

City of Cartersville, Georgia

Dellinger Park Pickleball Courts – Phase 1



City of Cartersville

CITY:

City of Cartersville, Georgia

100 Pine Grove Road

P.O. Box 1390

Cartersville, Georgia 30120

First Advertisement: Friday, June 23, 2023

A MANDATORY Pre-proposal meeting: Wednesday, July 19th 6:30pm at the main offices of the Cartersville Parks and Recreation Department located at 100 Pine Grove Rd., Cartersville GA, 30120. Attendance is required to submit a proposal.

Second Advertisement: Friday, July 14, 2023

Bid Opening: Monday, July 31, 2023, 3:00pm Local Time, Cartersville Parks and Recreation Main Offices

SECTION ONE

INFORMATION FOR BIDDERS

1. RECEIPT AND OPENING OF PROPOSALS

The City of Cartersville, Georgia (hereinafter called the City), invites proposals for Dellinger Park Pickleball Courts – Phase 1. Proposals will be received by the City at P.O. Box 1390, Cartersville, Ga until Monday, July 31,2023 3:00pm Local Time and then at said Cartersville Parks and Recreation Administration Offices located at 100 Pine Grove Road, Cartersville, GA. publicly opened and read aloud. The envelope containing the proposals must be sealed and designated on the outside of the envelope as bid for:

City of Cartersville
Dellinger Park Pickleball Courts – Phase 1

The City may consider informal any proposal not prepared and submitted in accordance with the provisions hereof and may waive any informalities to reject any and all proposals. Any proposal may be withdrawn prior to the above scheduled time for opening of bids or authorized postponement thereof. Any proposal received after the time and date specified shall not be considered. No bidder may withdraw a proposal within Sixty (60) days after the actual date of the opening thereof.

2. PREPARATION OF BID

Each bid must be submitted on the prescribed form. All blank spaces for bid prices must be filled in, in ink or typewritten, in both words and numerals. In case of discrepancies, words will take precedence over numerals and unit prices will take precedence over totals.

Each bid must be submitted in a sealed envelope bearing on the outside the name of the bidder, his address, and the name of the Project for which the bid is submitted. If forwarded by mail, the sealed envelope containing the bid must be enclosed in another envelope addressed as specified in the bid form. Any bid

which is not properly prepared and accompanied by required certifications may be rejected by the City.

Bidders must submit (2) two paper copy of bid documents as well as one digital copy provided on a USB/flash drive device.

3. QUALIFICATIONS OF BIDDERS

The City may make such investigations as he deems necessary to determine the ability of the bidder to perform the work, and the bidder shall furnish to the City all such information and data for this purpose as the City may request. By submission of its Proposal, the Bidder acknowledges the right of the City to make such investigations, to contact references and utilize this information as a basis of determining award of the contract. The City reserves the right to reject any proposal if the evidence submitted by, or investigation of, such bidder fails to satisfy the City that such bidder is properly qualified to carry out the obligations of the contract and to complete the work contemplated therein. Conditional proposals will not be accepted.

Written information pertaining to the Bidder's qualifications may be requested by the City. Failure of the Bidder to provide such information within fifteen days of notification will be grounds for disqualification.

All bidders must demonstrate the following:

- a. Demonstrate the ability to obtain insurance coverage via an Insurance Company authorized to transact business in Georgia rated "A" or better by AM Best.
- b. Demonstrate ability of obtain Workers Compensation of Statutory Limits together with Employer's Liability of at least \$500,000 per accident or claim.
- c. Demonstrate the ability to obtain General Liability Insurance in the amount of \$2,000,000 general aggregate.
- d. Demonstrate compliance with "Georgia Security and Immigration Compliance Act".
- e. Demonstrate your qualifications to perform the service to be bid upon by providing at least five (5) owner or engineer of record references of similar projects completed on time and on budget within the last five (5) years. Each reference shall include a description of the project, the project budget, contact information of the owner (including address, contact name, current phone number and e-mail) and date project completed. For purposes

hereof similar services shall mean similar in cost, scope, duration, location, type of service, unique job requirements.

- f. Provide a detailed listing of litigation, arbitration and other administrative proceedings in the last 5 years.
- g. Provide a list of subcontractors the bidder intends to utilize on the project.
- h. Provide credit history for the previous 3 years.
- i. Demonstrate the appropriate licensure for the project to be bid upon.

Failure to demonstrate the ability to meet the minimum requirements will result in disqualification and rejection of said proposal. The disqualified Contractor may discuss with the City the reasons for the disqualification, but the decision of the City is final.

4. BID SECURITY

Each bid must be accompanied by a certified check or bid bond prepared on the form of bid bond attached hereto, duly executed by the bidder as principal and having as surety thereon a surety company approved by the City, in the amount of not less than 5% of the bid. Such certified checks or bid bonds will be returned to all except the three lowest responsible bidders within three (3) business days after the opening of bids, and the remaining certified checks or bid bonds will be returned promptly after the City and the accepted bidder have executed the Contract, or, if no award has been made within 180 days after the date of the opening of bids, upon demand of the bidder at any time thereafter, so long as he has not been notified of the acceptance of his bid.

