 \$3,392,007	\$1,717,144 \$732,871 \$1,058,251 \$3,508,366
89 Totaler Billed for Customer Count 1750 11750 11567 15657 1589	<u> </u>	5386	\$3,107,643	\$3,392,007	\$3,508,366
Benefit by Hauler Billed for Customer Count 26379 11260 16257 53896					
Billed for Customer Count 26379 11260 16257 53846					
26379 11260 16267 <u>53896</u>	Cart Replacement Cost	Purchase Cost @ 3.5% for 60 months	Cost of Rental for 60 Months	60 Monthly Cost/Benefit	Value of Assets @ 60 months
93895	\$1,521,013 \$649,252 \$937,379	\$1,660,193 \$708,661 \$1,023,153	\$1,978,425 \$506,700 \$97,542	\$318,232,01 (\$201,961.17) (\$925,611.17)	
	\$3,107,643	\$3,392,007	\$2,582,667	[\$809,340,33]	\$1.553.822
Net Value Coat/Benefit \$744.481.35				,	
84 Month (Cost)/Benefit by Hauler					
Billed for Customer Count Cal	Cart Replacement Cost	Cost @ 3.5% for 84 months	Cost of Rental for 84 Months	84 Monthly Cost/Benefit	Value of Assets @ 84 months
Advanced 28379 Augusta Disposal 11260 Inland Services 16257	\$1,521,013 \$649.252 \$937,379	\$1,717,144 \$732,971 \$1,058,251	\$2,769,795 \$709,380 \$136,559	\$1,0 52,651.09 (\$23,590.94) (\$921,692.41)	
<u>Totals</u>	\$3,107,643	\$3,508,366	\$3,615,734	\$107,367,74	8932,2893
Net Value Cost/Benefit \$1.039.650.75					
Total Anticipated Savings					
Billing Discrepancies Ne 60 Months \$1,512,480	Net Value Cost/Benefit \$744,481.35	Total \$2,256,961,35			
84 Months \$2,117,472	\$2,117,472 \$1,039,660.75	\$3,157,132,75	7700.20		

RFP 05-143 Purchase & Delivery of Refuse & Recycling Carts Landfill

RFP Due: Tuesday, October 25, 2005 @ 3:00 p.m.

Vendor	Addendum 1	Bid Bond	Original	Five Copies
Cascade Engineering	Yes	Yes	Yes	Yes
Rehrig Pacific	Yes	Yes	Yes	Yes
Otto Environmental	No Bid			
Kilch Enterprise	Yes	Yes	Yes	Yes
Schaefer Systems	Yes	Yes	Yes	Yes
	L	l		L



Engineering Services Committee Meeting 5/30/2006 1:30 PM Solid Waste Pickup

Department: Clerk of Commission

Caption: Discuss the various Solid Waste pickups. (Requested by Commissioner Smith)

Background:
Analysis:
Financial Impact:
Alternatives:
Recommendation:

Funds are Available in the Following Accounts:

REVIEWED AND APPROVED BY:

Clerk of Commission



Engineering Services Committee Meeting 5/30/2006 1:30 PM Tom Dozier

Department: Clerk of Commission

Caption: Presentation by Mr. Tom Dozier regarding alternatives for the relocation of Silver Sheet Metal Company.

Background:

Analysis:
Financial Impact:
Alternatives:
Recommendation:

Funds are Available in the Following Accounts:

REVIEWED AND APPROVED BY:

Clerk of Commission

Nancy Morawski

From:

Lena Bonner

Sent:

Tuesday, May 23, 2006 4:04 PM

To:

'TD705@aol.com'

Cc:

Nancy Morawski

Subject: RE: 1553 BROAD STREET / ST. SEBASTIAN WAY PROJECT

Mr. Dozier

As requested, we will place your request on the May 30th Engineering Services agenda, which meets at 1:30 P.M in Room 802 in the Municipal Building.

Lena J. Bonner Clerk of Commission Room 806 Municipal Building 530 Greene Street Augusta, Ga. 30911 Office phone-706-821-1820 Fax - 706-821-1838

----Original Message----

From: TD705@aol.com [mailto:TD705@aol.com]

Sent: Thursday, May 11, 2006 10:58 AM

To: Lena Bonner

Cc: RHUTCHINS@silversheetmetal.com; tdozier3@silversheetmetal.com

Subject: 1553 BROAD STREET / ST. SEBASTIAN WAY PROJECT

MS. BONNER,

AS AN AUGUSTA/RICHMOND COUNTY RESIDENT AND BUSINESS TAXPAYER, WE WOULD LIKE TO MEET WITH ENGINEERING SERVICES COMMITTEE TO DISCUSS ALTERNATIVES FOR RELOCATING SILVER SHEET METAL CO. ON 30 MAY AND MEETING WITH THE COMMISSIONERS ON 6 JUNE 2006 IF REQUIRED.

AS A COMPANY, WE WOULD LIKE TO REMAIN IN THE 1553 BROAD ST. AREA. TO ACCOMPLISH STAYING IN THIS AREA, WE WILL REQUIRE ACQUIRING CITY PROPERTY. THANK YOU. PLEASE ADVISE

TOM DOZIER 1559 BROAD STREET AUGUSTA, GA. 30904 706-722-1559

td705@aol.com



Engineering Services Committee Meeting 5/30/2006 1:30 PM Waterproofing Consultant Contract for Municipal Building

Department: Capital Improvements, through Administration

Caption: Approve Contract with Stafford Engineers for Roof and

Waterproofing Consulting on the Augusta Richmond County

Municipal Building

Background: The consultant will inspect, analyze and produce re-roofing

and waterproofing plans for the Municipal Building. Stafford

Engineers was selected by a Committee consiting of

representatives of Facilities Maintenance, Procurement and Capital Improvements Program Management, following review of submissions recieved from respondents to RFQ

#06-091.

Analysis: The Municipal Building is the flagship facility for Augusta

Richmond County, but has been suffering in some locations from water penetrations through the roof and exterior wall

systems. The selected firm is a waterproofing/roofing

specialist, chosen by a Qualifications Based Selection (QBS) process, to further the project goal of maintaining the high quality facility that the Municipal Building represents. The Association of County Commissioners of Georgia endorses the use of QBS for procurement of design professional

services as an effective and efficient alternative to traditional low-bid procedures. The Municipal Building roof has some unusual challenges, including a structure with less slope built

into it than would be permissable, by code, for a new building. The challenges present warrant the hiring of a roofing/waterproofing consulting firm. The second-place respondent had greater local participation, but their Atlantabased roofing consultant was considerably less experienced than the selected firm, and failed to provide any professional

references.

Financial Impact: Total compensation to the consultant is \$48,000.00.

Alternatives: 1. Readvertise and reissue the RFQ. 2. Enter contrat

negotiations with the second-place firm. 3. Utilize an alternate project delivery method, such as design-build. 4.

Cancel Project.

Recommendation: Approve Contract with Stafford Engineers for Roof and

Waterproofing Consulting on the Augusta Richmond County

Municipal Building.

Funds are

Available in the

Following Accounts:

SPLOST III account #323-296050050.

REVIEWED AND APPROVED BY:

Administrator. Clerk of Commission Augusta GEORGIA

DAVID S. COPENHAVER

Marion Williams

Mayor Pro Tem

Mayor

AUGUSTA-RICHMOND COUNTY COMMISSION

STEPHEN E. SHEPARD

County Attorney Augusta Law Department

STAFF ATTORNEY Vanessa Flournoy

Betty Beard
Marion Williams
Joe Bowles
Richard Colclough
Calvin Holland, Sr.
Andy Cheek
Jerry Brigham
Jimmy Smith
J. R. Hatney
Don Grantham

Frederick L. Russell Administrator

Please Reply to: 701 Greene Street, Suite 104 Augusta, Georgia 30901

Facsimile Message

Reply to:

701 Greene Street, Suite 104 Augusta, Georgia 30901

<u>DATE</u>: April 12, 20

TO: Bob Munger

FROM: Stephen E. Shepard

FAX NUMBER: 706-821-2484

TOTAL PAGES: 1, including cover

RE: Stafford Consulting Contract

I have approved the contract with Stafford Consulting Engineers. The only problem I have with the agreement is that it does not state the kind of entity that Stafford Consulting Engineers is, ie. Corp. or LLC etc.

Presumably that are a North Carolina corporation qualified to do business in Georgia.

With those revisions, I have no problem with the contract.

I did notice that address from some of the correspondence, that they are qualified to do business in the State of Georgia.

NOTICE OF CONFIDENTIALITY: THE INFORMATION CONTAINED IN THIS FACSIMILE MESSAGE IS LEGALLY PRIVILEGED AND CONFIDENTIAL INFORMATION INTENDED FOR THE USE OF THE INDIVIDUAL(S) NAMED ABOVE. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY READING OF THE CONTENTS OR THE DISSEMINATION, DISTRIBUTION OR DUPLICATION OF THIS TELECOPY IS STRICTLY PROHIBITED. YOUR KIND COOPERATION IN THAT RESPECT IS GREATLY APPRECIATED. IF YOU RECEIVE THIS TRANSMISSION IN ERROR, PLEASE TELEPHONE THE SENDER, COLLECT. PLEASE CALL (706) 722-4111 IF THE TRANSMISSION IS NOT FULLY RECEIVED.

Augusta Law Department 501 Greene Street, Suite 302, Augusta, Georgia 30901 (706) 842-5550 - Fax (706) 842-5556

County Attorney 701 Greene Street, Suite 104, Augusta, Georgia 30901 (706)724-6597 – Fax (706) 722-4817

LUMP SUM AGREEMENT FOR DESIGN CONSULTANT SERVICES

BETWEEN

Augusta, Georgia, a political subdivision of the State of Georgia

Acting by and through the

Augusta Richmond County Commission

Hereinafter Referred to as Owner

AND

Robert M. Stafford, Inc., a North Carolina corporation DBA Stafford Consulting Engineers

Hereinafter Referred to as Waterproofing Consultant

PROJECT: Exterior Envelope Renovation Consulting Services for the Augusta Richmond County Municipal Building

DATE: May 2, 2006

AGREEMENT FOR DESIGN CONSULTANT SERVICES

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AGREEMENT FOR

DESIGN CONSULTING SERVICES

AGREEMENT made this 2nd day of May, 2006, BETWEEN the Owner: Augusta, Georgia, a political subdivision of the State of Georgia, acting by and through the Augusta Richmond County Commission and the Waterproofing Consultant: Robert M. Stafford, Inc., a North Carolina corporation DBA Stafford Consulting Engineers, for Professional Services in connection with the Project known as: Exterior Renovation Design Services for the Municipal Building.

The Construction Program Manager for the Project is: Heery International, Inc.

The Owner and the Waterproofing Consultant agree as set forth below:

ARTICLE 1 DEFINITIONS

The following words and phrases where appearing in initial capitalization, shall for the purposes of this Agreement have the following meanings:

- 1.1 PROJECT. The Project shall be all exterior envelope consulting work, as described herein, to be conducted in conjunction with in the Augusta Richmond County Municipal Building, located at 530 Greene Street, Augusta., Georgia.
- 1.2 SERVICES. The Services to be performed by the Waterproofing Consultant under this Agreement shall consist of the Basic Services and any Additional Services both as defined herein.
- 1.3 BASIC SERVICES. Basic Services shall consist of consulting services as described in Article 3, to be performed and provided by the Waterproofing Consultant under this Agreement in connection with the Project.
- ADDITIONAL SERVICES. Additional Services shall consist of the Waterproofing services agreed to be performed by the Waterproofing Consultant in connection with the Project, but which are not specifically designated as Basic Services in Article 3.
- 1.5 WORK. The Work shall consist of tasks identified in Paragraph 1.1 above.

- PROJECT DOCUMENTS. The roofing and exterior wall system repairs and modifications shall be completed in accordance with the Drawings and Specifications, which will be prepared by the Waterproofing Consultant and approved by the Owner prior to the execution of the Agreement between the Roofing/Waterproofing Contractor and the Owner:
- 1.7 CONTRACTOR. The Contractor is the person or entity which enters into an agreement with the Owner to perform the abatement and demolition on the Project, including, without limitation, the providing of labor, materials, and equipment necessary for the completion of the Project. The term "Contractor" means the Contractor or its authorized representative, but excludes the Construction Program Manager and the Waterproofing Consultant.
- 1.8 BASIC SERVICES COMPENSATION. Basic Services Compensation shall be fees designated in Article 4 to be paid by the Owner to the Waterproofing Consultant in connection with the performance of the Basic Services by the Waterproofing Consultant.
- REIMBURSABLE EXPENSES. In connection with Additional Services, Reimbursable Expenses are those actual expenditures made by the Waterproofing Consultant, its employees, or its Professional Consultants in the interest of the Project including but not limited to, County standard per diem out-of-pocket expenses for travel and living expenses in connection with the Project, long distance telephone, expressage, professional consultants (other than those required for the performance of the Basic Services), and Owner-approved document reproduction. Pre-approved document reproduction expenses include expenses incurred for Bidding Documents, exclusive of addenda, and documents issued for permitting and/or construction.
- OWNER/CONSTRUCTION PROGRAM MANAGER CONTRACT. The Owner/Construction Program Manager Contract is the agreement between the Owner and the Construction Program Manager dated May 6, 2004 for the performance of construction program management services on the Project.
- 1.11 MASTER SCHEDULE. The Master Schedule is a graphic display of the major activities, phases, sequences and timing of the major project activities for design, construction procurement, construction and occupancy. The parties mutually agree that the Master Schedule is a guideline and reasonable adjustments to it are acceptable. Proposed changes to it should be agreed to by both parties in advance. Neither the Owner nor Waterproofing Consultant shall be held liable for schedule changes due to circumstances beyond their control.
- 1.12 CHANGE ORDER. A Change Order is the form of documentation from the Owner approving and authorizing a modification to the Master Schedule or previously approved contract documents.

ARTICLE 2 RELATIONSHIP OF THE PARTIES

- WATERPROOFING CONSULTANT SERVICES. The Waterproofing Consultant shall provide professional Waterproofing services for the Project in accordance with the terms and conditions of this Agreement. The Waterproofing Consultant's performance of services shall be as professional consultant to the Owner to carry out the activities of Project and to provide the technical documents and supervision to achieve the Owner's Project objectives.
- 2.2 OWNER REPRESENTATION. The Construction Program Manager is under separate contract with the Owner to provide construction program management services. The Construction Program Manager has no Waterproofing responsibilities of any nature. None of the activities of the Construction Program Manager supplant or conflict with the services and responsibilities customarily furnished by the Waterproofing Consultant or subconsultants in accordance with generally accepted Waterproofing consulting practices, except as otherwise modified by this Agreement. The Waterproofing Consultant understands and agrees that the Construction Program Manager is the Owner's exclusive representative to the Waterproofing Consultant and Contractor insofar as this Agreement is concerned. All instructions by the Owner to the Waterproofing Consultant relating to services performed by the Waterproofing Consultant will be issued or made through the Construction Program Manager. communications and submittals of the Waterproofing Consultant to the Owner and Contractor shall be issued or made through the Construction Program Manager, unless the Construction Program Manager shall otherwise direct. The Construction Program Manager shall have the authority to establish procedures, consistent with this Agreement, to be followed by the Waterproofing Consultant and Contractor and to call periodic conferences to be attended by the Waterproofing Consultant, and subconsultants, throughout the term of this Agreement.
- 2.3 Waterproofing Consultant understands and agrees that it is not a third party beneficiary of any contract between the Owner and the Construction Program Manager or of their performance there under. Waterproofing Consultant waives any rights, claims or causes of action it may have as an alleged third party beneficiary of any such contract or of the performance of the parties there under.

2.4 WATERPROOFING CONSULTANT REPRESENTATION

2.4.1 The Waterproofing Consultant shall provide a list of all consultants which the Waterproofing Consultant intends to utilize relating to the Project. The list shall include such information on the qualifications of the consultants as may be requested by the Owner. The Owner, through the Construction Program Manager, reserves the right to review the consultants proposed, and the

Waterproofing Consultant shall not retain a consultant to which the Owner, through the Construction Program Manager, has a reasonable objection.

- 2.4.2 The Waterproofing Consultant shall provide to the Owner, through the Construction Program Manager, a list of the proposed key project personnel of the Waterproofing Consultant and its consultants to be assigned to the Project. This list shall include such information on the professional background of each of the assigned personnel as may be requested by the Owner, through the Construction Program Manager. Such key personnel and consultants shall be satisfactory to the Owner and shall not be changed except with the consent of the Owner unless said personnel cease to be in the Waterproofing Consultant's (or its consultants, if applicable) employ.
- DIVISION OF RESPONSIBILITIES/SERVICES. The Waterproofing Consultant understands and agrees that should the Construction Program Manager provide the Waterproofing Consultant with any estimating assistance, cost or time control recommendations or other consultation, recommendations or suggestions, any or all such activities on the part of the Construction Program Manager or any other representative of the Owner shall in no way relieve the Waterproofing Consultant of the responsibility of fulfilling its obligations and responsibilities under this Agreement.

ARTICLE 3 BASIC SERVICES

3.1 SCOPE OF SERVICES

Augusta Richmond County proposes to renovate the exterior envelope of the Municipal Building, located at 530 Greene Street in Augusta. The Municipal Building is a 9-story reinforced concrete structure with marble and granite cladding, constructed in the 1950's.