5. LIQUIDATED DAMAGES AND FAILURE TO ENTER INTO CONTRACT

The successful bidder, upon his failure or refusal to execute and deliver the Contract and bonds required within ten (10) calendar days after he has received notice of the acceptance of his bid, shall forfeit to the City, as liquidated damages for such failure or refusal, the security deposited with his bid.

6. TIME OF COMPLETION AND LIQUIDATED DAMAGES

Bidder hereby agrees to commence work under this contract on or before a date to be specified in a written "Notice to Proceed" of the City and to fully complete the project within Thirty (30) consecutive calendar days; bidder further agrees to pay as liquidated damages the sum of \$500 per each consecutive calendar day that the Contractor shall be in default after the date stipulated in the Contract for completing work.

7. CONDITION OF WORK

Each bidder must inform himself fully of the conditions relating to the design and construction of the Project and the employment of labor thereon. Failure to do so will not relieve a successful bidder of his obligation to furnish all material and labor necessary to carry out the provisions of his Contract. Insofar as possible, the Contractor, in carrying out his work, must employ such methods or means as will not cause any interruption of or interference with the work of any other Contractor.

8. ADDENDA AND INTERPRETATIONS

Oral interpretations of the meaning of general conditions, specifications or other Contract documents shall not be binding over written material. Every request for such interpretation should be in writing, via email, addressed to Steve Roberts, email: sroberts@cityofcartersville.org and to be given consideration must be received by Friday, July 21, 2023, 5:00pm Local Time. Any and all such interpretations and any supplemental instructions will be in the form of written addenda to the specifications, which, will be mailed to all prospective bidders. Failure of any bidder to receive any such addendum or interpretations shall not relieve such bidder from any obligation under his bid as submitted. All addenda so issued shall become part of the Contract Documents.

9. SECURITY FOR FAITHFUL PERFORMANCE

Simultaneously with its delivery of the executed Contract, the Contractor shall furnish a surety bond or bonds as security for faithful performance of his Contract and for the payment of all persons performing labor on the Project under this contract, and furnishing materials in connection with its contract, as specified in the General Conditions included herein. 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 of Georgia.

10. POWER OF ATTORNEY

Attorneys-in-fact who sign bid bonds or contract bonds must file with each bond a certified and effectively dated copy of their power of attorney.

11. NOTICE OF SPECIAL CONDITIONS

Attention is particularly called to those parts of the contract documents and specifications which are identified subsequently under Special Conditions.

12. LAWS AND REGULATIONS

The bidders' attention is directed to the fact that all applicable federal and state laws, municipal ordinances, and the rules and regulations of all authorities having jurisdiction over construction of the Project shall apply to the contract throughout, and they will be deemed to be included in the contract the same as though herein written out in full.

13. METHOD OF AWARD

If the Contract is awarded, it will be awarded to the Bidder whose evaluation by City indicates that the award will be in the best interests of the Project. Bid totals will be determined by using the base bid plus any and all alternates. The City reserves the right to accept any bid in whole or part and waive formalities, if in the best interest of the City. The City shall have complete discretion in making this determination and may consider factors such as, but not limited to the following:

- (a) Unit bid prices of various items as they relate to total bid price.
- (b) Proximity of the Bidder's permanent place of business as it may relate to Bidder's responsiveness in carrying out the contract.
- (c) Litigation record of the Bidder.
- (d) Satisfactory completion of similar projects.
- (e) Resources pertaining to management, personnel and equipment.
- (f) Financial history, credit rating and current resources.

14. OBLIGATION OF BIDDER

At the time of the opening of proposals, each bidder will be presumed to have inspected the site and to have read and to be thoroughly familiar with the general conditions, specifications and contract documents (including all addenda). The

failure or omission of any bidder to examine any form, instrument or document shall in no way relieve any bidder from any obligation in respect to its bid.

Each bidder agrees to waive any claim it has or may have against the City, the Engineer, and their respective elected officials, officers, attorneys, and employees, arising out of or in conjunction with the administration, evaluation, or recommendation for award of any bid. The City reserves the right to reject any or all proposals; to waive formalities; re-advertise; and to reduce or add to the Contract from time to time.

15. CORRELATION AND INTENT OF DOCUMENTS

The Contract Documents are complementary, and what is called for by one shall be as binding as if called for by all. The intent of the Contract Documents is to describe in detail all construction entailed in this Project. The Contractor will furnish plans, all labor, materials, equipment, transportation, tools and appurtenances such as may be reasonably required under the terms of the contract to make each part of the work complete.

16. CLAIMS

The City reserves the right to refuse to issue any voucher and to direct that no payment shall be made to the Contractor in case they have reason to believe that said Contractor has neglected or failed to pay any Subcontractor, material dealer, worker or employee for work performed on or about the Project including work as set forth in these specifications, until the City is satisfied that such Subcontractors, material dealers, worker, or employees have been fully paid. However, this provision shall not obligate the City to intervene in any claim.

17. ORDER OF WORK

The work shall be started at such points as the City shall designate and shall be prosecuted in the order it directs. This applies to both location and items of construction.

18. SUBCONTRACTS

If required by the City the apparent Successful Bidder, and any other Bidder so requested, will within seven (7) calendar days after the day of the Bid opening submit to City a list of all Subcontractors and other persons and organizations (including those who are to furnish the principal items of material and equipment) proposed for those portions of the Work as to which such identification is so

required. If City or Engineer after due investigation has reasonable objection to any proposed Subcontractor, other person or organization, either may before giving the Notice of Award request the apparent Successful Bidder to submit an acceptable substitute without an increase in Bid price. If the apparent Successful Bidder declines to make any such substitution, the contract shall not be awarded to such Bidder, but his declining to make any such substitution will not constitute grounds for sacrificing his Bid Security. Any Subcontractor, other person or organization so listed and to whom City or Engineer does not make written objection prior to the giving of the Notice of Award will be deemed acceptable to City and Engineer. All subcontractors submitted for consideration must comply with e-Verify requirements.

19. TIMELY EXECUTION

When City gives a Notice of Award to the Successful Bidder, it will be accompanied by at least five (5) unsigned counterparts of the Contract and all other Contract Documents. Within ten (10) calendar days thereafter Contractor shall sign and deliver at least five (5) counterparts of the Contract to City with all other Contract Documents attached. Within ten (10) calendar days thereafter City will deliver 2 fully signed counterparts to Contractor. Engineer will identify those portions of the Contract Documents not fully signed by City and Contractor and such identification shall be binding on all parties.

20. PRE-BID CONFERENCE

***A MANDATORY Pre-proposal meeting will take place Wednesday, July 19th 6:30pm at the main offices of the Cartersville Parks and Recreation Department located at 100 Pine Grove Rd., Cartersville GA, 30120. Attendance is required to submit a proposal.**

END OF SECTION

SECTION TWO

CONTRACT DOCUMENTS

BID BOND
(Five Percent of Bid)

KNOW ALL MEN BY THESE PRESENTS, that we, the undersigned

_____ as Principal and

_____ as Surety,

are hereby held and firmly bound unto the City of Cartersville, Georgia as City in the penal

sum of _____ Dollars (\$ _____) for the

payment of which, well and truly to be made, we hereby jointly and severally bind ourselves, our heirs, executors, administrators, successors and assigns.

Signed this _____ day of _____, 20_____.

The condition of the above obligation is such that whereas the Principal has submitted to the City of Cartersville, Georgia a certain bid attached hereto and hereby made a part hereof to enter into a contract in writing for the construction of:

City of Cartersville
Dellinger Park Pickleball Courts – Phase 1

NOW, THEREFORE,

- (a) If said bid shall be rejected or in the alternate,
- (b) If said bid shall be accepted and the Principal shall execute and deliver a contract in the Form of Contract attached hereto (properly completed in accordance with said bid) and shall furnish a bond for his faithful performance of said contract and for the payment of all persons performing labor or furnishing materials in connection therewith, and shall in all other respects perform the Contract created by the acceptance of said bid, then this obligation shall be void; otherwise the same

shall remain in force and effect; it being expressly understood and agreed that the liability of the surety for any and all claims hereunder shall, in no event, exceed the penal amount of this obligation as herein stated.

BID BOND
(Continued)

The Surety, for value received, hereby stipulates and agrees that the obligations of said Surety and its bond shall be in no way impaired or affected by any extension of the time within which the City may accept such Bids, and said Surety does hereby waive notice of any such extension.

IN WITNESS WHEREOF, the Principal and the Surety have hereunto set their hands and seals, and such of them as are corporations have caused their corporate seals to be hereto affixed and these presents to be signed by their proper officers, the day and year first set forth above.

SEAL

Principal

SEAL

Surety

BID PROPOSAL

Place _____

Date _____

Proposal of _____ (hereinafter called "Bidder") a contractor organized and existing under the laws of the State of _____, an individual, a corporation, or a partnership doing business as _____.

TO: City of Cartersville, Georgia
(hereinafter called "City")

Gentlemen:

The Bidder in compliance with your invitation for bids for the construction of

**City of Cartersville
Dellinger Park Pickleball Courts – Phase 1**

having examined the plans and specifications with related documents and the site of the proposed work, and being familiar with all of the conditions surrounding the construction of the proposed Project, including the availability of materials and labor, hereby proposes to furnish all labor, materials, and supplies, and to construct the Project in accordance with the Contract Documents, within the time set forth herein, and at the price stated below. The price will cover all expenses incurred in performing the work required under this Contract, of which this proposal is a part.

Bidder hereby agrees to commence work under this Contract on or before a date to be specified in a written "Notice to Proceed" of the City and to fully complete the Project within Thirty (30) consecutive calendar days; bidder further agrees to pay as liquidated damages the sum of \$500 per each consecutive calendar day that the Contractor shall be in default after the date stipulated in the contract for completing the work.