The scope of work will include field investigations of the roof and exterior wall assemblies, analysis and preparation of a Preliminary Design Report, followed by Drawings and Specifications suitable for competitive bidding.

Specific tasks included are:

1. Review of Owner's circa 1955 construction drawings.

- 2. Field investigation of in situ conditions, including limited destructive testing of roof areas, down to structural deck, as needed to ascertain the composition and condition of all existing roof assemblies. This will include roof membrane(s), insulation, flashings, joint covers, roof mounted equipment and other roof appurtenances. All destructive tests shall be repaired the same day.
- 3. Determination of existing roof slopes (both at membrane and structural level).
- 4. Determination of condition of exterior joint sealants, including verification of various types of joint widths and depths of adjoining surfaces.
- 5. Interview facility's maintenance personnel about any known leaks or other exterior assembly problems.
- 6. Analyze existing windows and provide recommendations for replacement or refurbishment. Include cost estimate for same. Detailed design of window replacement/refurbishment is not included in the scope of work or fee proposal.
- 7. Formulation of a Preliminary Design Report documenting findings and describing all recommended renovation work and materials, including cost estimates with separate line items for each major area of work.
- 8. Attend Preliminary Design Review Meeting with Owner to discuss report's findings and recommendations.
- 9. Production of code-compliant construction drawings and specifications consistent with scope of renovation work approved by Owner following Preliminary Design Review Meeting.
- 10. Submit Final Review set of Construction Drawings and Technical Specifications to Owner, along with the final cost estimate.
- 11. Attend Final Design Review Meeting with Owner to discuss any modifications that might be needed prior to issuance for competitive bidding.

- 12. Prepare Construction/Bidding Documents, including removal of existing roofing, insulation, flashing and sealant materials; repair of damaged or deteriorated deck, installation of new insulation providing positive slope to drains (as defined by the International Building Code, as a minimum); installation of selected roof membrane with appropriate surfacing and flashings; design and detailing of appropriate secondary overflow system as required; repair and/or replacement of existing sealant joints in parapets and exterior walls systems, (including cladding joints and abutments of doors/windows, and juncture of dissimilar materials); and installation of other materials as necessary to provide watertight roof and wall assemblies. Primary drainage systems will be reviewed to determine if existing roof drains are properly sized. Extensive design or revisions to the existing pipe systems is not included in this scope of services. All construction documents shall be prepared in compliance with applicable building codes, including the International Building Code and ASCE 7.
- 13. Incorporation of Owner's standard bidding documents into the Project Manual, including Conditions of the Contract, Instructions to Bidders, Bid Form, Insurance and Bond Requirements, etc.
- 14. Assist Owner during project Bidding, including attendance at Pre-Bid Conference and responding to Owner's request for document clarifications or consideration of product substitutions.
- 15. Review bids and make recommendation as to apparent responsive, responsible, low bidder.
- 16. Attend Pre-Roofing/Pre-Sealing conference, including preparation of meeting minutes.
- 17. Provide construction observation including written reports, as needed, but in no case less than once a week during periods of active work, to achieve a professional standard of care, with regards to quality of renovation work, and fidelity to Contract Documents; with the understanding that Basic Services includes up to ten (10) site visits. Construction observation visits exceeding ten (10) visits, when authorized in advance by the Owner's Project Manager, will entitle the Waterproofing Consultant to Additional Services compensation, in accordance with Article 4.
- 18. Review all of contractor's shop drawings, product data, etc., as required by the Construction Documents.
- 19. Review Contractor's Applications for Payment and forward to Owner's Project Manager, with Waterproofing Consultant's written certification as to the level of completion.
- 20. Respond to contractor's requests for information (RFI's) as quickly as possible, but in no case less than 48 hours, except when specific permission is granted otherwise by the Owner's Project Manager.
- 21. Review and evaluation of contractor's change order requests.
- 22. Conduct a final inspection with punch list, when project is considered substantially complete.
- 23. Provide Owner's Project manager with AutoCad files of construction drawings.
- 24. Review and transmit contractor's required close-out documents.

- 25. Waterproofing Consultant's opinions of cost estimates will be based on observations, the recommendations identified in the Preliminary Report and previous experience in determining replacement costs of building systems components. The opinions of cost will be in current dollars and will not include inflation unless specifically noted otherwise. The actual costs may vary depending on the contractors used, the quality of materials used, the extent of work performed at one time, if the items are purchased individually or under master purchase contacts, and other factors.
- 26. Observations of windows, sealant joints, etc. will be made from grade and roof surfaces. In the event that close access to walls above grade is required to evaluate sealant joints and/or windows, when such walls are not readily accessible, it will be necessary to have a mechanical lift or similar equipment to gain access to exterior wall surfaces to conduct visual observations and related testing. Arrangements and cost for provision of such equipment and associated labor will be the responsibility of the Owner, should it be required.
- 3.2 WATERPROOFING CONSULTANT'S PROFESSIONAL RESPONSIBILITY AND STANDARD OF CARE
- 3.2.1 By execution of this Agreement, the Waterproofing Consultant warrants that (a) it is an experienced Waterproofing firm having the skill and the legal and professional ability necessary to perform all the Services required of it under this Agreement in connection with the Project contemplated herein; (b) it has the capabilities and resources necessary to perform its obligations hereunder; and (c) it is familiar with all current laws, rules and regulations which are applicable to the Project (such laws, rules and regulations including, but not limited to, all local ordinances, city, county, state and federal authorities which are applicable to the Project, and all orders and interpretations by governing public authorities of such ordinances, requirements, laws, rules and regulations in effect at the time of commencement of services on the Project), and that all drawings, specifications and other documents prepared by the Waterproofing Consultant shall be prepared in accordance with and shall accurately reflect and incorporate all such laws, rules and regulations.
- 3.2.2 The Waterproofing Consultant hereby represents and agrees that the drawings, specifications and other documents prepared by it pursuant to this Agreement shall be complete and functional for the purposes intended, except as to any deficiencies which are due to causes beyond the control of the Waterproofing Consultant.

- 3.2.3 The Waterproofing Consultant shall be responsible for any errors, inconsistencies or omissions in the drawings, specifications, and other documents. while the Waterproofing Consultant cannot guarantee the various documents required herein to be completely free of minor human errors and omissions, it shall be the responsibility of the Waterproofing Consultant throughout the period of performance under this Agreement to use due care with professional competence. The Waterproofing Consultant will correct at no additional cost to the Owner any and all errors and omissions in the drawings, specifications and other documents prepared by the Waterproofing Consultant. The Waterproofing Consultant further agrees, at no additional cost, to render assistance to the Owner in resolving problems relating to the design or specified materials.
- 3.2.4 It is the responsibility of the Waterproofing Consultant to make certain that all drawings, specifications and other documents are in accordance with applicable laws, statutes, building codes and regulations and that appropriate approvals are obtained from Federal, State and local governments.

3.3 PROJECT CONFERENCES

Throughout all phases of the Project, the Waterproofing Consultant and its consultants shall meet periodically with the Owner and Construction Program Manager when reasonably requested. Attendees shall be as jointly determined by the Owner, Construction Program Manager and Waterproofing Consultant. As a minimum, regularly scheduled meetings which the Waterproofing Consultant will attend include:

- 1. Project Launch Meeting
- 2. Preliminary Design Review Meeting
- 3. Final Design Review Meeting
- 4. Contractor Pre-Bid Meeting
- 5. Contractor Pre-Roofing/Pre-Sealing Meeting.

ARTICLE 4 COMPENSATION

- 4.1 BASIC SERVICES COMPENSATION
- 4.1.1 The Owner shall compensate the Waterproofing Consultant in accordance with the terms and conditions of this Agreement, including the following:
- 4.1.2 For the Basic Services of the Waterproofing Consultant, Basic Services Compensation shall be a lump sum fee of Forty-eight Thousand Dollars (\$48,000.00).
- 4.1.3 The Basic Services Compensation stated in Paragraph 4.1.1 includes all compensation and other payments due the Waterproofing Consultant (manpower, overhead, profit, expenses, direct costs, etc.) in the performance of the Basic Services.
- 4.2 PAYMENTS TO THE WATERPROOFING CONSULTANT. Payments on account of the Waterproofing Consultant shall be made as follows:
- 4.2.1 Payments for Basic Services shall be made on upon completion of each of the following line items:

Total Amount Due

Preliminary Design Report Submittal	\$11,000.00
Preliminary Design Review/Approval	\$14,000.00
Construction Documents Submittal	\$25,000.00
Construction Documents Review/Approval	\$35,000.00
Bid/Award	\$37,500.00
50% Construction Completion	
Final Inspection	
Prep/Review/Submittal of Closeout Documentation	

- 4.2.2 No deductions shall be made from the Waterproofing Consultant's Basic Services Compensation on account of penalty, liquidated damages, retainage or other sums withheld from payments to Contractor.
- 4.2.3 If the Project is suspended for more than six months or abandoned in whole or in part by the Owner, the Waterproofing Consultant shall be paid compensation for services performed prior to receipt of written notice from the Owner of such suspension or abandonment, and all reasonable termination expenses resulting from such suspension or abandonment. If the Project is resumed after being suspended for more than six months, the Waterproofing Consultant's Basic Services Compensation shall be equitably adjusted.

4.2.4 If Owner fails to make any payment due Waterproofing Consultant for services and expenses within thirty (30) days after receipt of waterproofing Consultant's bill therefore, the Waterproofing Consultant may, after giving seven (7) days written notice to the Owner, suspend services under this Agreement until he has been paid in full all amounts due him for services and expenses.

4.3 ADDITIONAL SERVICES COMPENSATION

- 4.3.1 In the event that the number of site visits during the construction phase exceeds ten (10), and visits exceeding that amount are pre-approved in writing by the Owner's Project Manager, the Waterproofing Consultant shall be entitled to Additional Services compensation in the amount of Nine Hundred Fifty Dollars (\$950.00) per trip.
- 4.3.2 With respect to any additional services not specifically addressed herein, performed by the Waterproofing Consultant hereunder, the Waterproofing Consultant and Owner shall negotiate an equitable adjustment to the Basic Services Compensation. However, if negotiations are not successful prior to the time the additional services are needed, the Owner may elect to contract with another entity to perform the Additional Service(s); or the Owner may direct the Waterproofing Consultant to proceed with the Additional Services on a time spent basis with Additional Compensation Services to be computed as the following fixed rates:
- 4.3.2.1 Principal · One Hundred Sixty Dollars (\$160.00) per hour.

Associate - One Hundred Forty Dollars (\$140.00) per hour.

Senior Project Engineer- One Hundred Twenty-five Dollars (\$125.00) per hour

Project Manager · One Hundred Dollars (\$100.00) per hour

Engineer Ninety Dollars (\$90.00) per hour

Technician · Seventy-five Dollars (\$75.00) per hour

Inspector - Sixty Dollars (\$60.00) per hour

CADD Operator—Sixty Dollars (\$60.00) per hour

Administrative Support - Forty-five Dollars (\$45.00) per hour.

4.3.2.2 Should the Owner elect to contract with a separate entity to perform Additional Services, as described under Paragraph 4.3.1, the Waterproofing Consultant shall comply with reasonable requests from Owner, without additional compensation, with regards to coordination of work with the respective separate entity.

4.3.3 Payments for Additional Services of the Waterproofing Consultant shall be made monthly upon presentation of the Waterproofing Consultant's statement of services, fully supported by invoices, time cards, and other documentation as requested by the Owner.

4.4 ACCOUNTING RECORDS

- 4.4.1 Records of the Waterproofing Consultant with respect to Additional Services and payroll, consultant and other expenses (including Reimbursable Expenses) pertaining to the Project, shall be kept on generally accepted accounting principals and shall be available to the Owner or its authorized representative for inspection and copying at mutually convenient times.
- 4.4.2 At the request of the Owner or its authorized representative the Waterproofing Consultant will supply in a timely manner and certify as accurate, unaltered copies of all time sheets, invoices, and other documents to substantiate and document any and all Additional Services and Reimbursable Expenses.

ARTICLE 5 PERIOD OF SERVICE

- 5.1 Specific dates relating to the period of services will be set forth in the Master Schedule.
- Unless earlier terminated as provided in Article 10 hereof, this Agreement shall remain in force for a period which may reasonably be required for the Basic Services and Additional Services hereunder. However, the provisions of the Agreement relating to Professional Responsibility (Paragraph 3.2); Dispute Resolution (Article 11); Professional Liability coverage (Article 8); Indemnification (Article 9); and Ownership of Documents/Confidential Information (Article 13) shall remain in effect after termination of the other provisions of the Agreement.
- 5.3 If the Project is delayed through no fault of the Waterproofing Consultant, all specific dates noted in the Master Schedule that are affected by the delay will be adjusted by the number of calendar days of the delay.
- 5.4 If the Owner materially revises the Project, a reasonable time extension and/or credit shall be negotiated between the Waterproofing Consultant and the Owner.
- 5.5 Time is of the essence of this Agreement.

ARTICLE 6 OWNER'S RESPONSIBILITIES

- 6.1 The Owner shall provide full information regarding the requirements for the Project.
- 6.2 The Owner shall examine documents submitted by the Waterproofing Consultant and shall render decisions pertaining thereto promptly, to avoid unreasonable delay in the progress of the Waterproofing Consultant's Services.
- 6.3 The Owner shall furnish information and approvals required of it expeditiously, for orderly progress of the Work and shall endeavor to adhere as closely as possible with the time conditions for such Owner activities as set forth in all approved schedules for the Project.

ARTICLE 7 NOTICES

- Any notice required by this Agreement or other communications to either party by the other shall be in writing and deemed given when delivered personally or five (5) days after deposit in the United States Post Office, postage prepaid certified mail, return receipt requested, addressed as follows, or to such other address as shall be duly given by notice meeting the requirement of this Article.
- 7.2 To Owner:

Mr. Rick Acree, RA. Assistant Director of Public Services Facilities Management Division 501 Greene Street, Suite 301 Augusta, GA 30901

7.3 To Waterproofing Consultant:

Mr. Stuart W. Sutton, PE President Stafford Consulting Engineers Charlotte, NC 28269

7.4 With Copy to Construction Program Manager:

Mr. Bob Munger, AIA ARC Capital Improvements Program Manager Heery International, Inc. 501 Greene Street; Suite 313 Augusta, GA 30901

ARTICLE 8 INSURANCE

8.1 The Waterproofing Consultant shall purchase and maintain insurance for protection from claims under worker's or workmen's compensation acts; claims resulting from negligent acts or omissions for damages because of bodily injury, including personal injury, sickness, disease or death of any of the Waterproofing Consultant's employees or any other person; claims for damages because of injury to or destruction of personal property including loss of use resulting there from; and claims arising out of the performance of this Agreement and caused by negligent acts or omissions for which the Waterproofing Consultant is legally liable. Minimum limits of coverage shall be:

INSURANCE DESCRIPTION	Minimum Required Coverage
a. Worker's Compensation	Statutory
b. Public Liability	\$1,000,000 Combined Limit
Bodily Injury: Each Person	\$100,000
Bodily Injury: Each Accident	\$200,000
Property Damage: Each Accident	\$100,000
c. Automobile Liability & Property Damage	\$1,000,000 Combined Limit
Bodily Injury: Each Person	\$100,000
Bodily Injury: Each Accident	\$200,000
Property Damage: Each Accident	\$100,000
d. Professional Liability:	\$1,000,000 per Loss/Claim

- 8.2 Evidence of such insurance shall be furnished to the Owner, and the Owner shall receive thirty (30) days prior written notice of any cancellation, non-renewal or reduction of coverage of any of the policies. Upon notice of such cancellation, non-renewal or reduction, the Waterproofing Consultant shall procure substitute insurance so as to assure the Owner that the minimum limits of coverage are maintained continuously throughout the period of this Agreement.
- 8.3 The Waterproofing Consultant shall deliver to the Owner a certificate of insurance for its Professional Liability coverage.
- 8.4 All insurance policies (with the exception of Professional Liability) required under this Agreement shall name the Owner as an additional insured for the insurance and shall contain a waiver of subrogation against the Owner.

ARTICLE 9 INDEMNIFICATION

- 9.1 Notwithstanding anything to the contrary contained herein, the Waterproofing Consultant shall indemnify and hold harmless the Owner, the Construction Program Manager and their agents and employees from and against all claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from (i) the Waterproofing Consultant's performance or failure to perform its obligations under this Agreement and (ii) any claim, damage, loss or expense attributable to bodily injury, sickness, disease or death, or to injury to or destruction of personal property including the loss of use resulting there from and caused in whole or in part by any negligent act or omission of the Waterproofing Consultant or anyone directly or indirectly employed by the Waterproofing Consultant. Such obligation shall not be construed to negate, abridge or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Article.
- 9.2 Except as otherwise set forth in this Agreement, the Waterproofing Consultant and the Owner shall not be liable to each other for any delays in the performance of their respective obligations and responsibilities under this Agreement which arise from causes beyond their control and without their fault or negligence, including but not limited to, any of the following events or occurrences: fire, flood, earthquake, epidemic, atmospheric condition of unusual severity, war, state or local government acting in its sovereign capacity, and strikes. Owner shall not be liable to the Waterproofing Consultant for acts or failures to act by Construction Program Manager, the Contractor, or the Owner's consultants.