Bidder acknowledges receipt of the following addenda:

Base Bid (Lump Sum) \$ _____
(Numerals)

(Words)

Contingency \$ 15,000.00
(Numerals)

Fifteen Thousand & No/100 Dollars
(Words)

Total

\$ _____
(Numerals) (Words)

BID PROPOSAL (Continued)

Amount shall be shown in both words and figures. In case of discrepancy, the amount shown in words will govern.

The above price shall include all labor, materials, removal, overhead, profit, insurance, etc., to cover the finished work of the several kinds called for.

Bidder understands that the City reserves the right to reject any or all bids and to waive any informalities in the bidding.

The Bidder agrees that this bid shall be good and may not be withdrawn for a period of 60 calendar days after the scheduled closing time for receiving bids.

The undersigned further agrees that, in case of failure on his part to execute said Contract and bond within ten (10) calendar days after the award thereof, the check or bond accompanying his bid and the money payable thereon shall become the property of the City; otherwise, the check or bond accompanying this proposal shall be returned to the Bidder.

The Bidder declares that he understands that the items shown on the plans are subject to adjustment by either increase or decrease, and that should the quantities of any of the items of work be increased, the undersigned proposes to do the additional work at the unit prices stated in the schedule of values; and should the quantities be decreased, he also understands that payment will be made on actual quantities at the unit price stated in the schedule of values and will make no claim for anticipated profits for any decrease in the quantities and that actual quantities will be determined upon completion of work by field measurement agreed to by the Project Representative, at which time adjustment will be made to the Contract amount by direct increase or decrease.

Attached hereto is a bid bond or certified check on the _____ of _____, in the amount of _____ according to conditions under "Information For Bidders" and the provisions therein.

The full name and residence of persons or parties interested in the foregoing bids, as principals, are named as follows:

BID PROPOSAL
(Continued)

Dated at: _____

The _____ day of _____, 20____.

_____.

By _____.

(Title: _____)

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS:

That _____ as Principal hereinafter called Contractor,
and _____ a corporation organized and existing
under the laws of the State of _____, as Surety, hereinafter called Surety,
are held and firmly bound unto The City of Cartersville, Georgia as obligee, hereinafter
called City, in the amount of _____ Dollars
(\$ _____) in lawful money of the United States, for the payment
whereof Contractor and Surety bind themselves, their heirs, executors, administrators,
successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Contractor has by written agreement dated _____, 20_____,
entered into a Contract with City for:

**City of Cartersville
Dellinger Park Pickleball Courts – Phase 1**

in accordance with drawings and specifications prepared by Stephenson Engineering,
INC. Cartersville, GA which Contract is by reference made a part hereof, and is
hereinafter referred to as the Contract.

NOW, THEREFORE, the condition of this obligation is such that, if Contractor shall
promptly and faithfully perform said Contract, then this obligation shall be null and void;
otherwise it shall remain in full force and effect.

The Surety hereby waives notice of any alteration or extension of time made by the City.

Whenever Contractor shall be, and declared by City to be in default under the Contract,
the City having performed City's obligations thereunder, the Surety may promptly remedy
the default, or shall promptly:

- (1) Complete the Contract in accordance with its terms and conditions, or
- (2) Obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and upon determination by Surety of the lowest responsible bidder, or, if the City elects, upon determination by the City and the Surety jointly of the lowest responsible bidder, arrange for a contract between such bidder and the City, and make available as work progresses (even though there should be a default or a succession of defaults under the Contract or Contract of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the Contract price; but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term "Balance of the Contract price," as used in this paragraph shall mean the total amount payable by City to Contractor under the Contract and any amendments hereto, less the amount properly paid by City to Contractor. No action can be instituted on this bond after one year from the completion of the Contract and the acceptance by City of the work thereunder.
- (3) No suit or action shall be commenced hereunder by any claimant other than in the Superior Court of Bartow County, Georgia. This Bond shall be interpreted under the laws of the State of Georgia. Jurisdiction and venue shall lie in the Superior Court of Bartow County, Georgia.

In witness whereof, this instrument is executed in Five (5) counterparts, each one of which shall be deemed an original this _____ day of _____ 20_____.

_____ Witness as to Principal _____ _____ Witness as to Surety _____	_____. Principal By _____ SEAL _____. Surety By _____. Attorney-in-Fact _____. Address
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Note: Date of Bond must not be prior to date of Contract.

LABOR AND MATERIAL PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS:

That _____ as Principal, hereinafter called Principal, and _____, a corporation organized and existing under the laws of the State of _____, as Surety, hereinafter called Surety, are held and firmly bound unto the City of Cartersville, Georgia, as obligee, herein below defined, in the amount of _____ Dollars (\$ _____) for the payment whereof Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Principal has by written agreement dated _____, 20_____, entered into a Contract with City for:

**City of Cartersville
Dellinger Park Pickleball Courts – Phase 1**

In accordance with drawings and specifications prepared by Stephenson Engineering, INC. Cartersville Georgia which Contract is by reference made a part hereof, and is hereinafter referred to as the Contract.

NOW, THEREFORE, the condition of this obligation is such that if the Principal shall promptly make payment to all claimants as herein below defined, for all labor and materials used or reasonably required for use in the performance of the Contract, then this obligation shall be void; otherwise it shall remain in full force and effect, subject, however, to the following conditions:

LABOR AND MATERIAL PAYMENT BOND

- (1) A claimant is defined as one having a direct Contract with the Principal or with a Subcontractor of the Principal for labor, material, or both, used or reasonably required for use in the performance of the Contract, labor and material being construed to include that part of water, gas, power, light, heat oil, gasoline, telephone service, rental of equipment, or repair or equipment directly applicable to the Contract.
- (2) The above-named principal and surety hereby jointly and severally agree with the City that every claimant as herein defined, who has not been paid in full before the expiration of a period of ninety (90) days after the date on which the last of such claimant's work or labor was done or performed, or materials were furnished by such claimant, may sue on this bond for the use of such claimant, prosecute the suit to final judgment for such sum or sums as may be justly due claimant, and have execution thereon. The City shall be entitled to attorney fees and costs for the prosecution of any such suit. The City shall not be liable for the payment of any costs or expenses of any such suit.
- (3) No suit or action shall be commenced hereunder by any claimant,
 - (a) Unless claimant, other than one having a direct Contract with the Principal, shall have given written notice to any two of the following: The Principal, the City, or the Surety above-named, within ninety (90) days after such claimant did or performed the last of the work or labor, or furnished the last of the materials for which said claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were furnished, or for whom the work or labor was done or performed. Such notice shall be served by mailing the same by registered mail or certified mail, postage prepaid, in an envelope addressed to the Principal, City or Surety, at any place where an office is regularly maintained for the transaction of business, or served in any manner in which legal process may be served in the state in which the aforesaid Project is located, save that such service need not be made by a public officer.
 - (b) After one year from the completion of the Contract and the acceptance by City of the work thereunder, it being understood, however, that if any limitation embodied in this bond is prohibited by any law controlling the construction hereof such limitation shall be deemed to be amended so as

to be equal to the minimum period of limitation permitted by such law.

LABOR AND MATERIAL PAYMENT BOND

- (c) No suit or action shall be commenced hereunder by any claimant other than in the Superior Court of Bartow County, Georgia. This Bond shall be interpreted under the laws of the State of Georgia. Jurisdiction and venue shall lie in the Superior Court of Bartow County, Georgia.
- (4) The amount of this bond shall be reduced by and to the extent of any payment or payments made in good faith hereunder inclusive of the payment by Surety or mechanics' liens which may be filed of record against improvement, whether or not claim for the amount of such lien be presented under and against this bond.
- (5) This payment bond is intended as payment bond for all claimants furnishing work or material for the Contract and should be construed so as to be in accordance with applicable statutes including Official Code of Georgia Section 13-10-1(a) (2).

In witness whereof, this instrument is executed in Five (5) counterparts, each one of which shall be deemed an original this _____ day of _____ 20____:

Witness as to Principal

Principal

By _____ SEAL

Witness as to Surety

Surety

By _____
Attorney-in-Fact

Address

This bond is issued simultaneously with performance bond in favor of the City conditioned on the full and faithful performance of the Contract.

Note: Date of Bond must not be prior to date of Contract.

CONTRACT

THIS AGREEMENT made this the _____ day of _____, 20____,
by and between the City of Cartersville, Georgia, hereinafter called
"City", and _____ a contractor doing
business as an individual, a partnership, or a corporation* of the City of _____,
County of _____, and State of _____ hereinafter called "Contractor".

WITNESSETH: That for and in consideration of the payments and agreements hereinafter mentioned, to be made and performed by the City, the Contractor hereby agrees to commence and complete the construction described as follows:

**City of Cartersville
Dellinger Park Pickleball Courts – Phase 1**

hereinafter called the "Project", for the sum of _____ Dollars (\$_____) and all extra work in connection therewith, under the terms as stated in the Contract Documents, and at their own proper cost and expense to furnish all materials, supplies, machinery, equipment, tools, superintendence, labor, insurance and other accessories and services necessary to complete the said Project in accordance with the conditions and prices stated in the proposal, the General Conditions of the Contract, the plans, which include all explanatory matter thereof, the specifications and Contract Documents therefore as prepared by the City of Cartersville and as enumerated in Paragraph 2 of the General Conditions, all of which are made a part hereof and collectively constitute the Contract.

Contractor hereby agrees to commence work under this Contract on or before a date to be specified in a written "Notice to Proceed" of the City and to fully complete the Project within Thirty (30) consecutive calendar days; Contractor further agrees to pay as liquidated damages the sum of \$500 per each consecutive calendar day that the Contractor shall be in default after the date stipulated in the contract for completing the work.

The City agrees to pay the Contractor in current funds for the performance of the Contract, subject to additions and deductions as provided in the General Conditions of the Contract, and to make payments on account thereof as provided in "Payments to Contractor," of the General Conditions.

IN WITNESS WHEREOF, the parties to those presents have executed this Contract in Five (5) counterparts, each of which shall be deemed an original, in the year and day first above mentioned.