ARTICLE 10 TERMINATION OF AGREEMENT

- If (1), the Owner abandons the Project or the Project is stopped for more than six 10.1 (6) months due to actions taken by the Owner, or under an order of any court or other public authority having jurisdiction, or as a result of an act of government, such as a declaration of a national emergency making materials unavailable through no act or fault of the Waterproofing Consultant or its agents or employees, or (2), the Owner has failed to substantially perform in accordance with the provisions of this Agreement due to no fault of the Waterproofing Consultant and such non-performance continues without cure for a period of thirty (30) days after the Owner receives from the Waterproofing Consultant a written notice of such nonperformance (including a detailed explanation of the actions of the Owner required for cure), the Waterproofing Consultant may, upon fifteen (15) day's additional written notice to the Owner, terminate this Agreement, without prejudice to any right or remedy otherwise available to the Owner, and recover from the Owner payment for all services performed to the date of the notice terminating this Agreement.
- Upon the appointment of a receiver for the Waterproofing Consultant, or if the Waterproofing Consultant makes a general assignment for the benefit of creditors, the Owner may terminate this Agreement, without prejudice to any right or remedy otherwise available to the Owner, upon giving three (3) working days written notice to the Waterproofing Consultant. If an order for relief is entered under the bankruptcy code with respect to the Waterproofing Consultant, the Owner may terminate this Agreement by giving three working days written notice to the Waterproofing Consultant unless the Waterproofing Consultant or the trustee: (1), promptly cures all breaches; (2), provides adequate assurances of future performance; (3), compensates the Owner for actual pecuniary loss resulting from such breaches; and (4), assumes the obligations of the Waterproofing Consultant within the statutory time limits.
- 10.3 If the Waterproofing Consultant persistently or repeatedly refuses or fails, except in cases for which extension of time is provided, to supply sufficient properly skilled staff or proper materials, or persistently disregards laws, ordinances, rules, regulations or orders of any public authority jurisdiction, or otherwise substantially violates or breaches any term or provision of this Agreement, then the Owner may, without prejudice to any right or remedy otherwise available to the Owner, and after giving the Waterproofing Consultant written notice, terminate this Agreement.

- 10.4 Upon termination of this Agreement by the Owner under Paragraph 10.2 or 10.3, it shall be entitled to furnish or have furnished the Services to be performed hereunder by the Waterproofing Consultant by whatever method the Owner may deem expedient. Also, in such cases, the Waterproofing Consultant shall not be entitled to receive any further payment until completion of the Work; and the total compensation to the Waterproofing Consultant under this Agreement shall be the amount which is equitable under the circumstances. If the Owner and the Waterproofing Consultant are unable to agree on the amount to be paid under the foregoing sentence, the Owner shall fix an amount, if any, which it deems appropriate in consideration of all of the circumstances surrounding such termination, and shall make payment accordingly.
- The Owner may, upon thirty day's written notice to the Waterproofing Consultant terminate this Agreement, in whole or in part, at any time for the convenience of the Owner, without prejudice to any right or remedy otherwise available to the Owner. Upon receipt of such notice, the Waterproofing Consultant shall immediately discontinue all services affected unless such notice directs otherwise. In the event of a termination for convenience of the Owner, the Waterproofing Consultant's sole and exclusive right and remedy is to be paid for all work performed and to receive equitable adjustment for all work performed through the date of termination. The Waterproofing Consultant shall not be entitled to be paid any amount as profit for unperformed services or consideration for the termination of convenience by the Owner.
- Should the Owner terminate the Waterproofing Consultant as provided for under this Article, the Owner will acquire such documents, including the ownership and use of all drawings, plans, specifications, documents and materials relating to the Project prepared by or in the possession of the Waterproofing Consultant. The Waterproofing Consultant will turn over to the Owner in a timely manner and in good unaltered condition all such original documents and materials.
- 10.7 The payment of any sums by the Owner under this Article 10 shall not constitute a waiver of any claims for damages by the Owner for any breach of the Agreement by the Waterproofing Consultant.

ARTICLE 11 DISPUTE RESOLUTION

If a dispute arises out of or related to this Agreement, or its alleged breach, and if that dispute has not been settled through direct discussions within a reasonable period, the parties to this Agreement agree to first endeavor to settle the dispute in an amicable manner by submitting the dispute to a mutually acceptable mediator under the Construction Industry Mediation Rules, before having recourse to a judicial forum. Each party further agrees that it will endeavor to follow a similar dispute resolution procedure to resolve any disputes against any third parties (including the Contractor and Construction Program Manager) which arise out of or relate to work.

Should mediation of disputes prove unsuccessful, the parties to this Agreement agree that the matter(s) in question will be decided in the Superior Court of Richmond County, Georgia. By signing this Agreement, the Design Consultant waives any right to contest the venue in the Superior Court of Richmond County, Georgia.

ARTICLE 12 SUCCESSORS/ASSIGNMENT

- 12.1 This Agreement shall inure to the benefit of and be binding on the heirs, successors, assigns, trustees and personal representatives of the Owner, as well as the permitted assigns and trustees of the Waterproofing Consultant.
- 12.2 The Waterproofing Consultant shall not assign, sublet or transfer its interest in this Agreement without the written consent of the other, except that the Waterproofing Consultant may assign accounts receivable to a commercial bank or financial institution for securing loans, without prior approval of the Owner.

ARTICLE 13 OWNERSHIP OF DOCUMENTS/CONFIDENTIAL INFORMATION

- The Waterproofing Consultant agrees to transmit a digital copy of all plan text and drawings and closeout documents to Owner prior to project closeout. Said electronic files and documents are not to be used by the Owner on projects at separate facilities without a written agreement with the Waterproofing Consultant, except as provided for under Paragraph 10.6.
- In order for the Waterproofing Consultant to fulfill this Agreement effectively, it may be necessary or desirable for the Owner to disclose to the Waterproofing Consultant confidential and proprietary information and trade secrets pertaining to the Owner's past, present and future activities. The Waterproofing Consultant hereby agrees to treat any and all information gained by it as a result of the Services performed hereunder as strictly confidential. The Waterproofing Consultant further agrees that it will not disclose to anyone outside of the authorized Project team (i) Owner's trade secrets during the period of this Agreement or thereafter or (ii) Owner's confidential and proprietary information during the period of this Agreement and thereafter for a period of 2 years.

ARTICLE 14 ADDITIONAL PROVISIONS

- 14.1 This Agreement and its Exhibits and Attachments represent the entire and integrated agreement between the Owner and the Waterproofing Consultant 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 Waterproofing Consultant.
- Unless otherwise specified, this Agreement shall be governed by the law of the State of Georgia, U.S.A.
- If any one or more of the provisions contained in this Agreement, for any reason, are held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions thereof and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.
- 14.4 Except where specifically stated otherwise, all periods of time stated in terms of days shall be considered periods calculated in calendar days.
- 14.5 The headings or captions within this Agreement shall be deemed set forth in the manner presented for the purposes of reference only and shall not control or otherwise affect the information set forth therein or interpretation thereof.
- 14.6 For the purpose of this Agreement unless the context clearly indicates otherwise, the singular includes the plural, and the plural includes the singular.
- 14.7 This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and the counterparts shall constitute one and the same instrument, which shall be sufficient evidence by any one thereof.

This Agreement executed the day and year first written above.

OWNER

Augusta, Georgia, a political

Subdivision of the State of Georgia

Acting by and through the Augusta

	Richmond County Commission	
758	By:	By: Christine Ciriglen
<i>V</i>	Mayor	Vice President - Operations Title
	Attest:	Attest: Circly Duncash Witness

WATERPROOFING CONSULTANT Robat M. Stafford, Enc. DBA

Stafford Consulting Engineers

EXHIBIT A MASTER SCHEDULE

ID	Task Name	Start	Finish		Qtr 2, 2	2006		Qtr 3,	2006
				Mar	Apr	May	Jun	Jul	Aug
1	Consultant Notice To Proceed	5/2/06	5/2/06		1	5/2			
2	Project Launch Meeting	5/8/06	5/8/06			5/8	3		
3	Analysis & Prelim design	5/9/06	6/16/06				h		
4	Prelim Report Review	6/19/06	6/26/06						
5	Prelim Review Meeting	6/26/06	6/26/06				1	6/26	
6	Const. Document Design	6/27/06	7/27/06						h_
7	CD Review/Approval	7/28/06	8/17/06		1				
8	CD Review Meeting	8/17/06	8/17/06						*
9	Final Document Design	8/18/06	8/28/06		1 1				
10	Final Document Submittal	8/29/06	8/29/06						
11	Bid/Award/Contract	8/30/06	12/19/06		1				
12	Construction	12/20/06	3/20/07						
13	Closeout	3/21/07	4/17/07						

	ACORD. CERTIF	ICATE OF LIA	ABILITY I	NSURAL	VCF	DATE (MM/DD/YYYY)		
_	ODUCER					03/20/06		
HF	RH Professional Practice surance Brokers, Inc.		ONLY AN HOLDER.	D CONFERS NO R THIS CERTIFICAT	ED AS A MATTER OF IN IGHTS UPON THE CERT E DOES NOT AMEND, E FORDED BY THE POLIC	TFICATE XTEND OR		
1	33 Harding Place narlotte, NC 28204-1513		INCUIDEDO	INSURERS AFFORDING COVERAGE				
	URED		A STATE OF THE STA	COLUMN TO SERVICE SERV	STATE OF THE STATE	NAIC #		
	Stafford Consulting Eng	gineers		INSURER A: Continental Casualty Company				
9115 Harris Corners Parkway			INSURER B:					
Suite 230			INSURER C:					
	Charlotte, NC 28269		INSURER D:					
-	VERAGES		INSURER E:					
THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.						SUED OR		
INSF	NADD'L INSRD TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE	POLICY EXPIRATION DATE (MM/DD/YY)	LIMIT	s		
	GENERAL LIABILITY		DATE (MINODELLA)	DATE (MINIOD/17)	EACH OCCURRENCE	S		
	COMMERCIAL GENERAL LIABILITY				DAMAGE TO RENTED PREMISES (Ea occurrence)	5		
	CLAIMS MADE OCCUR				MED EXP (Any one person)	5		
					PERSONAL & ADV INJURY	s		
					GENERAL AGGREGATE	\$		
	GEN'L AGGREGATE LIMIT APPLIES PER				PRODUCTS - COMP/OP AGG	s		
	POLICY PRO-							
	ANY AUTO				COMBINED SINGLE LIMIT (Ea accident)	\$		
	ALL OWNED AUTOS SCHEDULED AUTOS				BODILY INJURY (Per person)	s		
	HIRED AUTOS NON-OWNED AUTOS				BODILY INJURY (Per accident)	\$		
		5			PROPERTY DAMAGE (Per accident)	\$		
	GARAGE LIABILITY				AUTO ONLY - EA ACCIDENT	s		
	ANY AUTO				OTHER THAN EA ACC	s		
					AUTO ONLY: AGG	\$		
	EXCESS/UMBRELLA LIABILITY				EACH OCCURRENCE	\$		
	OCCUR CLAIMS MADE		200		AGGREGATE	\$		
			-			s		
	DEDUCTIBLE					\$		
_	RETENTION \$				I WC STATILL LOTU	\$		
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY				WC STATU- OTH- TORY LIMITS ER			
	ANY PROPRIETOR/PARTNER/EXECUTIVE			1	E.L. EACH ACCIDENT	\$		
	OFFICER/MEMBER EXCLUDED? If yes, describe under				E.L. DISEASE - EA EMPLOYEE			
_	SPECIAL PROVISIONS below	110100000000			E.L. DISEASE - POLICY LIMIT			
Α	OTHER Professional	MCA006086916	03/13/06	03/13/07	\$1,000,000/\$1,000,00 Per Claim/Aggregate			
The pre Ref cc:	CRIPTION OF OPERATIONS / LOCATIONS / VEHICLE aggregate limit is total insurance sented within the policy period for the county Muratafford Consulting Engineers; \alpha RTIFICATE HOLDER	e available for claims or all operations of insure nicipal Building	d. ., Inc.		"			
	2.1.1. Care CD C has 1.5 are handed by (3		CANCELLAT		D DOLLOIDE DE CALCETTE			
	Augusta-Richmond Cou Attn: Rick Acree, R.A. Facilities Management D 501 Greene Street, Suite	vivision	DATE THEREOF, NOTICE TO THE IMPOSE NO OBLI REPRESENTATIV	THE ISSUING INSURER CERTIFICATE HOLDER! IGATION OR LIABILITY (/ES.	ED POLICIES BE CANCELLED B WILL ENDEAVOR TO MAIL WAMED TO THE LEFT, BUT FAIL DF ANY KIND UPON THE INSUR	30 DAYS WRITTEN URE TO DO SO SHALL		
Augusta, GA 30901			77 -	AUTHORIZED REPRESENTATIVE				

IMPORTANT

If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

DISCLAIMER

The Certificate of Insurance on the reverse side of this form does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.

Client#: 243070

70STAFFCON

ACORD™ CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 03/21/06

PRODUCER

BB&T McPhail Bray Insurance P. O. Box 11148

5925 Carnegie Blvd Suite 400

Charlotte, NC 28220

INSURED

Stafford Consulting Engineers 9115 Harris Corners Parkway, Suite 230 Charlotte, NC 28269-3709 THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURERS AFFORDING COVERAGE	NAIC #	
INSURER A: Travelers Indemnity Company of CT	25682	
NSURER B: Travelers Ind Co of Amer.	25666	
NSURER C: Travelers Indemnity Co.	25658	
NSURER D: Charter Oak Fire Insurance Company	25615	
NSURER E:		

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	NSR ADD'L LTR INSRD TYPE OF INSURANCE		POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	3
Α		GENERAL LIABILITY	I660328X4279TCT06	01/01/06	01/01/07	EACH OCCURRENCE	\$1,000,000
		X COMMERCIAL GENERAL LIABILITY			DAMAGE TO RENTED PREMISES (Ea occurrence)	\$100,000	
		CLAIMS MADE X OCCUR				MED EXP (Any one person)	\$5,000
						PERSONAL & ADV INJURY	\$1,000,000
						GENERAL AGGREGATE	\$2,000,000
		GEN'L AGGREGATE LIMIT APPLIES PER:				PRODUCTS - COMP/OP AGG	\$2,000,000
		POLICY PRO- JECT LOC					
В	B AUTOMOBILE LIABILITY X ANY AUTO		BA468Y187906SEL	01/01/06	01/01/07	COMBINED SINGLE LIMIT (Ea accident)	\$1,000,000
		ALL OWNED AUTOS SCHEDULED AUTOS				BODILY INJURY (Per person)	\$
		X HIRED AUTOS NON-OWNED AUTOS				BODILY INJURY (Per accident)	\$
						PROPERTY DAMAGE (Per accident)	\$
		GARAGE LIABILITY				AUTO ONLY - EA ACCIDENT	\$
		ANY AUTO				OTHER THAN EA ACC	\$
						AUTO ONLY: AGG	\$
С		EXCESS/UMBRELLA LIABILITY	ISMCUP468Y2409IND0	01/01/06	01/01/07	EACH OCCURRENCE	\$3,000,000
		X OCCUR CLAIMS MADE				AGGREGATE	\$3,000,000
							\$
		DEDUCTIBLE					\$
		X RETENTION \$ 10000				I WO DIATU I SOTI	\$
D		KERS COMPENSATION AND OYERS' LIABILITY	IOUB6917W84706 01/01/06		01/01/06 01/01/07	X WC STATU- TORY LIMITS OTH- ER	
	ANY	PROPRIETOR/PARTNER/EXECUTIVE				E.L. EACH ACCIDENT	\$500,000
	OFFICER/MEMBER EXCLUDED? If yes, describe under					E.L. DISEASE - EA EMPLOYEE	
	SPECIAL PROVISIONS below					E.L. DISEASE - POLICY LIMIT	\$500,000
A		R Property	1660328X4279TCT06	01/01/06	01/01/07	\$222,000. BPP	
Special, R/C							
_). Deductible	L			L	
		on of operations / Locations / Vehic M. Stafford, Inc. dba Stafford		EMENT / SPECIAL PRO	VISIONS		

RE: Augusta Richmond County Municipal Building Certificate Holder is named Additional Insured as required by written (See Attached Descriptions)

CERTIFICATE HOLDER

Augusta-Richmond County Commission Attn; Rick Acree, R.A. Facilities Mgt. Div. 501 Greene St., Ste 301 Augusta, GA 30901 CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR

REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

GASH H. DOUG, CLV

IMPORTANT

If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

DISCLAIMER

The Certificate of Insurance on the reverse side of this form does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.

DESCRIPTIONS (Continued from Page 1)	
contract on all policies, except Worker Compensation. Waiver of Subrogation is applicable for all policies.	

TECHNICAL CONSULTANT PROPOSAL EVALUATION FORM RFQ #06-091; Exterior Renovations to the Augusta Municipal Building

Reviewer:			Date:		2/16/2006	
Criteria Category	Evaluation Weight	- 0				
Qualifications	30%					
References	25%					
Submission Clarity, Quality, Fidelity	15%					
Proximity to Project	10%					
Organization/Managemt/Technical	10%					
DBE Participation Total	10%	-				
Evaluation Crite	eria — — — — — — — — — — — — — — — — — — —		T	Respondents		
Oualifications		J&L	Stafford			
Years of Roofing Experience		1 4	10	1	1	1
Roofing/Waterproofing Training		4	10			
Familiarity with Project Specifics		10	8	-		
Cladding/Sealant Experience		6	10		-	
Average Firm Qualification Scores		6.00	9.50	0.00	0.00	0.00
Reference Scores		6	9	1 0.00	0.00	0.00
Reference Scores		0	9			
Submission Clarity, Quality, Fidelity		5	5		1	_
Submission Carrey, Quanty, Finency		,		_		
Proximity Scores		8.5	4			1
Organization/Managemt/Technical						-
Understanding of project scope		10	10			
Technical Approach		7	7			
Organizational/Legal Approach		6	10			
Ability to meet proposed schedule Average Org./Management Scores		7.00	5 8.00	0.00	0.00	0.00
				0.00	0.00	0.00
DBE Scores		8	0			
Summary of Scores						
Qualifications	30%	1.80	2.85	0.00	0.00	0.00
References	25%	1.50	2.25	0.00	0.00	0.00
Quality of Submission	15%	0.75	0.75	0.00	0.00	0.00
Proximity to Project	10%	0.85	0.40	0.00	0.00	0.00
Organization/Management	10%	0.70	0.80	0.00	0.00	0.00
DBE Participation	10%	0.80	0.00	0.00	0.00	0.00
Total Cooms		5.40		1		

Notes:

Cost and EMR scores are determined by:

 $y = 10a x^{-1}$

or y=10(a/x)

6.627906977

7.05

0.00

0.00

0.00

Where:

Total Score

y = Cost score a = Minimum bid or EMR Value x = Bid to be evaluated

CANDY FACTORY ENVIRO ENGINEER EVALUATION NOTES

# Firm	Qualifications/Experience	References	DBE Organization/ Approach Participation	DBE 1 Participation	Submission Quality	Other Notes
1 1&1	Good, but no Only (1) member of team apprears to be a roofing specialist, but no references for RRC, a A little disjointed. Who is specific projects experience listed for this nerson	Good, but no references for RRC, a	A little disjointed. Who is	Good	o la retamble	
	monad our company of the control of		TO THE TANK OF THE PARTY OF THE	POOD	acceptable	
2 Stafford	Firm has good depth of roof design specialists and impresssive number of roofing projects.	poog	poog	None	acceptable	
						1.29 two yr avg.
Firm 1 Notes:						

Firm 2 Notes:

Firm 3 Notes:

Robert Munger

From: Robert Munger

Sent: Thursday, February 16, 2006 9:08 AM

To: Rick Acree; Claude Andrews

Subject: Municipal Building Ext. Envelope Renov. Proposal Evaluations

Attached is a standardized evaluation spreadsheet that you might want to use. We used this for another one of the RFP's and it does the math for you, including the weightings by category.

I've used the following standard formulas for calculating the DBE and proximity scores, and have already plugged those in. I also checked references and scored them. Feel free to use my numbers for those categories, or come up with yours independently, if you chose. The three criteria highlighted with yellow should, as a minimum, be rated by you.

I've had to estimate the amount of DBE participation, since fee splits aren't given. As far as the proximity goes, J&L is higher, but they did not get a perfect score since they have team members from outside the CSRA.

Here are the standard tables I used:

DBE Participation percentage)	(fee	Points
Greater than or equal to 50%		10
Greater than or equal to 40%		8
Greater than or equal to 25%		6
Greater than or equal to 10%		4
Greater than or equal to 5%		3
Good faith effort (requires documentation)		2
No effort		0

Location	Points
Within Augusta Richmond County	10
Within the CSRA or East Central Georgia:	8
Within Georgia:	6
Within SE United States (includes AL, GA, TN, NC, SC, FL)	4
Within United States	2
All Others	1

Bob Munger

HEERY
Program Manager
Augusta Richmond County
Capital Improvements Program Management
501 Greene Street
Augusta, GA 30901
(706) 842.5543
(706) 821-2484 fax
rmunger@augustaga.gov



RFQ Specifications

RFQ Item #06-091

Exterior Renovation Design Services

For

Augusta Municipal Building

RFQ Due: Friday, February 10, 2006 @ 11:00 a.m.

Thanks for doing business with us...

Gui A Sams, Procurement Director
1530 fre ne street, Room 605
ducusiti Georgia 30911

Request for Qualifications

Sealed RFQ's will be received at this office until Friday, February 10, 2006 @ 11:00 a.m.

RFQ Item #06-091 Exterior Renovation Design Services for Municipal Building

RFQ's will be received by Augusta, GA Commission hereinafter referred to as the OWNER at the offices of:

Geri A. Sams
Procurement Department
530 Greene Street - Room 605
Augusta, Georgia 30911
706-821-2422

RFQ documents may be obtained at the office of Augusta, GA Procurement Department, 530 Greene Street – Room 605, Augusta, GA 30911. Documents may be examined during regular business hours at the offices of Augusta, GA Procurement Department. All questions must be submitted in writing to the office of the Procurement Department by Fax at 706-821-2811 or by mail. No RFQ will be accepted by fax, all must be received by mail or hand delivered. A mandatory Pre-Bid Conference will be conducted at the Municipal Building on Friday, January 20 2006 @ 10:00 a.m. at the conference room of the Procurement Department, 530 Greene Street, Room 605, Augusta GA, 30909. The last day to submit questions is Tuesday, January 24, 2006 @ 3:00 p.m.

It is the wish of the Owner that minority businesses are given the opportunity to BID on the various parts of the work. This desire on the part of the Owner is not intended to restrict or limit competitive bidding or to increase the cost of the work. The Owner supports a healthy free market system that seeks to include responsible businesses and provide ample opportunity for business growth and development.

No RFQ may be withdrawn for a period of 60 days after time has been called on the date of opening.

Bidders will please note that the number of copies requested; all supporting documents including financial statements and references and such other attachments that may be required by the bid invitation are material conditions of the bid. Any package found incomplete or submitted late shall be rejected by the Procurement Office. Any bidder allegedly contending that he/she has been improperly disqualified from bidding due to an incomplete bid submission shall have the right to appeal to the appropriate committee of the Augusta commission. Please mark RFQ number on the outside of the envelope.

Bidders are cautioned that sequestration of RFQ documents through any source other than the office of the Procurement Department is not advisable. Acquisition of RFQ documents from unauthorized sources placed the bidder at the risk of receiving incomplete or inaccurate information upon which to base his qualifications.

Augusta has a Link Deposit program designed to provide loans to eligible <u>local Small</u>, Minority and Women Owned Businesses. For more information about this program contact the Office of Disadvantage Business Enterprise at 706-821-2406.

GERI A. SAMS, Procurement Director

Publish:

Augusta Chronicle December 29, January 5, 12, 19, 2006

January 4, 2006

cc: Tameka Allen

Metro Courier

Interim Deputy Administrator

Bob Munger

Heery International

Yvonne Gentry

DBE Coordinator

1.0 GUIDELINES

- 1. Augusta, Georgia will not be liable for any EXPENSES INCURRED by respondents in their preparation of proposals. Augusta reserves the right to reject any and all qualifications and to make an award that is determined to be in the best overall interests of Augusta, Georgia. <u>Under no circumstance will any bid be accepted by fax or email</u>. All RFQ's must be labeled and received in the Procurement office by the due date and time. There will be no exceptions made for any late, lost by the post office or express carrier, or misdirected submittals. All bidders must submit a copy of the company's business licenses.
- 2. **JOINT QUALIFICATIONS** will be accepted; however, Augusta, GA reserves the right to select the most qualified underwriters.
- 3. Augusta reserves the right to make any **INQUIRES** regarding any qualifications of any or all respondents and request additional information.
- 4. When submitting your proposal FEE STRUCTURE. Price information shall be separated from the qualifications in a sealed envelope and opened only after the qualifications have been reviewed and ranked. The names of the respondents will be identified at the opening; however, no package will be handled so as to permit disclosure of the detailed contents of the responses until after award of contract. A record of all responses shall be prepared and maintained for the files and audit purposes.
- 5. **PUBLIC INSPECTION.** The responses will be open for public inspection only after contract award. Proprietary or confidential information marked, as such in proposals will not be disclosed without written consent of the offeror.
- 6. **EVALUATION AND SELECTION.** The Request for Qualifications shall state the relative importance of price and other evaluation factors that will be used in the context of proposal evaluation and contract award.
- 7. **SELECTION COMMITTEE.** A selection committee, minimally consisting of representatives of the procurement office, the using agency, and the Administrator's office or their choice shall convene for the purpose of evaluating the qualifications.
- 8. **PRELIMINARY NEGOTIATIONS.** Discussions with the offerors and technical revisions to the proposals may occur. Discussions may be conducted with the responsible offerors who submit qualifications for the purpose of clarification and to assure full understanding of, and conformance to, the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussions and revision of proposals and such revisions may be permitted after submission and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of information derived from proposals submitted by competing offerors.
- 9. **FINAL NEGOTIATIONS AND LETTING THE CONTRACT.** The Committee shall rank the technical proposals, submitted by each offeror, and request final and best offers from the top ranked three firms if available. Award shall be made or recommended for award through the Augusta Administrator, to the responsible offeror whose proposals is determined to be the most advantageous to the Augusta, GA, taking into consideration price and the evaluation factors set forth in the Request for Qualifications. Other factors or criteria shall be used in the evaluation. The contract file shall contain a written report of the basis on which the award is made/recommended. The contract shall be awarded or let in accordance with the procedures set forth in the Request for Qualifications. Other factors or criteria shall be used in the evaluation. The contract file shall contain a written report of the basis on which the award is made/recommended. The contract shall be awarded or let in accordance with the procedures set forth in the Augusta, Georgia Code.

- 10. PROHIBITION AGAINST CONTINGENT FEES. It shall be unethical for a person to be retained, or to retain a person, to solicit or secure the Augusta contract upon any agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business.
- 11. **RIGHT OF REJECTION.** We reserve the right to accept or reject any or all responses to this RFQ and to enter into discussions and/or negotiations with one or more qualified vendors at the same time, if such action is in the best interest of the Augusta Commission.
- 12. **REQUEST FOR QUALIFICATIONS.** Qualifications shall be handled in the same manner as the bid process as described above for solicitation and awarding of contracts for goods or services with the following exceptions:
 - (a) Only the names of the vendors making offers shall be disclosed at the opening.
 - (b) Content of the qualifications submitted by competing persons should not be disclosed during the process of the negotiations.
 - (c) Qualifications shall be open for public inspection after the award is made.
 - (d) Proprietary or confidential information, marked as such in each qualification package, shall not be disclosed without the written consent of the offeror.
 - (e) Discussions may be conducted with responsible persons submitting proposals determined to have a reasonable chance of being selected for the award. These discussions will only be for the purpose of clarification to assure a full understanding of the solicitation requirement and responsiveness thereto.
 - (f) Nonmonetary revisions may be permitted after submissions and prior to award for the purpose of obtaining the best and final offers.
 - (g) In conducting discussions with the persons submitting the qualifications, there shall be no disclosure of any information derived from the other persons submitting qualifications.
- 13. AUGUSTA, GA COMMISSION RIGHT TO INCORPORATE PROPOSALS INTO CONTRACT. Upon acceptance of the vendor proposals by the Augusta Commission, the vendor shall enter into a contract with Augusta to provide the services called out in this RFQ. This RFQ and the winning qualifications shall be incorporated for reference into the contract.
- 14. **USE OF CONFIDENTIAL INFORMATION.** It shall be unethical for any Augusta employee or official knowingly to use confidential information for actual or anticipated personal gain, or for the actual or anticipated personal gain of any other person.

EMPLOYEE CONFLICT OF INTEREST:

It shall be unethical for any Augusta, GA business or participant directly or indirectly in a procurement contract when the employee or official knows that:

- (a) the employee or official or any member of the employee's or official's immediate family has a substantial interest or financial interest pertaining to the procurement contract, except that the purchase of goods and services from businesses which a member of the Commission or other Augusta employee has a financial interest is authorized as per O.C.G.A. 36-1-14, or the procurement contract is awarded pursuant to O.C.G.A. 45-10-22 and 45-10-24, or the transaction is excepted from said restrictions by O.C.G.A. 45-10-25;
- (b) Any other person, business, or organization with whom the employee or official of any member of an employee or official's immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement contract.

Any employee or official or any member of an employee's or official immediate family who holds a substantial interest or financial interest in a disclosed blind trust shall not be deemed to have a conflict of interest with regard to matters pertaining to that substantial interest or financial interest.

It is the wish of the Owner that minority businesses are given the opportunity to submit on the various parts of the work. This desire on the part of the Owner is not intended to restrict or limit competitive bidding or to increase the cost of the work. The Owner supports a healthy free market system that seeks to include responsible businesses and provide ample opportunity for business growth and development.

The Disadvantaged Business Enterprise Language has been included. Please note that the DBE forms are required to be completed and included as part of your qualifications.

USE OF CONFIDENTIAL INFORMATION 1-10-15

It shall be unethical for any Augusta, GA County employee or official to knowingly use confidential information for actual or anticipated personal gain, or for the actual or anticipated gain of any other person.

Name:		Title:	
Company:		Date:	

THIS SHEET IS A REQUIREMENT IN YOUR RFQ PACKAGE

2.0 PROJECT AND OWNERSHIP OF DATA

The requested services will provide design and Contract Documents for exterior envelope renovations to the Municipal Building of Augusta Richmond County. This facility functions as the headquarters for Augusta Richmond County Government, and houses various departments including the County Commission, Mayor, Administrator, Superior Court and various other Judicial and Governmental departments.

The ownership of all data, drawings, charts, etc, which are prepared or produced under this contract shall be that of Augusta Richmond County.

3.0 RESPONSES

The responses to this RFQ shall be submitted in sealed envelopes no later than 11 a.m. Friday, February 10, 2006, to:

Ms. Geri A. Sams, Procurement Director Augusta-Richmond County 530 Greene Street, Rm 605 Augusta, GA 30911

Submit one (1) original and five (5) Submissions (5 bound copies, 1 original clipped).

Clearly mark outside of outer envelope:

RFQ No. 06-091 "Exterior Envelope Renovations for Augusta Richmond County Municipal Building."

Augusta Richmond County assumes no responsibility for proposals received after the advertised deadline, or at locations other than as specified herein.

4.0 DESCRIPTION OF PROJECT

The Municipal Building is a nine-story facility totaling approximately 120,000 square feet. The three lower levels are considerably larger than the upper six floors. It was constructed approximately 50 years ago, utilizing a cast-in-place concrete frame. Exterior walls consist primarily of marble cladding over masonry backup. Smaller areas of granite cladding are used in spandrel areas. Interior wall finishes are primarily plaster.

The selected Design Consultant will analyze the existing exterior envelope, including the upper and lower roof assemblies, flashing, stone cladding, sealant joints, windows, etc. The Design Consultant's analysis will be based on the OWNER'S original construction drawings, supplemented by Design Consultant's field investigations.

There are a total of five separate roof areas (three lower and a high roof with a penthouse roof above it). The existing roof assemblies are thought to consist of an original coal tar built-up over rigid insulation, with a second roof membrane with rigid insulation later added on top. The existing roof structure may not have sufficient slope for non-coal tar-type roof membranes. If additional slope is required, the Design Consultant will design and detail any required modifications to perimeter conditions and/or roof storm drainage systems. Assumed compositions of roof assemblies and slopes as stated herein shall not form the basis of Design Consultant's recommendations or design. All existing conditions must be confirmed by field investigations.

The structure was well-built, utilizing durable materials. The Design Consultant will make recommendations for cost effective envelope renovations, in consideration of the facility's expected continued use for at least 20 years beyond the date of renovation completion. Recommendations will be accompanied by estimated renovation costs for completion of the associated work.

Following OWNER'S approval of Design Consultant's design recommendations, the Design Consultant will prepare Construction Drawings and Specifications in sufficient detail to effectively bid and execute the specified renovation work.

Work by Design Consultant, as executed and as designed for renovations, must be executed in such a manner as to minimize disruptions, inconveniences and indoor air quality degradation to building inhabitants.

5.0 SCOPE OF WORK

The scope of work required of the selected Design Consultant will include the following specific tasks:

- 1. Review of OWNER's circa 1955 construction drawings.
- 2. Field investigation of in situ conditions, including limited destructive testing of roof areas as needed to ascertain the composition and condition of all existing roof assemblies.
- 3. Determination of existing roof slopes (both at membrane and structural level).
- 4. Determination of condition of exterior joint sealants, including verification of joint widths and depths of adjoining surfaces
- 5. Interview facility's maintenance personnel about any known leaks or other exterior assembly problems.
- Analyze existing windows and provide recommendations for replacement or refurbishment. Include
 cost estimate for same. Detailed design of window replacement/refurbishment is not included in the
 scope of work or fee proposal.
- 7. Formulation of a Preliminary Design Report documenting findings and describing all recommended renovation work, including cost estimates with separate line items for each major area of work.
- 8. Attend Preliminary Design Review Meeting with OWNER to discuss report's findings and recommendations.
- 9. Production of code-compliant construction drawings and specifications consistent with scope of renovation work approved by OWNER following Preliminary Design Review Meeting.
- 10. Submit Final Review set of Construction Drawings and Technical Specifications to OWNER, along with the final cost estimate.

- 11. Attend Final Design Review Meeting with OWNER to discuss any modifications that might be needed prior to issuance for competitive bidding.
- 12. Assist OWNER during project Bidding, including responding to OWNER's request for document clarifications or consideration of product substitutions.
- 13. Provide construction observation as needed, but in no case less than once a week during periods of active work, to achieve a professional standard of care, with regards to quality of renovation work, and fidelity to Contract Documents.
- 14. Conduct a final inspection with punch list, when project is considered substantially complete.