City of Cartersville, Georgia

By _____

ATTEST: (Seal)

City Clerk

Contractor

By _____

ATTEST: (Seal)

Secretary

Witness

Secretary of City should attest. If Contractor is corporation, corporate secretary should attest.

Give proper title of each person executing Contract.

CONCERNING THE CONTRACT FOR
Dellinger Park Pickleball Courts – Phase 1

BARTOW COUNTY, GEORGIA

1. The City of Cartersville is entering into a contract for Dellinger Park Pickleball Courts – Phase 1 (the “Contract”) with:

_____.

2. I have reviewed the Contract and it is hereby approved as to form.

BY: _____

Name:

Title: City Attorney for the City of Cartersville

CONTRACTOR'S AFFIDAVIT OF INDIVIDUAL EXECUTING

(Name of Individual Executing Contract)

CONCERNING THE CONTRACT FOR
Dellinger Park Pickleball Courts – Phase 1

BARTOW COUNTY, GEORGIA

Personally appeared before the undersigned Notary Public, being of full age, who after being duly sworn, deposes and says:

1. That I am over 18 years of age, competent to make this affidavit, and I am executing this affidavit in my individual capacity.
2. That I am the _____(title) of _____ (the "Company"), which is entering into a contract for Dellinger Park Pickleball Courts – Phase 1 (the "Contract") with the City of Cartersville, Georgia.
3. That the organizational documents of the Company provided to the City of Cartersville are true and accurate, are in full force and effect and no proceeding is pending for dissolution or annulment of the Company.
4. That, pursuant to the organizational documents of the Company, I am authorized to legally bind the Company and to execute documents on behalf of the Company, which includes, but is not limited to, execution of the Contract with the City of Cartersville.
5. That I acknowledge that this Affidavit is to be a part of the Contract with the City of Cartersville. The City of Cartersville shall rely upon the representations herein and those included in the organizational documents of the Company in making and entering into the Contract, and any material misrepresentation herein shall constitute grounds to permit said Contract to be voided by City of Cartersville, but shall also constitute the offense of false swearing to a written document.
6. This Affidavit is given for the purpose of inducing the City of Cartersville's execution of the Contract.

FURTHER AFFIANT SAYETH NOT.

BY: _____

Name: _____(Print)

Title: _____(Title)

Sworn to and subscribed before me,
this ____ day of _____, 20__.

NOTARY PUBLIC

CONTRACTOR AFFIDAVIT AND AGREEMENT

By executing this affidavit, the undersigned contractor verifies its compliance with O.C.G.A. § 13-10-91, stating affirmatively that the individual, firm, or corporation which is contracting with the City of Cartersville has registered with and is participating in a federal work authorization program* [any of the electronic verification of work authorization programs operated by the United States Department of Homeland Security or any equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, pursuant to the Immigration Reform and Control Act of 1986 (IRCA), P.L. 99-603], in accordance with the applicability provisions and deadlines established in O.C.G.A. § 13-10-91.

The undersigned further agrees that, should it employ or contract with any subcontractor(s) in connection with the physical performance of services pursuant to this contract with the City of Cartersville, contractor will secure from such subcontractor(s) similar verification of compliance with O.C.G.A. § 13-10-91 on the Subcontractor Affidavit provided in Rule 300-10-01-.08 or a substantially similar form. Contractor further agrees to maintain records of such compliance and provide a copy of each such verification to the (name of the public employer) at the time the subcontractor(s) is retained to perform such service.

EEV/Basic Pilot Program* User Identification Number

BY: Authorized Officer or Agent Date
(Contractor Name)

Title of Authorized Officer or Agent of Contractor

Printed Name of Authorized Officer or Agent

SUBSCRIBED AND SWORN BEFORE ME
ON THIS ____ DAY OF _____, 20__

Notary Public
My Commission Expires: _____

* As of the effective date of O.C.G.A. § 13-10-91, the applicable federal work authorization program is the "EEV/Basic Pilot Program" operated by the U. S. Citizenship and Immigration Services Bureau of the U.S. Department of Homeland Security, in conjunction with the Social Security Administration (SSA).

By executing this affidavit, the undersigned subcontractor verifies its compliance with O.C.G.A. § 13-10-91, stating affirmatively that the individual, firm or corporation which is engaged in the physical performance of services under a contract with _____ (name of contractor) on behalf of the City of Cartersville has registered with and is participating in a federal work authorization program* [any of the electronic verification of work authorization programs operated by the United States Department of Homeland Security or any equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, pursuant to the Immigration Reform and Control Act of 1986 (IRCA), P.L. 99-603], in accordance with the applicability provisions and deadlines established in O.C.G.A. § 13-10-91.

EEV/Basic Pilot Program* User Identification Number

BY: Authorized Officer or Agent Date
(Subcontractor Name)

Title of Authorized Officer or Agent of Subcontractor

Printed Name of Authorized Officer or Agent

SUBSCRIBED AND SWORN

BEFORE ME ON THIS THE

____ DAY OF _____, 20__

Notary Public

My Commission Expires:

* As of the effective date of O.C.G.A. § 13-10-91, the applicable federal work authorization program is the "EEV/Basic Pilot Program" operated by the U. S. Citizenship and Immigration Services Bureau of the U.S. Department of Homeland Security, in conjunction with the Social Security Administration (SSA).