6.0 DELIVERABLES

The selected Design Consultant shall provide the following deliverables:

- 1. Five bound copies, and one unbound copy, of the Preliminary Design Report shall be submitted to the OWNER's designated representative.
- 2. Two copies of the Final Review set of Construction Drawings and Technical Specifications. Submit one full-size set and one half-size set of drawings.
- 3. One reproducible set of Contract Documents (Drawings and Project Manual) stamped by licensed architect or engineer of record, with Georgia stamp.
- 4. One electronic file of the Project Manual, in MS Word format, along with CAD files of all computer drawings.

The Consultant shall agree that all documents and computer files prepared under the terms of this agreement shall become the property of the OWNER. The OWNER shall have the right to use this material without restraint or limitation and without compensation to the Consultant.

7.0 COMPENSATION

Fees will be negotiated following the determination of the highest-ranked applicant. If the parties fail to reach a mutually acceptable fee, the City reserves the right to negotiate with the second-highest applicant, continuing in descending order until such time as an agreement is reached.

8.0 FORM AND CONTENTS OF SUBMITTAL

Submittal Form

Provide four (4) bound copies of your submittal plus one (1) copy clipped together to facilitate reproduction.

Submittal shall utilize letter-size (8 ½ x 11 inches) or, zee folded to that dimension from 11 x 17 inch stock.

Submittal should be clear and concise and follow the format described herein.

Submittal Contents

<u>Cover Letter:</u> Include a (one page maximum) cover transmittal letter which clearly states the single contact (principal-in-charge) proposed for this project, the firm (or firms) mailing address(es), telephone and facsimile numbers. Specifically designate the applicant's representative who will serve as lead contact in all communications and who is authorized to negotiate on behalf of the firm or team.

Scope of Services: Describe how services will be provided, including a detailed listing and description of tasks and deliverables.

Experience and Capacity: Describe background and experience of the firm demonstrating ability to provide

required services.

References: List references from exterior renovation and re-roofing work performed on other relevant contracts.

<u>Personnel:</u> Identify all key professionals to be directly involved in work, with resumes and specific applicable experience including subcontractors, if applicable.

Insurance: Submit documentation of firm's insurance coverage, applicable to proposed services rendered, including (i) Workman's Compensation Insurance and/or Employer's Liability Insurance, in accordance with applicable laws for all its employees engaged in the Services; (ii) Commercial General Liability Insurance, including Completed Operations and Broad Form Property Damage coverage to an aggregate limit of \$1,000,000; (iii) Automobile Liability Insurance and (iv) Professional Liability Insurance.

RFQ Submittal: Write the title of the RFQ on front of the envelope. Total proposal shall not exceed thirty pages. Submit in accordance with Section 3.0

<u>Fee:</u> Include lump sum, fixed fee in a separate sealed envelope (1 copy), contained within the main envelope. Mark envelope "Fee Proposal for RFQ # 06-091. Fee shall be based on the scope of work described herein, including Section 5.0.

RFQ's must be received by 11:00 a.m. Friday, February 10, 2006.

11.0 EVALUATION CRITERIA

Qualifications will be evaluated using the following factors and assigned values.

#	Criteria	Available Points
1	Quality, thoroughness, and clarity of submission as pertinent to the project description and requirements stated herein.	15
2	Qualifications and experience of key professionals, particularly related to re- roofing and exterior envelope rehabilitations.	30
3	References.	25
4	Organization and management approach of the firm or team.	10
5	Participation of women and minorities.	10
6	Proximity to Project.	10

12.0 SCHEDULE

Issuance of RFQ December 29, 2005

Mandatory Pre-proposal meeting and tours
Deadline: Receipt of Questions
Receive Qualification Submittals

January 20, 2006 @ 10:00 a.m.

January 24, 2006 @ 3:00 p.m.

February 10, 2006 @ 11:00 a.m.

---all dates below line are tentative-----

Finalist Interviews February 2006 Award March 2006 Complete Contract Prep March 2006 Commission Approval March 2006 Notice to Proceed April 2006 Project Meetings (at existing Library) **April 2006** Submit Preliminary Program April 2006 Submit Final Program April 2006

Note: Schedule is preliminary and subject to change.

13.0 ADDITIONAL INFORMATION

The OWNER reserves the right to: (1) evaluate the qualifications submitted and waive any irregularities therein; (2) reject any and all Respondents submitting qualifications; and (3) negotiate certain terms and conditions of the Agreement.

All costs related to preparation of a response to the RFQ, including negotiations and/or clarifications with finalists, will be the sole responsibility and borne by the applicant(s).

It is the policy of the Government of Augusta Richmond County, Georgia to provide fair and reasonable opportunities for participation by disadvantaged business enterprises (DBE). Augusta-Richmond County encourages these firms to compete and encourages non-minority firms to provide for the participation of DBE firms through partnerships, joint ventures, subcontracts, and other contractual opportunities. All Respondents are requested to indicate how such businesses will be utilized in the performance of the contract by including the name, address, telephone number and point of contact for each minority business enterprise participant to be included in the form attached hereto.

Bidders are required to complete the "Disadvantaged Business Enterprise Identification" forms included with this RFQ. Qualifications without this form will be rejected.

14.0 PROJECT MANAGEMENT

The City will be assisted by Heery International, Inc., Program Management consultants for Augusta Richmond County Capital Improvements.

Project Communications prior to Award shall be in writing, sent to:

Ms. Geri Sams Procurement Director Augusta Richmond County 530 Greene Street, Rm 605 Augusta, GA 30911

15.0 AERIAL PHOTO



Aerial photo of Municipal Building (left wing is mirror image of right wing)

Disadvantaged Business Enterprise Language for RFP's

Policy and Evaluation

It is an official policy of the Augusta-Richmond County Commission, other Augusta-Richmond officials, and employees, that all necessary and reasonable steps shall be taken to ensure that disadvantaged business enterprises including small business enterprises have the maximum opportunity to compete for and participate in all contracts and subcontracts. Further, the Augusta-Richmond County Commission has the option to establish incentives to promote business opportunities covered by Augusta-Richmond County Code§ 1-10-61.

To implement this policy, Augusta-Richmond County encourages minority participation through subcontracting, joint ventures, or other methods in contracting for services. In the proposal evaluation process, up to twenty (20) points will be given to those proposals that have the most substantial degree of minority business enterprise and small business participation. In order to expedite the evaluation process, we have attached the Checklist for Good Faith Efforts, Proposed Disadvantaged Business Enterprise Participation, and Letter of Intent to Perform forms. The bidder should complete the Proposed DBE Participation Form, indicating the percentage of participation for this proposal. The completed form must accompany the proposal, or the bidder will forfeit the possible twenty (20) points assigned to minority business enterprise and small business participation in the evaluation criteria. Augusta-Richmond County's office of Disadvantaged Business Enterprise (DBE) is available at (706) 826-1325 as a resource in identifying local Disadvantaged Business Enterprises (M/WBEs and SBEs).

Section I - Definition

Minority Person - A United States citizen or permanent resident alien (as defined by the Immigration and Naturalization Service) of the United States, who is Asian, Black, Hispanic, Native American, or female, also one who is economically and socially disadvantaged.

Disadvantaged Business Enterprise - (M/WBE and SBE) - A business which is owned or controlled by minority persons who have been deprived of the opportunity to develop. Or maintain a competitive position in the economy because of social and economic disadvantages. The ownership interest must be real and continuous and not created solely to meet the minority business or minority contractor provisions of this Policy. More specifically, disadvantaged business refers to any small business concern which:

- (1) Is at least fifty-one percent (51%) owned by one or more minority citizens of the United States who are determined to be socially and economically disadvantaged.
- (2) Is a corporation, with fifty-one percent (51%) of all classes of voting stock of such corporation must be owned by an individual determined to be socially and economically disadvantaged.
- (3) Is a partnership, with fifty-one percent (51%) of the partnership interest is owned by an individual or individuals who are socially and economically disadvantaged and whose management and daily business operations are controlled by individuals determined to be socially and economically disadvantaged. Such individuals must be involved in the daily management and operation of the business concerned.

Women Business Enterprise (WBE) - A business which is owned and controlled by one or more females and who have been deprived of the opportunity to develop and maintain a competitive position in the economy because of social and economic disadvantages.

Small Business Enterprise (SBE) - A local small business which has its principal office and place of doing business in Augusta-Richmond County which is not dominant in its field of operation and is regarded as small in size as measured by its annual gross receipts being less than \$500,000.

Section II - DBE Utilization

A. Obligation:

Bidders are required to make all efforts that are reasonable to ensure that M/WBEs and SBEs have full and fair opportunities to compete for performance by complying with the requirements of this clause. Included in these requirements is the achievement of the mandatory utilization of Disadvantaged Business Enterprises (DBEs) in the performance of work under this Contract, and/or substantiation that there is a good faith effort to ensure that DBEs have the maximum opportunity to participate in the performance of work under this Contract. Contractors shall not discriminate on the basis of race, ethnicity, national origin or gender in the award and performance of the work under this contract.

Good Faith Effort Documentation - Techniques used by a bidder/proposer to seek M/WBEs and SBEs participation as subcontractor or supplier required to fulfill the bid/proposal requirements. Such good faith efforts of a bidder/proposer include, but are not necessarily limited to, the following actions:

- a) Describing efforts to target identified divisions of work identified in the bid specifications
- b) Attending the pre-bid meetings
- c) Sending or faxing letters to all M/WBEs and SBEs at the prequalification meeting, as well as those on the list provided by staff not less than seven days prior to the Qualification Statement deadline.
- d) Providing a telephone log of follow-up phone calls made to M/WBEs and SBEs concerning the project, including dates and times of calls, names of individuals placing and receiving calls and results of the calls.
- e) Providing a written statement indicating good faith negotiations with any competitive M/WBEs and SBEs bids and specifically identifying the M/WBEs and SBEs.
- f) Including a complete list of all M/WBEs and SBEs bids received, noting names, addresses and bid amounts.
- g) Providing all reasons for rejected bids.
- h) Stating whether any bonding requirement was waived and, if not, why.
- i) Utilizing the service of the Disadvantaged Business Enterprise office in identifying qualified M/WBEs and SBEs.

In completing the Proposed DBE Participation form, please remember that proposed goals are not limited to first, second and third tier subcontracting. Successful contractors have creatively applied viable methods such as mentor/protégé relationships and supply purchases to meet M/WBEs and SBEs participation goals. The contractor is responsible for ensuring that M/WBEs and SBEs perform commercially useful work at the level of the contract commitment.

Reporting Requirement

In cases where the successful bidder uses a minority subcontractor or vendor, the bidder shall indicate the percentage of the invoiced amount that such minority subcontractor or vendor performed. The bidder shall submit this form directly to the Disadvantaged Business Enterprise Office.

Bidders may contact the Disadvantaged Business Enterprise Office at (706) 826-1325 for questions or clarifications on the reporting policy.

B. Compliance

All bidders or subcontractors participating in this contract are hereby notified that failure to fully comply with the Augusta-Richmond County's DBE policy, as set forth herein, shall constitute a breach of contract which may result in termination of the contract or such other remedy as deemed appropriate by the Owner.

Bidders will please note that the number of copies requested; all supporting documents including financial statements and references and such other attachments that may be required by the bid invitation are material conditions of the bid. Any package found incomplete or submitted late shall be rejected by the Procurement Office. Any bidder allegedly contending that he/she has been improperly disqualified from bidding due to an incomplete bid submission shall have the right to appeal to the appropriate committee of the Augusta Commission.

All forms as requested by the DBE Office must be completed and returned as part of your submittal.

- A). Bid opening. Sealed Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the public notice and invitation for bids. The amount of each bid, and such other relevant information as the Purchasing Director deems appropriate, together with the name of each bidder shall be recorded. The record and each bid shall be open to public inspection in accordance with (Public Access to Procurement Information).
- B). Bid acceptance and bid evaluation. Provided that the bids are delivered to the Purchasing Director at the time, place, and under the conditions contained in the Invitation for Bids, the bids shall be conditionally accepted without alteration or correction pending evaluation.

Bids shall be evaluated based on the requirements set forth in the invitation for bids, which may include bidder responsiveness, capability and past performance, and criteria to determine acceptability such as inspection, testing, quality workmanship, delivery, and suitability for particular purpose.

Contract Award

Augusta-Richmond County proposes to award the contract to the most responsive, responsible bidder submitting a reasonable bid provided the bidder has met the goals of DBE participation and all requirements set forth in the specifications for this Bid or Request for Proposal (RFP). Bidders are advised that the Augusta-Richmond County has sole discretion and authority to determine if any bidder has made a "Good Faith Effort." Augusta-Richmond County reserves the right to reject any or all bids submitted. Augusta-Richmond County will have absolute discretion to reject any bid or to exclude a prospective bidder from submitting a bid that has been non-responsive to the DBE program requirements without satisfactory justification being accepted by the Director of the Disadvantaged Business Enterprise Program.

Revised: 6/10/05 Approved: 8/2/05

ATTACHMENT A

<u> </u>	R OF INTENT TO PERFORM AS A SUBCONSULTANT/SUBCONTRACTOR/SUPPL
-	(NAME OF PROPOSER)
2	
A.	The undersigned intends to perform work in connection with the above project in the following capacity (check one):
	An individual A corporation
	A partnership A joint venture
B.	The DBE status of the undersigned is confirmed as follows:
	By attachment of a current Certificate of Certification issued by the Department of Transportation By attachment of a current Certification issued by the Disadvantaged Business Enterprise Office
C.	Transportation By attachment of a current Certification issued by the Disadvantaged Business Enterprise Office The undersigned is prepared to perform the following work in connection with the above projection.
C.	Transportation By attachment of a current Certification issued by the Disadvantaged Business Enterprise Office
C.	Transportation By attachment of a current Certification issued by the Disadvantaged Business Enterprise Office The undersigned is prepared to perform the following work in connection with the above projection.
	Transportation By attachment of a current Certification issued by the Disadvantaged Business Enterprise Office The undersigned is prepared to perform the following work in connection with the above projection.
	Transportation By attachment of a current Certification issued by the Disadvantaged Business Enterprise Office The undersigned is prepared to perform the following work in connection with the above proje
D. E.	TransportationBy attachment of a current Certification issued by the Disadvantaged Business Enterprise Office The undersigned is prepared to perform the following work in connection with the above project. The undersigned states that they will be performing% of the total project. The undersigned will sublet and/or award% of this subcontract to non-DBE contractors and /or non-DBE suppliers.
D. E.	TransportationBy attachment of a current Certification issued by the Disadvantaged Business Enterprise Office The undersigned is prepared to perform the following work in connection with the above project. The undersigned states that they will be performing% of the total project. The undersigned will sublet and/or award% of this subcontract to non-DBE
D. E.	Transportation By attachment of a current Certification issued by the Disadvantaged Business Enterprise Office The undersigned is prepared to perform the following work in connection with the above project. The undersigned states that they will be performing % of the total project. The undersigned will sublet and/or award % of this subcontract to non-DBE contractors and /or non-DBE suppliers. Indersigned will enter into a formal agreement for the above described work with the ser cited above conditioned upon the execution of a contract for the project cited.

ATTACHMENT B

PROPOSED DBE PARTICIPATION

OBE FIRM	PRINCIPAL OFFICIAL	ADDRESS/PHONE NO.	TYPE OF WORK	Dollar Value of Work
n a	9.			
				× × × × × × × × × × × × × × × × × × ×
				y Th
Tot	al Price:		\$	
Tota	al DBE value:		S	_
Tota	l DBE percent:			%

AUGUSTA-RICHMOND COUNTY DISADVATAGED BUSINESS ENTERPRISE DEPARTMENT CONTRACTOR'S STATEMENT OF DBE UTILIZATION

SHEET	Ce.	(1) PAY REQUEST NO.	ST NO.	(2) REPORT P	(2) REPORT PERIOD FROM_		TO	Ī	
(3) PROJECT NAME	2			(4) PROJECT NO.	NO.	(5) B ₂	(5) BASE BID \$		
(6) CONTRACT NO.		(7) REQUIRED DBE UTII	OBE UTILIZATION_	%— NO	(8) PROPOSED DBE UTILIZATION	DBE UTILIZA	TION %		
(9) DBE NAME REPRESENTATIVE NAME & TELEPHONE NUMBER	(10) CLASS OF WORK	(11) CONTRACT AMOUNT	(12) CONTRACT ADJUST- MENTS	(13) REVISED CONTRACT AMOUNT	(14) AMOUNT EARNED THIS PERIOD	(15) AMOUNT EARNED TO DATE	(16) AMOUNT RETAINED THIS PERIOD	(17) AMOUNT RETAINED TO DATE	(18) % OF CONTRACT COMPLETE TO DATE
								S	
							3		
	10.25			I		=			
						v =''			
(19) DBE TOTALS						c			
(20) CONTRACTOR: (23) PERCENTAGE OF TOTAL CONTRACT COMPLETED TO DATE	S. OF TOTAL	CONTRACT CO	(21) AU	21) AUTHORIZED SIGNATURE ID TO DATE	SNATURE		(22) DATE	TE	

AUGUSTA-RICHMOND COUNTY CHECKLIST FOR GOOD FAITH EFFORTS

A bidder's good faith efforts must be those that could reasonably be expected from a bidder who was actively and aggressively seeking to meet the Disadvantaged Business Enterprise (DBE) goal. Good faith efforts may include, but are not limited to:

	Yes	No	
1.9		-	Soliciting, through all reasonable and available means, the interestor all certified DBEs who have the capability to perform the work of the contract. Such solicitations must be in sufficient time to
2. 3.		_	allow DBEs to participate effectively. Confirming attendance at any pre-solicitation or pre-bid meetings. Providing proof of any advertisements in general circulation, trade association, and minority or woman focused media.
4. 5.	_	_	Documenting the follow-up to the initial solicitation with DBEs. Documenting how portions of the work were selected to solicit DBE participation and how the selection was made in order to increase the likelihood of meeting the DBE goals. This would
			include, where appropriate, breaking down contracts into economically feasible units to facilitate DBE participation.
6.		_	Providing information on any negotiations with DBEs including bid item adjustments, terms and conditions of the contract, bonding and insurance requirements and etc.
7.	_		Documenting efforts to assist DBEs in obtaining bonding, lines of credit, or insurance.
8.	_		Providing copies of the information supplied to DBEs to solicit their bids. Such information should include adequate information about the plans, specifications, and requirements of the contract to
9.	_	_	enable the DBE to supply a complete and competitive bid. Providing information regarding the services/assistance secured from minority and women community organizations, contractors' groups, local minority and women business assistance offices and other organizations that provides assistance in the recruitment and
10.	_	_	placement DBEs. Negotiating in good faith with interested DBEs. It is the bidder's responsibility to make a portion of the work available to DBE subcontractors and suppliers. The bidder must provide documentation that consideration was given
1.			when selecting portions of the work or material needs on the contract to the availability of DBE firms in those areas when soliciting for DBE participation. Documenting the basis for rejecting DBE bids. In cases where the
			bidder determines the DBE to be unqualified, supporting evidence used to make the determination must be provided.

Augusta GEORGIA

DAVID S. COPENHAVER

Marion Williams

Mayor Pro Tem

Mayor

AUGUSTA-RICHMOND COUNTY COMMISSION

STEPHEN E. SHEPARD

County Attorney Augusta Law Department

STAFF ATTORNEY Vanessa Flournoy

Betty Beard
Marion Williams
Joe Bowles
Richard Colclough
Calvin Holland, Sr.
Andy Cheek
Jerry Brigham
Jimmy Smith
J. R. Hatney
Don Grantham

Frederick L. Russell Administrator

Please Reply to: 701 Greene Street, Suite 104 Augusta, Georgia 30901

Facsimile Message

Reply to:

701 Greene Street, Suite 104 Augusta, Georgia 30901

<u>DATE</u>: April 12, 20

TO: Bob Munger

FROM: Stephen E. Shepard

FAX NUMBER: 706-821-2484

TOTAL PAGES: 1, including cover

RE: Stafford Consulting Contract

I have approved the contract with Stafford Consulting Engineers. The only problem I have with the agreement is that it does not state the kind of entity that Stafford Consulting Engineers is, ie. Corp. or LLC etc.

Presumably that are a North Carolina corporation qualified to do business in Georgia.

With those revisions, I have no problem with the contract.

I did notice that address from some of the correspondence, that they are qualified to do business in the State of Georgia.

NOTICE OF CONFIDENTIALITY: THE INFORMATION CONTAINED IN THIS FACSIMILE MESSAGE IS LEGALLY PRIVILEGED AND CONFIDENTIAL INFORMATION INTENDED FOR THE USE OF THE INDIVIDUAL(S) NAMED ABOVE. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY READING OF THE CONTENTS OR THE DISSEMINATION, DISTRIBUTION OR DUPLICATION OF THIS TELECOPY IS STRICTLY PROHIBITED. YOUR KIND COOPERATION IN THAT RESPECT IS GREATLY APPRECIATED. IF YOU RECEIVE THIS TRANSMISSION IN ERROR, PLEASE TELEPHONE THE SENDER, COLLECT. PLEASE CALL (706) 722-4111 IF THE TRANSMISSION IS NOT FULLY RECEIVED.

Augusta Law Department 501 Greene Street, Suite 302, Augusta, Georgia 30901 (706) 842-5550 - Fax (706) 842-5556

County Attorney 701 Greene Street, Suite 104, Augusta, Georgia 30901 (706)724-6597 – Fax (706) 722-4817

LUMP SUM AGREEMENT FOR DESIGN CONSULTANT SERVICES

BETWEEN

Augusta, Georgia, a political subdivision of the State of Georgia

Acting by and through the

Augusta Richmond County Commission

Hereinafter Referred to as Owner

AND

Robert M. Stafford, Inc., a North Carolina corporation DBA Stafford Consulting Engineers

Hereinafter Referred to as Waterproofing Consultant

PROJECT: Exterior Envelope Renovation Consulting Services for the Augusta Richmond County Municipal Building

DATE: May 2, 2006

AGREEMENT FOR DESIGN CONSULTANT SERVICES

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AGREEMENT FOR

DESIGN CONSULTING SERVICES

AGREEMENT made this 2nd day of May, 2006, BETWEEN the Owner: Augusta, Georgia, a political subdivision of the State of Georgia, acting by and through the Augusta Richmond County Commission and the Waterproofing Consultant: Robert M. Stafford, Inc., a North Carolina corporation DBA Stafford Consulting Engineers, for Professional Services in connection with the Project known as: Exterior Renovation Design Services for the Municipal Building.

The Construction Program Manager for the Project is: Heery International, Inc.

The Owner and the Waterproofing Consultant agree as set forth below:

ARTICLE 1 DEFINITIONS

The following words and phrases where appearing in initial capitalization, shall for the purposes of this Agreement have the following meanings:

- 1.1 PROJECT. The Project shall be all exterior envelope consulting work, as described herein, to be conducted in conjunction with in the Augusta Richmond County Municipal Building, located at 530 Greene Street, Augusta., Georgia.
- 1.2 SERVICES. The Services to be performed by the Waterproofing Consultant under this Agreement shall consist of the Basic Services and any Additional Services both as defined herein.
- 1.3 BASIC SERVICES. Basic Services shall consist of consulting services as described in Article 3, to be performed and provided by the Waterproofing Consultant under this Agreement in connection with the Project.
- ADDITIONAL SERVICES. Additional Services shall consist of the Waterproofing services agreed to be performed by the Waterproofing Consultant in connection with the Project, but which are not specifically designated as Basic Services in Article 3.
- 1.5 WORK. The Work shall consist of tasks identified in Paragraph 1.1 above.

- PROJECT DOCUMENTS. The roofing and exterior wall system repairs and modifications shall be completed in accordance with the Drawings and Specifications, which will be prepared by the Waterproofing Consultant and approved by the Owner prior to the execution of the Agreement between the Roofing/Waterproofing Contractor and the Owner:
- 1.7 CONTRACTOR. The Contractor is the person or entity which enters into an agreement with the Owner to perform the abatement and demolition on the Project, including, without limitation, the providing of labor, materials, and equipment necessary for the completion of the Project. The term "Contractor" means the Contractor or its authorized representative, but excludes the Construction Program Manager and the Waterproofing Consultant.
- 1.8 BASIC SERVICES COMPENSATION. Basic Services Compensation shall be fees designated in Article 4 to be paid by the Owner to the Waterproofing Consultant in connection with the performance of the Basic Services by the Waterproofing Consultant.
- REIMBURSABLE EXPENSES. In connection with Additional Services, Reimbursable Expenses are those actual expenditures made by the Waterproofing Consultant, its employees, or its Professional Consultants in the interest of the Project including but not limited to, County standard per diem out-of-pocket expenses for travel and living expenses in connection with the Project, long distance telephone, expressage, professional consultants (other than those required for the performance of the Basic Services), and Owner-approved document reproduction. Pre-approved document reproduction expenses include expenses incurred for Bidding Documents, exclusive of addenda, and documents issued for permitting and/or construction.
- OWNER/CONSTRUCTION PROGRAM MANAGER CONTRACT. The Owner/Construction Program Manager Contract is the agreement between the Owner and the Construction Program Manager dated May 6, 2004 for the performance of construction program management services on the Project.
- 1.11 MASTER SCHEDULE. The Master Schedule is a graphic display of the major activities, phases, sequences and timing of the major project activities for design, construction procurement, construction and occupancy. The parties mutually agree that the Master Schedule is a guideline and reasonable adjustments to it are acceptable. Proposed changes to it should be agreed to by both parties in advance. Neither the Owner nor Waterproofing Consultant shall be held liable for schedule changes due to circumstances beyond their control.
- 1.12 CHANGE ORDER. A Change Order is the form of documentation from the Owner approving and authorizing a modification to the Master Schedule or previously approved contract documents.

ARTICLE 2 RELATIONSHIP OF THE PARTIES

- WATERPROOFING CONSULTANT SERVICES. The Waterproofing Consultant shall provide professional Waterproofing services for the Project in accordance with the terms and conditions of this Agreement. The Waterproofing Consultant's performance of services shall be as professional consultant to the Owner to carry out the activities of Project and to provide the technical documents and supervision to achieve the Owner's Project objectives.
- 2.2 OWNER REPRESENTATION. The Construction Program Manager is under separate contract with the Owner to provide construction program management services. The Construction Program Manager has no Waterproofing responsibilities of any nature. None of the activities of the Construction Program Manager supplant or conflict with the services and responsibilities customarily furnished by the Waterproofing Consultant or subconsultants in accordance with generally accepted Waterproofing consulting practices, except as otherwise modified by this Agreement. The Waterproofing Consultant understands and agrees that the Construction Program Manager is the Owner's exclusive representative to the Waterproofing Consultant and Contractor insofar as this Agreement is concerned. All instructions by the Owner to the Waterproofing Consultant relating to services performed by the Waterproofing Consultant will be issued or made through the Construction Program Manager. communications and submittals of the Waterproofing Consultant to the Owner and Contractor shall be issued or made through the Construction Program Manager, unless the Construction Program Manager shall otherwise direct. The Construction Program Manager shall have the authority to establish procedures, consistent with this Agreement, to be followed by the Waterproofing Consultant and Contractor and to call periodic conferences to be attended by the Waterproofing Consultant, and subconsultants, throughout the term of this Agreement.
- 2.3 Waterproofing Consultant understands and agrees that it is not a third party beneficiary of any contract between the Owner and the Construction Program Manager or of their performance there under. Waterproofing Consultant waives any rights, claims or causes of action it may have as an alleged third party beneficiary of any such contract or of the performance of the parties there under.

2.4 WATERPROOFING CONSULTANT REPRESENTATION

2.4.1 The Waterproofing Consultant shall provide a list of all consultants which the Waterproofing Consultant intends to utilize relating to the Project. The list shall include such information on the qualifications of the consultants as may be requested by the Owner. The Owner, through the Construction Program Manager, reserves the right to review the consultants proposed, and the

Waterproofing Consultant shall not retain a consultant to which the Owner, through the Construction Program Manager, has a reasonable objection.

- 2.4.2 The Waterproofing Consultant shall provide to the Owner, through the Construction Program Manager, a list of the proposed key project personnel of the Waterproofing Consultant and its consultants to be assigned to the Project. This list shall include such information on the professional background of each of the assigned personnel as may be requested by the Owner, through the Construction Program Manager. Such key personnel and consultants shall be satisfactory to the Owner and shall not be changed except with the consent of the Owner unless said personnel cease to be in the Waterproofing Consultant's (or its consultants, if applicable) employ.
- DIVISION OF RESPONSIBILITIES/SERVICES. The Waterproofing Consultant understands and agrees that should the Construction Program Manager provide the Waterproofing Consultant with any estimating assistance, cost or time control recommendations or other consultation, recommendations or suggestions, any or all such activities on the part of the Construction Program Manager or any other representative of the Owner shall in no way relieve the Waterproofing Consultant of the responsibility of fulfilling its obligations and responsibilities under this Agreement.

ARTICLE 3 BASIC SERVICES

3.1 SCOPE OF SERVICES

Augusta Richmond County proposes to renovate the exterior envelope of the Municipal Building, located at 530 Greene Street in Augusta. The Municipal Building is a 9-story reinforced concrete structure with marble and granite cladding, constructed in the 1950's.

The scope of work will include field investigations of the roof and exterior wall assemblies, analysis and preparation of a Preliminary Design Report, followed by Drawings and Specifications suitable for competitive bidding.

Specific tasks included are:

1. Review of Owner's circa 1955 construction drawings.

- 2. Field investigation of in situ conditions, including limited destructive testing of roof areas, down to structural deck, as needed to ascertain the composition and condition of all existing roof assemblies. This will include roof membrane(s), insulation, flashings, joint covers, roof mounted equipment and other roof appurtenances. All destructive tests shall be repaired the same day.
- 3. Determination of existing roof slopes (both at membrane and structural level).
- 4. Determination of condition of exterior joint sealants, including verification of various types of joint widths and depths of adjoining surfaces.
- 5. Interview facility's maintenance personnel about any known leaks or other exterior assembly problems.
- 6. Analyze existing windows and provide recommendations for replacement or refurbishment. Include cost estimate for same. Detailed design of window replacement/refurbishment is not included in the scope of work or fee proposal.
- 7. Formulation of a Preliminary Design Report documenting findings and describing all recommended renovation work and materials, including cost estimates with separate line items for each major area of work.
- 8. Attend Preliminary Design Review Meeting with Owner to discuss report's findings and recommendations.
- 9. Production of code-compliant construction drawings and specifications consistent with scope of renovation work approved by Owner following Preliminary Design Review Meeting.
- 10. Submit Final Review set of Construction Drawings and Technical Specifications to Owner, along with the final cost estimate.
- 11. Attend Final Design Review Meeting with Owner to discuss any modifications that might be needed prior to issuance for competitive bidding.

- 12. Prepare Construction/Bidding Documents, including removal of existing roofing, insulation, flashing and sealant materials; repair of damaged or deteriorated deck, installation of new insulation providing positive slope to drains (as defined by the International Building Code, as a minimum); installation of selected roof membrane with appropriate surfacing and flashings; design and detailing of appropriate secondary overflow system as required; repair and/or replacement of existing sealant joints in parapets and exterior walls systems, (including cladding joints and abutments of doors/windows, and juncture of dissimilar materials); and installation of other materials as necessary to provide watertight roof and wall assemblies. Primary drainage systems will be reviewed to determine if existing roof drains are properly sized. Extensive design or revisions to the existing pipe systems is not included in this scope of services. All construction documents shall be prepared in compliance with applicable building codes, including the International Building Code and ASCE 7.
- 13. Incorporation of Owner's standard bidding documents into the Project Manual, including Conditions of the Contract, Instructions to Bidders, Bid Form, Insurance and Bond Requirements, etc.
- 14. Assist Owner during project Bidding, including attendance at Pre-Bid Conference and responding to Owner's request for document clarifications or consideration of product substitutions.
- 15. Review bids and make recommendation as to apparent responsive, responsible, low bidder.
- 16. Attend Pre-Roofing/Pre-Sealing conference, including preparation of meeting minutes.
- 17. Provide construction observation including written reports, as needed, but in no case less than once a week during periods of active work, to achieve a professional standard of care, with regards to quality of renovation work, and fidelity to Contract Documents; with the understanding that Basic Services includes up to ten (10) site visits. Construction observation visits exceeding ten (10) visits, when authorized in advance by the Owner's Project Manager, will entitle the Waterproofing Consultant to Additional Services compensation, in accordance with Article 4.
- 18. Review all of contractor's shop drawings, product data, etc., as required by the Construction Documents.
- 19. Review Contractor's Applications for Payment and forward to Owner's Project Manager, with Waterproofing Consultant's written certification as to the level of completion.
- 20. Respond to contractor's requests for information (RFI's) as quickly as possible, but in no case less than 48 hours, except when specific permission is granted otherwise by the Owner's Project Manager.
- 21. Review and evaluation of contractor's change order requests.
- 22. Conduct a final inspection with punch list, when project is considered substantially complete.
- 23. Provide Owner's Project manager with AutoCad files of construction drawings.
- 24. Review and transmit contractor's required close-out documents.

- 25. Waterproofing Consultant's opinions of cost estimates will be based on observations, the recommendations identified in the Preliminary Report and previous experience in determining replacement costs of building systems components. The opinions of cost will be in current dollars and will not include inflation unless specifically noted otherwise. The actual costs may vary depending on the contractors used, the quality of materials used, the extent of work performed at one time, if the items are purchased individually or under master purchase contacts, and other factors.
- 26. Observations of windows, sealant joints, etc. will be made from grade and roof surfaces. In the event that close access to walls above grade is required to evaluate sealant joints and/or windows, when such walls are not readily accessible, it will be necessary to have a mechanical lift or similar equipment to gain access to exterior wall surfaces to conduct visual observations and related testing. Arrangements and cost for provision of such equipment and associated labor will be the responsibility of the Owner, should it be required.
- 3.2 WATERPROOFING CONSULTANT'S PROFESSIONAL RESPONSIBILITY AND STANDARD OF CARE
- 3.2.1 By execution of this Agreement, the Waterproofing Consultant warrants that (a) it is an experienced Waterproofing firm having the skill and the legal and professional ability necessary to perform all the Services required of it under this Agreement in connection with the Project contemplated herein; (b) it has the capabilities and resources necessary to perform its obligations hereunder; and (c) it is familiar with all current laws, rules and regulations which are applicable to the Project (such laws, rules and regulations including, but not limited to, all local ordinances, city, county, state and federal authorities which are applicable to the Project, and all orders and interpretations by governing public authorities of such ordinances, requirements, laws, rules and regulations in effect at the time of commencement of services on the Project), and that all drawings, specifications and other documents prepared by the Waterproofing Consultant shall be prepared in accordance with and shall accurately reflect and incorporate all such laws, rules and regulations.
- 3.2.2 The Waterproofing Consultant hereby represents and agrees that the drawings, specifications and other documents prepared by it pursuant to this Agreement shall be complete and functional for the purposes intended, except as to any deficiencies which are due to causes beyond the control of the Waterproofing Consultant.