SECTION THREE

GENERAL CONDITIONS

1. CONTRACT AND CONTRACT DOCUMENTS

The Contract Documents as hereinafter enumerated in Paragraph 2 of the General Conditions, shall form this Contract and the provisions thereof shall be as binding upon the parties hereto as if they were fully set forth. The Table of Contents, Titles, Headings, Running Headlines and Marginal Notes contained herein and in said documents are solely to facilitate reference to various provisions of the Contract Documents and in no way effect, limit or cast light on the interpretation of the provisions to which they refer.

2. DEFINITIONS

The following terms as used in this Contract are respectively defined as follows:

- (a) City - The party of the First Part in the accompanying Contract, and meaning the City of Cartersville, Georgia.
- (b) Contractor - A person, firm or corporation with whom the Contract is made by the City and meaning _____

- (c) Contract Documents - The Contract Documents are composed of the Advertisement for Bids; Instructions to Bidders; Form of Proposal (bid), General Conditions, Supplementary Conditions, Detail Specifications, Form of Contract, Form of Bond(s), E-Verify, Addenda and the drawings including all changes incorporated herein before their execution.
- (d) Engineers - Refers to Stephenson Engineering, INC,
- (e) Project – Refers to the Work to be performed as set forth in the Contract Documents for Dellinger Park Pickleball Courts – Phase 1

- (f) Project Representative - Refers to the authorized representative of the City, who is assigned to the site or any part thereof.

- (g) Subcontractor - A person, firm or corporation supplying labor and/or materials for work at the site of the Project for, and under separate Contract or agreement with the Contractor for performance of a part of the work at the site.

- (g) Work on (at) the Project - Work to be performed at the location of the Project, including the transportation of materials and supplies to or from the location of the Project by employees of the Contractor and any Subcontractor.

3. CORRELATION AND INTENT OF DOCUMENTS

The Contract Documents are complementary, and what is called for by any one shall be as binding as if called for by all.

The intent of the documents is to describe all construction entailed in this Project. The Contractor will furnish all labor and materials, equipment, transportation, tools and appurtenances such as may be reasonably required under the terms of the Contract to make each part of the work complete.

The Drawings are intended to conform and agree with the Specifications; if, however, discrepancies occur, the City will decide which shall govern. Special specifications stated on the Drawings govern that particular piece of construction and have equal weight and importance as the printed specifications. In the event of any discrepancies between the Drawings and the figures written thereon, the figures are to be taken as correct.

4. ADDITIONAL INSTRUCTIONS AND DETAIL DRAWINGS

The Contractor will be furnished additional instructions and detail drawings as necessary to carry out the work included in the Contract. The additional drawings and instructions thus supplied to the Contractor will coordinate with the Contract Documents and will be so prepared that they can be reasonably interpreted as part thereof. The Contractor shall carry out the work in accordance with the additional detail drawings and instructions.

The Contractor and the City will prepare jointly (a) a schedule, fixing the dates at which special detail drawings will be required, such drawings, if any, to be furnished by the City in accordance with said schedule, and (b) a schedule fixing

the respective dates for the submission of shop drawings, the beginning of manufacture, testing and installation of materials, supplies, and equipment, and the completion of the various parts of the work; each such schedule to be subject to change from time to time in accordance with the progress of the work.

5. SHOP OR SETTING DRAWINGS

The Contractor shall submit promptly to the City two (2) copies of each shop or setting drawing prepared in accordance with the schedule predetermined as aforesaid. After examination of such drawings by the City and the return thereof, the Contractor shall make such corrections to the drawings as have been indicated and shall furnish the City with two corrected copies. If requested by the City the Contractor must furnish additional copies. Regardless of corrections made in or approval given to such drawings by the City, the Contractor shall nevertheless be responsible for the accuracy of such drawings and for their conformity to the Plans and Specifications at the time he furnishes such drawings.

6. MATERIALS, SERVICES AND FACILITIES

- (a) It is understood that except as otherwise specifically stated in the Contract Documents, the Contractor shall provide and pay for all materials, labor, tools, equipment, water, light, power, transportation, superintendence, temporary construction of every nature, and all other services and facilities of every nature whatsoever necessary to execute, complete, and deliver the work within the specified time.
- (b) Any work necessary to be performed by the Contractor to complete the Project on time after regular working hours, on Sundays or Legal Holidays, shall be performed without additional expense to the City.

7. CONTRACTOR'S TITLE TO MATERIALS

No materials or supplies for the work shall be purchased by the Contractor or by any Subcontractor subject to any chattel mortgage or under a conditional sale Contract or other agreement by which an interest is retained by the seller. The Contractor warrants that it has good title to all materials and supplies used by it in the work, free from all liens, claims and/or encumbrances.

8. MATERIALS FURNISHED BY THE CONTRACTOR

All materials used in the work including equipment shall be new and unused materials of a reputable U.S. Manufacturer conforming to the applicable requirements of the Specifications, and no materials shall be used in the work until they have been approved by the City. The Contractor shall furnish all materials necessary except as otherwise specifically noted or specified.