- 3.2.3 The Waterproofing Consultant shall be responsible for any errors, inconsistencies or omissions in the drawings, specifications, and other documents. while the Waterproofing Consultant cannot guarantee the various documents required herein to be completely free of minor human errors and omissions, it shall be the responsibility of the Waterproofing Consultant throughout the period of performance under this Agreement to use due care with professional competence. The Waterproofing Consultant will correct at no additional cost to the Owner any and all errors and omissions in the drawings, specifications and other documents prepared by the Waterproofing Consultant. The Waterproofing Consultant further agrees, at no additional cost, to render assistance to the Owner in resolving problems relating to the design or specified materials.
- 3.2.4 It is the responsibility of the Waterproofing Consultant to make certain that all drawings, specifications and other documents are in accordance with applicable laws, statutes, building codes and regulations and that appropriate approvals are obtained from Federal, State and local governments.

3.3 PROJECT CONFERENCES

Throughout all phases of the Project, the Waterproofing Consultant and its consultants shall meet periodically with the Owner and Construction Program Manager when reasonably requested. Attendees shall be as jointly determined by the Owner, Construction Program Manager and Waterproofing Consultant. As a minimum, regularly scheduled meetings which the Waterproofing Consultant will attend include:

- 1. Project Launch Meeting
- 2. Preliminary Design Review Meeting
- 3. Final Design Review Meeting
- 4. Contractor Pre-Bid Meeting
- 5. Contractor Pre-Roofing/Pre-Sealing Meeting.

ARTICLE 4 COMPENSATION

- 4.1 BASIC SERVICES COMPENSATION
- 4.1.1 The Owner shall compensate the Waterproofing Consultant in accordance with the terms and conditions of this Agreement, including the following:
- 4.1.2 For the Basic Services of the Waterproofing Consultant, Basic Services Compensation shall be a lump sum fee of Forty-eight Thousand Dollars (\$48,000.00).
- 4.1.3 The Basic Services Compensation stated in Paragraph 4.1.1 includes all compensation and other payments due the Waterproofing Consultant (manpower, overhead, profit, expenses, direct costs, etc.) in the performance of the Basic Services.
- 4.2 PAYMENTS TO THE WATERPROOFING CONSULTANT. Payments on account of the Waterproofing Consultant shall be made as follows:
- 4.2.1 Payments for Basic Services shall be made on upon completion of each of the following line items:

Total Amount Due

Preliminary Design Report Submittal	\$11,000.00
Preliminary Design Review/Approval	\$14,000.00
Construction Documents Submittal	\$25,000.00
Construction Documents Review/Approval	\$35,000.00
Bid/Award	\$37,500.00
50% Construction Completion	
Final Inspection	
Prep/Review/Submittal of Closeout Documentation	

- 4.2.2 No deductions shall be made from the Waterproofing Consultant's Basic Services Compensation on account of penalty, liquidated damages, retainage or other sums withheld from payments to Contractor.
- 4.2.3 If the Project is suspended for more than six months or abandoned in whole or in part by the Owner, the Waterproofing Consultant shall be paid compensation for services performed prior to receipt of written notice from the Owner of such suspension or abandonment, and all reasonable termination expenses resulting from such suspension or abandonment. If the Project is resumed after being suspended for more than six months, the Waterproofing Consultant's Basic Services Compensation shall be equitably adjusted.

4.2.4 If Owner fails to make any payment due Waterproofing Consultant for services and expenses within thirty (30) days after receipt of waterproofing Consultant's bill therefore, the Waterproofing Consultant may, after giving seven (7) days written notice to the Owner, suspend services under this Agreement until he has been paid in full all amounts due him for services and expenses.

4.3 ADDITIONAL SERVICES COMPENSATION

- 4.3.1 In the event that the number of site visits during the construction phase exceeds ten (10), and visits exceeding that amount are pre-approved in writing by the Owner's Project Manager, the Waterproofing Consultant shall be entitled to Additional Services compensation in the amount of Nine Hundred Fifty Dollars (\$950.00) per trip.
- 4.3.2 With respect to any additional services not specifically addressed herein, performed by the Waterproofing Consultant hereunder, the Waterproofing Consultant and Owner shall negotiate an equitable adjustment to the Basic Services Compensation. However, if negotiations are not successful prior to the time the additional services are needed, the Owner may elect to contract with another entity to perform the Additional Service(s); or the Owner may direct the Waterproofing Consultant to proceed with the Additional Services on a time spent basis with Additional Compensation Services to be computed as the following fixed rates:
- 4.3.2.1 Principal · One Hundred Sixty Dollars (\$160.00) per hour.

Associate - One Hundred Forty Dollars (\$140.00) per hour.

Senior Project Engineer- One Hundred Twenty-five Dollars (\$125.00) per hour

Project Manager · One Hundred Dollars (\$100.00) per hour

Engineer Ninety Dollars (\$90.00) per hour

Technician · Seventy-five Dollars (\$75.00) per hour

Inspector - Sixty Dollars (\$60.00) per hour

CADD Operator—Sixty Dollars (\$60.00) per hour

Administrative Support - Forty-five Dollars (\$45.00) per hour.

4.3.2.2 Should the Owner elect to contract with a separate entity to perform Additional Services, as described under Paragraph 4.3.1, the Waterproofing Consultant shall comply with reasonable requests from Owner, without additional compensation, with regards to coordination of work with the respective separate entity.

4.3.3 Payments for Additional Services of the Waterproofing Consultant shall be made monthly upon presentation of the Waterproofing Consultant's statement of services, fully supported by invoices, time cards, and other documentation as requested by the Owner.

4.4 ACCOUNTING RECORDS

- 4.4.1 Records of the Waterproofing Consultant with respect to Additional Services and payroll, consultant and other expenses (including Reimbursable Expenses) pertaining to the Project, shall be kept on generally accepted accounting principals and shall be available to the Owner or its authorized representative for inspection and copying at mutually convenient times.
- 4.4.2 At the request of the Owner or its authorized representative the Waterproofing Consultant will supply in a timely manner and certify as accurate, unaltered copies of all time sheets, invoices, and other documents to substantiate and document any and all Additional Services and Reimbursable Expenses.

ARTICLE 5 PERIOD OF SERVICE

- 5.1 Specific dates relating to the period of services will be set forth in the Master Schedule.
- Unless earlier terminated as provided in Article 10 hereof, this Agreement shall remain in force for a period which may reasonably be required for the Basic Services and Additional Services hereunder. However, the provisions of the Agreement relating to Professional Responsibility (Paragraph 3.2); Dispute Resolution (Article 11); Professional Liability coverage (Article 8); Indemnification (Article 9); and Ownership of Documents/Confidential Information (Article 13) shall remain in effect after termination of the other provisions of the Agreement.
- 5.3 If the Project is delayed through no fault of the Waterproofing Consultant, all specific dates noted in the Master Schedule that are affected by the delay will be adjusted by the number of calendar days of the delay.
- 5.4 If the Owner materially revises the Project, a reasonable time extension and/or credit shall be negotiated between the Waterproofing Consultant and the Owner.
- 5.5 Time is of the essence of this Agreement.

ARTICLE 6 OWNER'S RESPONSIBILITIES

- 6.1 The Owner shall provide full information regarding the requirements for the Project.
- 6.2 The Owner shall examine documents submitted by the Waterproofing Consultant and shall render decisions pertaining thereto promptly, to avoid unreasonable delay in the progress of the Waterproofing Consultant's Services.
- 6.3 The Owner shall furnish information and approvals required of it expeditiously, for orderly progress of the Work and shall endeavor to adhere as closely as possible with the time conditions for such Owner activities as set forth in all approved schedules for the Project.

ARTICLE 7 NOTICES

- Any notice required by this Agreement or other communications to either party by the other shall be in writing and deemed given when delivered personally or five (5) days after deposit in the United States Post Office, postage prepaid certified mail, return receipt requested, addressed as follows, or to such other address as shall be duly given by notice meeting the requirement of this Article.
- 7.2 To Owner:

Mr. Rick Acree, RA. Assistant Director of Public Services Facilities Management Division 501 Greene Street, Suite 301 Augusta, GA 30901

7.3 To Waterproofing Consultant:

Mr. Stuart W. Sutton, PE President Stafford Consulting Engineers Charlotte, NC 28269

7.4 With Copy to Construction Program Manager:

Mr. Bob Munger, AIA ARC Capital Improvements Program Manager Heery International, Inc. 501 Greene Street; Suite 313 Augusta, GA 30901

ARTICLE 8 INSURANCE

8.1 The Waterproofing Consultant shall purchase and maintain insurance for protection from claims under worker's or workmen's compensation acts; claims resulting from negligent acts or omissions for damages because of bodily injury, including personal injury, sickness, disease or death of any of the Waterproofing Consultant's employees or any other person; claims for damages because of injury to or destruction of personal property including loss of use resulting there from; and claims arising out of the performance of this Agreement and caused by negligent acts or omissions for which the Waterproofing Consultant is legally liable. Minimum limits of coverage shall be:

INSURANCE DESCRIPTION	Minimum Required Coverage
a. Worker's Compensation	Statutory
b. Public Liability	\$1,000,000 Combined Limit
Bodily Injury: Each Person	\$100,000
Bodily Injury: Each Accident	\$200,000
Property Damage: Each Accident	\$100,000
c. Automobile Liability & Property Damage	\$1,000,000 Combined Limit
Bodily Injury: Each Person	\$100,000
Bodily Injury: Each Accident	\$200,000
Property Damage: Each Accident	\$100,000
d. Professional Liability:	\$1,000,000 per Loss/Claim

- 8.2 Evidence of such insurance shall be furnished to the Owner, and the Owner shall receive thirty (30) days prior written notice of any cancellation, non-renewal or reduction of coverage of any of the policies. Upon notice of such cancellation, non-renewal or reduction, the Waterproofing Consultant shall procure substitute insurance so as to assure the Owner that the minimum limits of coverage are maintained continuously throughout the period of this Agreement.
- 8.3 The Waterproofing Consultant shall deliver to the Owner a certificate of insurance for its Professional Liability coverage.
- 8.4 All insurance policies (with the exception of Professional Liability) required under this Agreement shall name the Owner as an additional insured for the insurance and shall contain a waiver of subrogation against the Owner.

ARTICLE 9 INDEMNIFICATION

- 9.1 Notwithstanding anything to the contrary contained herein, the Waterproofing Consultant shall indemnify and hold harmless the Owner, the Construction Program Manager and their agents and employees from and against all claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from (i) the Waterproofing Consultant's performance or failure to perform its obligations under this Agreement and (ii) any claim, damage, loss or expense attributable to bodily injury, sickness, disease or death, or to injury to or destruction of personal property including the loss of use resulting there from and caused in whole or in part by any negligent act or omission of the Waterproofing Consultant or anyone directly or indirectly employed by the Waterproofing Consultant. Such obligation shall not be construed to negate, abridge or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Article.
- 9.2 Except as otherwise set forth in this Agreement, the Waterproofing Consultant and the Owner shall not be liable to each other for any delays in the performance of their respective obligations and responsibilities under this Agreement which arise from causes beyond their control and without their fault or negligence, including but not limited to, any of the following events or occurrences: fire, flood, earthquake, epidemic, atmospheric condition of unusual severity, war, state or local government acting in its sovereign capacity, and strikes. Owner shall not be liable to the Waterproofing Consultant for acts or failures to act by Construction Program Manager, the Contractor, or the Owner's consultants.

ARTICLE 10 TERMINATION OF AGREEMENT

- If (1), the Owner abandons the Project or the Project is stopped for more than six 10.1 (6) months due to actions taken by the Owner, or under an order of any court or other public authority having jurisdiction, or as a result of an act of government, such as a declaration of a national emergency making materials unavailable through no act or fault of the Waterproofing Consultant or its agents or employees, or (2), the Owner has failed to substantially perform in accordance with the provisions of this Agreement due to no fault of the Waterproofing Consultant and such non-performance continues without cure for a period of thirty (30) days after the Owner receives from the Waterproofing Consultant a written notice of such nonperformance (including a detailed explanation of the actions of the Owner required for cure), the Waterproofing Consultant may, upon fifteen (15) day's additional written notice to the Owner, terminate this Agreement, without prejudice to any right or remedy otherwise available to the Owner, and recover from the Owner payment for all services performed to the date of the notice terminating this Agreement.
- Upon the appointment of a receiver for the Waterproofing Consultant, or if the Waterproofing Consultant makes a general assignment for the benefit of creditors, the Owner may terminate this Agreement, without prejudice to any right or remedy otherwise available to the Owner, upon giving three (3) working days written notice to the Waterproofing Consultant. If an order for relief is entered under the bankruptcy code with respect to the Waterproofing Consultant, the Owner may terminate this Agreement by giving three working days written notice to the Waterproofing Consultant unless the Waterproofing Consultant or the trustee: (1), promptly cures all breaches; (2), provides adequate assurances of future performance; (3), compensates the Owner for actual pecuniary loss resulting from such breaches; and (4), assumes the obligations of the Waterproofing Consultant within the statutory time limits.
- 10.3 If the Waterproofing Consultant persistently or repeatedly refuses or fails, except in cases for which extension of time is provided, to supply sufficient properly skilled staff or proper materials, or persistently disregards laws, ordinances, rules, regulations or orders of any public authority jurisdiction, or otherwise substantially violates or breaches any term or provision of this Agreement, then the Owner may, without prejudice to any right or remedy otherwise available to the Owner, and after giving the Waterproofing Consultant written notice, terminate this Agreement.

- 10.4 Upon termination of this Agreement by the Owner under Paragraph 10.2 or 10.3, it shall be entitled to furnish or have furnished the Services to be performed hereunder by the Waterproofing Consultant by whatever method the Owner may deem expedient. Also, in such cases, the Waterproofing Consultant shall not be entitled to receive any further payment until completion of the Work; and the total compensation to the Waterproofing Consultant under this Agreement shall be the amount which is equitable under the circumstances. If the Owner and the Waterproofing Consultant are unable to agree on the amount to be paid under the foregoing sentence, the Owner shall fix an amount, if any, which it deems appropriate in consideration of all of the circumstances surrounding such termination, and shall make payment accordingly.
- The Owner may, upon thirty day's written notice to the Waterproofing Consultant terminate this Agreement, in whole or in part, at any time for the convenience of the Owner, without prejudice to any right or remedy otherwise available to the Owner. Upon receipt of such notice, the Waterproofing Consultant shall immediately discontinue all services affected unless such notice directs otherwise. In the event of a termination for convenience of the Owner, the Waterproofing Consultant's sole and exclusive right and remedy is to be paid for all work performed and to receive equitable adjustment for all work performed through the date of termination. The Waterproofing Consultant shall not be entitled to be paid any amount as profit for unperformed services or consideration for the termination of convenience by the Owner.
- Should the Owner terminate the Waterproofing Consultant as provided for under this Article, the Owner will acquire such documents, including the ownership and use of all drawings, plans, specifications, documents and materials relating to the Project prepared by or in the possession of the Waterproofing Consultant. The Waterproofing Consultant will turn over to the Owner in a timely manner and in good unaltered condition all such original documents and materials.
- 10.7 The payment of any sums by the Owner under this Article 10 shall not constitute a waiver of any claims for damages by the Owner for any breach of the Agreement by the Waterproofing Consultant.

ARTICLE 11 DISPUTE RESOLUTION

If a dispute arises out of or related to this Agreement, or its alleged breach, and if that dispute has not been settled through direct discussions within a reasonable period, the parties to this Agreement agree to first endeavor to settle the dispute in an amicable manner by submitting the dispute to a mutually acceptable mediator under the Construction Industry Mediation Rules, before having recourse to a judicial forum. Each party further agrees that it will endeavor to follow a similar dispute resolution procedure to resolve any disputes against any third parties (including the Contractor and Construction Program Manager) which arise out of or relate to work.

Should mediation of disputes prove unsuccessful, the parties to this Agreement agree that the matter(s) in question will be decided in the Superior Court of Richmond County, Georgia. By signing this Agreement, the Design Consultant waives any right to contest the venue in the Superior Court of Richmond County, Georgia.

ARTICLE 12 SUCCESSORS/ASSIGNMENT

- This Agreement shall inure to the benefit of and be binding on the heirs, successors, assigns, trustees and personal representatives of the Owner, as well as the permitted assigns and trustees of the Waterproofing Consultant.
- 12.2 The Waterproofing Consultant shall not assign, sublet or transfer its interest in this Agreement without the written consent of the other, except that the Waterproofing Consultant may assign accounts receivable to a commercial bank or financial institution for securing loans, without prior approval of the Owner.

ARTICLE 13 OWNERSHIP OF DOCUMENTS/CONFIDENTIAL INFORMATION

- The Waterproofing Consultant agrees to transmit a digital copy of all plan text and drawings and closeout documents to Owner prior to project closeout. Said electronic files and documents are not to be used by the Owner on projects at separate facilities without a written agreement with the Waterproofing Consultant, except as provided for under Paragraph 10.6.
- In order for the Waterproofing Consultant to fulfill this Agreement effectively, it may be necessary or desirable for the Owner to disclose to the Waterproofing Consultant confidential and proprietary information and trade secrets pertaining to the Owner's past, present and future activities. The Waterproofing Consultant hereby agrees to treat any and all information gained by it as a result of the Services performed hereunder as strictly confidential. The Waterproofing Consultant further agrees that it will not disclose to anyone outside of the authorized Project team (i) Owner's trade secrets during the period of this Agreement or thereafter or (ii) Owner's confidential and proprietary information during the period of this Agreement and thereafter for a period of 2 years.

ARTICLE 14 ADDITIONAL PROVISIONS

- 14.1 This Agreement and its Exhibits and Attachments represent the entire and integrated agreement between the Owner and the Waterproofing Consultant 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 Waterproofing Consultant.
- Unless otherwise specified, this Agreement shall be governed by the law of the State of Georgia, U.S.A.
- If any one or more of the provisions contained in this Agreement, for any reason, are held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions thereof and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.
- 14.4 Except where specifically stated otherwise, all periods of time stated in terms of days shall be considered periods calculated in calendar days.
- 14.5 The headings or captions within this Agreement shall be deemed set forth in the manner presented for the purposes of reference only and shall not control or otherwise affect the information set forth therein or interpretation thereof.
- 14.6 For the purpose of this Agreement unless the context clearly indicates otherwise, the singular includes the plural, and the plural includes the singular.
- 14.7 This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and the counterparts shall constitute one and the same instrument, which shall be sufficient evidence by any one thereof.

This Agreement executed the day and year first written above.

OWNER

Augusta, Georgia, a political

Subdivision of the State of Georgia

Acting by and through the Augusta

	Richmond County Commission	
758	By:	By: Christine Quigler
V	Mayor	Vice President - Operations Title
	Attest:	Attest: Cindy Ownersh

WATERPROOFING CONSULTANT Robat M. Stafford, Enc. DBA

Stafford Consulting Engineers

EXHIBIT A MASTER SCHEDULE

ID	Task Name	Start	Finish		Qtr 2, 2	2006		Qtr 3,	2006
				Mar	Apr	May	Jun	Jul	Aug
1	Consultant Notice To Proceed	5/2/06	5/2/06		♦₁5/2				
2	Project Launch Meeting	5/8/06	5/8/06			5/8	3		
3	Analysis & Prelim design	5/9/06	6/16/06	***************************************			h		
4	Prelim Report Review	6/19/06	6/26/06						
5	Prelim Review Meeting	6/26/06	6/26/06				1	6/26	
6	Const. Document Design	6/27/06	7/27/06						h.
7	CD Review/Approval	7/28/06	8/17/06		1				h
8	CD Review Meeting	8/17/06	8/17/06						*
9	Final Document Design	8/18/06	8/28/06		1				
10	Final Document Submittal	8/29/06	8/29/06						
11	Bid/Award/Contract	8/30/06	12/19/06		1				
12	Construction	12/20/06	3/20/07						
13	Closeout	3/21/07	4/17/07				***************************************		
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	ACORD. CERTIF	CATE OF LIA	ABILITY I	NSURAL	VCF	DATE (MM/DD/YYYY)	
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1	33 Harding Place narlotte, NC 28204-1513		INCUIDEDO	AFFORDING COVE	PAGE	NAIC #	
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	9115 Harris Corners Pa	rkway	INSURER B:				
	Suite 230	•	INSURER C:				
	Charlotte, NC 28269		INSURER D:				
-	VERAGES		INSURER E:				
T A N	THE POLICIES OF INSURANCE LISTED BEL INY REQUIREMENT, TERM OR CONDITION MAY PERTAIN, THE INSURANCE AFFORDER POLICIES. AGGREGATE LIMITS SHOWN MA	OF ANY CONTRACT OR OTHER OBY THE POLICIES DESCRIBED	DOCUMENT WITH RES HEREIN IS SUBJECT T	SPECT TO WHICH TH	S CERTIFICATE MAY BE IS:	SUED OR	
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	GENERAL LIABILITY		DATE (MINODELLA)	DATE (MINIOD/17)	EACH OCCURRENCE	\$	
	COMMERCIAL GENERAL LIABILITY				DAMAGE TO RENTED PREMISES (Ea occurrence)	5	
	CLAIMS MADE OCCUR				MED EXP (Any one person)	5	
					PERSONAL & ADV INJURY	s	
					GENERAL AGGREGATE	\$	
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	HIRED AUTOS NON-OWNED AUTOS				BODILY INJURY (Per accident)	\$	
					PROPERTY DAMAGE (Per accident)	\$	
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	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY				WC STATU- OTH- TORY LIMITS ER		
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED?				E.L. EACH ACCIDENT	\$	
	If yes, describe under				E.L. DISEASE - EA EMPLOYEE		
_	SPECIAL PROVISIONS below	110100000000			E.L. DISEASE - POLICY LIMIT		
Α	OTHER Professional	MCA006086916	03/13/06	03/13/07	\$1,000,000/\$1,000,00 Per Claim/Aggregate		
The pre Ref cc:	CRIPTION OF OPERATIONS / LOCATIONS / VEHICLE aggregate limit is total insurance sented within the policy period for the county Muratafford Consulting Engineers; \alpha RTIFICATE HOLDER	e available for claims or all operations of insure nicipal Building	d. ., Inc.		"		
	2.1.1. Care CD C has 1.5 are handed by (3		CANCELLAT		D DOLLOIDE DE CALCETTE		
	Augusta-Richmond Cou Attn: Rick Acree, R.A. Facilities Management D 501 Greene Street, Suite	ivision	DATE THEREOF, NOTICE TO THE IMPOSE NO OBLI REPRESENTATIV	THE ISSUING INSURER CERTIFICATE HOLDER! IGATION OR LIABILITY (/ES.	ED POLICIES BE CANCELLED B WILL ENDEAVOR TO MAIL WAMED TO THE LEFT, BUT FAIL DF ANY KIND UPON THE INSUR	30 DAYS WRITTEN URE TO DO SO SHALL	
	Augusta, GA 30901			AUTHORIZED REPRESENTATIVE			

IMPORTANT

If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

DISCLAIMER

The Certificate of Insurance on the reverse side of this form does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.

Client#: 243070

70STAFFCON

ACORD™ CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 03/21/06

PRODUCER

BB&T McPhail Bray Insurance P. O. Box 11148

5925 Carnegie Blvd Suite 400

Charlotte, NC 28220

INSURED

Stafford Consulting Engineers 9115 Harris Corners Parkway, Suite 230 Charlotte, NC 28269-3709 THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURERS AFFORDING COVERAGE	NAIC #	
INSURER A: Travelers Indemnity Company of CT	25682	
NSURER B: Travelers Ind Co of Amer.	25666	
NSURER C: Travelers Indemnity Co.	25658	
NSURER D: Charter Oak Fire Insurance Company	25615	
NSURER E:		

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	ADD'L INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	3
Α		GENERAL LIABILITY	I660328X4279TCT06	01/01/06	01/01/07	EACH OCCURRENCE	\$1,000,000
		X COMMERCIAL GENERAL LIABILITY				DAMAGE TO RENTED PREMISES (Ea occurrence)	\$100,000
		CLAIMS MADE X OCCUR				MED EXP (Any one person)	\$5,000
						PERSONAL & ADV INJURY	\$1,000,000
						GENERAL AGGREGATE	\$2,000,000
		GEN'L AGGREGATE LIMIT APPLIES PER:				PRODUCTS - COMP/OP AGG	\$2,000,000
		POLICY PRO- JECT LOC					
В		AUTOMOBILE LIABILITY ANY AUTO	BA468Y187906SEL	01/01/06	01/01/07	COMBINED SINGLE LIMIT (Ea accident)	\$1,000,000
		ALL OWNED AUTOS SCHEDULED AUTOS				BODILY INJURY (Per person)	\$
		X HIRED AUTOS X NON-OWNED AUTOS				BODILY INJURY (Per accident)	\$
						PROPERTY DAMAGE (Per accident)	\$
		GARAGE LIABILITY				AUTO ONLY - EA ACCIDENT	\$
		ANY AUTO				OTHER THAN EA ACC	\$
						AUTO ONLY: AGG	\$
С		EXCESS/UMBRELLA LIABILITY	ISMCUP468Y2409IND0	01/01/06	01/01/07	EACH OCCURRENCE	\$3,000,000
		X OCCUR CLAIMS MADE				AGGREGATE	\$3,000,000
		· ·					\$
		DEDUCTIBLE					\$
		X RETENTION \$ 10000				LUIO DTATUL LOTU	\$
D		KERS COMPENSATION AND	IOUB6917W84706	01/01/06	01/01/07	X WC STATU- OTH-	
	ANY	PROPRIETOR/PARTNER/EXECUTIVE				E.L. EACH ACCIDENT	\$500,000
		CER/MEMBER EXCLUDED? , describe under				E.L. DISEASE - EA EMPLOYEE	
	SPEC	CIAL PROVISIONS below				E.L. DISEASE - POLICY LIMIT	\$500,000
A		R Property	I660328X4279TCT06	01/01/06	01/01/07	\$222,000. BPP	
		cial, R/C 0. Deductible					
DEST		U. DEGUCTIDIE ON OF OPERATIONS / LOCATIONS / VEHIC	PLES LEVELLISIONS ADDED BY ENDORSE	MENT/CDECIAL DOC	Meione		
		M. Stafford, Inc. dba Stafford		militi / Special Pro	AISIONS		

RE: Augusta Richmond County Municipal Building Certificate Holder is named Additional Insured as required by written (See Attached Descriptions)

CERTIFICATE HOLDER

Augusta-Richmond County Commission Attn; Rick Acree, R.A. Facilities Mgt. Div. 501 Greene St., Ste 301 Augusta, GA 30901 CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR

REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

GASH H. DOUG, CLV

IMPORTANT

If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

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DISCLAIMER

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DESCRIPTIONS (Continued from Page 1)				
contract on all policies, except Worker Compensation. Waiver of Subrogation is applicable for all policies.				



Engineering Services Committee Meeting 5/30/2006 1:30 PM Winchester Subdivision Drainage Improvements

Department: Abie L. Ladson, P.E., Interim Director Engineering

Department

Caption: Approve Capital Project Budget 322-04-206822651 in the

amount of \$407,000 for the proposed Winchester

Subdivision Drainage Improvement Project. Funding to be used for Engineering in the amount of \$6,000, \$10,000 for Land Acquisition, \$338,000 for Construction, and \$53,000 for Project Contingency. Funds are available in Phase II

SPLOST Contingency.

Background: The proposed drainage project is located in the Winchester

Subdivision, adjacent to Meadowbrook Drive and

Rollingwood Drive. Residents along Rollingwood Drive are currently experiencing severe drainage and erosion problems in their backyards, causing it to be unstable. On January 4, 2005, the Augusta-Richmond County Commission approved

funding the project not exceed \$800,000.

Analysis: The proposed project will tentatively consist of enclosing the

existing ditch and replacing it with an adequate storm sewer system. Currently, the depth of the ditch ranges from 4 feet to 10 feet along backyards of the residents along Rollingwood Drive. The Engineering Department is proposing to perform the engineering design in-house, and contracting out the

surveying and construction services

Financial Impact: Designing the project in-house will result in a savings of

\$50,000 to \$75,000. Funds are also available in Phase II

SPLOST Contingency.

Alternatives: 1)Approve Capital Project Budget 322-04-206822651 in the

amount of \$407,000 for the proposed Winchester

Subdivision Drainage Improvement Project. Funding to be used for Engineering in the amount of \$6,000, \$10,000 for

Land Acquisition, \$338,000 for Construction, and \$53,000 for Project Contingency. Funds are available in Phase II SPLOST Contingency 2)Do not approve, and discontinue the project

Approve Alternative Number One. **Recommendation:**

Funds are Available in the

Following Accounts:

GL322-04-11106011110 JL29282244416011110

REVIEWED AND APPROVED BY:

Finance. Administrator. **Clerk of Commission**

WINCHESTER SUBDIVISION DRAINAGE IMPROVEMENTS

LOCATION MAP





WINCHESTER SUBDIVISION DRAINAGE IMPROVEMENTS

WINCHESTER SUBDIVISION DRAINAGE IMPROVEMENT CONCEPTUAL COST ESTIMATE

BID ITEM	DESCRIPTION	UNIT	QUANTITY	UNIT	PRICE
001-1000	Force Account	LS	1	\$31,000.00	\$31,000.00
150-1000	Traffic Control	LS	1	\$5,000.00	\$5,000.00
163-0232	Temporary Grassing	AC	1	\$559.00	\$536.64
163-0240	Mulch	TN	3	\$115.00	\$345.00
163-0300	Construction Exit	EA	1	\$1,458.00	\$1,458.00
163-0521	Construct & Remove Temp. Ditch Checks	EA	20	\$272.00	\$5,440.00
163-0550	Construct & Remove Inlet Sediment Trap	EA	4	\$270.00	\$1,080.00
165-0030	Maint. of Temp. Silt Fence, TP C	LF	2,500	\$1.62	\$4,050.00
165-0040	Maint. of Check Dams	EA	20	\$132.00	\$2,640.00
171-0030	Temp. Silt Fence, TP C	LF	2,500	\$3.75	\$9,375.00
201-1500	Clearing & Grubbing	LS	1	\$20,000.00	\$20,000.00
207-0203	Backfill Material, TP 2	CY	2,500	\$52.00	\$130,000.00
210-0100	Grading Complete	LS	1	\$30,000.00	\$30,000.00
550-1300	Storm Drain Pipe, 30", H 1-10	LF	1,200	\$58.00	\$69,600.00
	Safety End Section Section 30" Storm				
550-3330	Drain, 4:1 Slope	EA	2	\$1,700.00	\$3,400.00
603-2012	Stone Dumped Rip Rap, TP 1, 12"	SY	48	\$37.50	\$1,800.00
603-7000	Plastic Filter Fabric	SY	48	\$5.00	\$240.00
610-5791	Remove Chain Fencing	LF	600	\$7.00	\$4,200.00
611-4890	Reset Fence	LF	600	\$11.00	\$6,600.00
668-1100	Catch Basin	EA	4	\$2,000.00	\$8,000.00
700-6910	Permanent Grassing	AC	1	\$1,020.00	\$1,020.00
702-7501	Tree Protection Barrier, Type I	LF	800	\$2.00	\$1,600.00

TOTAL: \$337,384.64

ENGINEERING SURVEYING COST:

\$6,000.00

IN-HOUSE DESIGN:

\$0.00

LAND ACQUISITION COST:

\$10,000.00

15% CONTINGENCY:

\$53,007.70

TOTAL COST ESTIMATE:

\$406,392.34



Office of The Administrator

Frederick L. Russell, Administrator

Tameka Allen, Interim Deputy Administrator Robert Leverett, Interim Deputy Administrator Room 801 - Municipal Building 530 Greene Street - AUGUSTA, GA. 30911 (706) 821-2400 - FAX (706) 821-2819 www.augustaga.gov

January 18, 2005

Ms. Teresa Smith Public Works & Engineering Director 18 15 Marvin Griffin Road Augusta, GA 30906

Dear Teresa:

The Augusta-Richmond County Commission, at their regular meeting held Tuesday, January 4, 2005 took action on the following items.



Approved funding not to exceed \$800,000 and engineering study and project from Phase I SPLOST for Winchester Subdivision with the identification of an appropriate funding source. (Approved by Engineering Services Committee January 11, 2005)

- 22. Approved execution of a Local State Route Acceptance Resolution for State Route 1128, 1128TA, 1128TB, 1128TC, 1128TD, 1128TE, 1128TF and 1128TG (Projects STP-1105(4), PI 245320; STP-7007(6), PI250610; BHSLB-1105(5), PI 245325; and BRSLB-7007(7), PI 250615; (Order of the Commission 3393 and contract for maintenance of highways 3393M) in association with the widening of Windsor Spring Road Phase IV (CPB# 323-04-299823766) and Phase V (CPB# 323-04-299823786). (Approved by Engineering Services Committee January 11, 2005)
- 23. Approved Capital Project Budget (CPB# 324-04-201824117) Change Number Two by transferring \$33,000 from Project Contingency to Engineering. Also approve Supplemental Agreement Number One with B & E Jackson Engineers in the amount of \$32,764.51 to provide additional engineering services to address drainage issues outside of the project limits that will severely impact the project area. (Approved by Engineering Services Committee January 11, 2005)
- Approved Change Order Number Six for Mabus Brothers in the amount of \$28,919.00 to be funded from project construction account for the Warren Road Improvement Project (CPB # 323-04-296823314). (Approved by Engineering Services Committee January 11, 2005)
- 27. Approved the Deeds of Dedication, Maintenance Agreements and Road Resolutions submitted by the Public Works and Engineering and Augusta Utilities Departments for 20 West Commerce Park. (Approved by Engineering Services Committee January 11, 2005)

If you have any questions, please contact me.

Tameka Allen

Yours truly,

Interim Deputy Administrator

Mr. David Persaud Mr. Max Hicks

Ms. Donna Williams