9. INSPECTION AND TESTING OF MATERIALS

All materials and equipment used in the construction of the Project shall be subject to adequate inspection and testing in accordance with accepted standards. The laboratory or inspection agency shall be selected by the City. Materials of construction, particularly those upon which the strength and durability of the structure may depend, shall be subject to inspection and testing to establish conformance with specifications and suitability for uses intended.

10. "OR EQUAL" CLAUSE

Whenever a material, article or piece of equipment is identified on the plans or in the specifications by reference to manufacturer's or vendor's names, trade names, catalogue numbers, etc., it is intended merely to establish a standard; and any material, article, or equipment of other manufacturers and vendors which will perform adequately the duties imposed by the general design will be considered equally acceptable provided the material, article, or equipment so proposed, is in the opinion of the City, of equal substance and function. It shall not be purchased or installed by the Contractor without the City's written approval.

11. PATENTS

(a) The Contractor shall hold and save the City and its officers, agents, servants, and employees harmless from liability of any nature or kind, including cost and expenses for, or on account of, any patented or unpatented invention, process, article, or appliance manufactured or used in the performance of the Contract, including its use by the City, unless otherwise specifically stipulated in the Contract Documents.

(b) License or Royalty Fees: License and/or Royalty Fees for the use of a process which is authorized by the City of the Project must be reasonable, and paid to the holder of the patent, or his authorized licensee, direct by the City and not by or through the Contractor.

(c) If the Contractor uses any design, device or materials covered by letters, patent or copyright, he shall provide for such use by suitable agreement with the City of such patented or copyrighted design, device or material. It is mutually agreed and understood, that, without exception, arising from the use of such design, device, or materials or in any way involved in the work, the Contractor and/or his Sureties shall indemnify and save harmless the City of the Project from all claims for infringement by the reason of the use of such patented or copyrighted design, device or materials or any trademark or copyright in connection with work agreed to be performed under this Contract and shall indemnify the City for any cost, expense or damage, including but not limited to attorney fees and litigation costs, which it may be obliged to pay by reason of such infringement at any time during the prosecution of the work or after completion of the work.

12. SURVEYS, PERMITS AND REGULATIONS

Control alignment and bench mark data from previous City surveys is not available and will not be provided by the City.

The Contractor shall procure and pay all permits, licenses and approvals necessary for the execution of this Contract.

The Contractor is required to complete the Notice of Intent (NOI) and submit to the Georgia EPD fourteen (14) days prior to beginning any construction activity.

The Contractor is required to coordinate the submittal of the Notice of Termination to the Georgia EPD, in accordance with the applicable NPDES storm water permit, once proper permanent vegetation has been established as approved by the City.

The Contractor shall comply with all laws, ordinances, rules, orders, and regulations relating to performance of the work, the protection of adjacent property, and the maintenance of passageways, guard fences or other protective facilities.

13. LINES AND GRADES

Bench marks and referenced horizontal control points will be shown on the plans.

Construction staking will be done by the Contractor at no additional cost to the City.

The Contractor shall furnish all necessary materials and competent personnel, and shall be responsible for the adequacy and accuracy of construction staking.

The Contractor shall furnish the City with an accurate record of the location of all underground pipes and other structures, and any changes from plans during construction.

14. CONTRACTOR'S OBLIGATIONS

The Contractor shall and will, in good workmanlike manner do and perform all work and furnish all supplies and materials, machinery, equipment, facilities and means, except as herein otherwise expressly specified, necessary or proper to perform and complete all the work required by this Contract, within the time herein specified, in accordance with the plans and drawings covered by this Contract any and all supplemental plans and drawings, and in accordance with the directions of the City as given from time to time during the progress of the work. Contractor shall furnish, erect, maintain and remove such construction plant and such temporary works as may be required. Contractor alone shall be responsible for the safety, efficiency and adequacy of his plant, appliances, and methods, and for any damage which may result from their failure of its improper construction, maintenance, or operation.

The Contractor shall observe, comply with, and be subject to all terms, conditions, requirements, and limitations of the Contract and specifications, and shall do, carry on, and complete the entire work to the satisfaction of the City.

15. CONTRACTOR'S RESPONSIBILITY

The Contractor shall indemnify and hold harmless the City and shall be responsible for all material and work until they are finally accepted by the City, and shall repair at its own expense any damage that it sustains before their final acceptance. The Contractor shall be responsible for all damages caused by it of whatever nature and must settle all claims arising from such damage without cost to the City; it shall act as defendant in, and bear the expense of each and every suit of any and every nature which may be brought against the Contractor or the City, by reason of, or connected with the work under the Contract. Should any claim arise, the City may hold back sufficient money to meet said claims or until the Contractor has satisfied the City that all claims against it as the result of its work have been adjusted. Contractor must also show that there are no claims or liens whatsoever

outstanding at the completion of its Contract before final payment is made.

16. WEATHER CONDITIONS

In the event of temporary suspension of work, or during inclement weather, or whenever the City shall direct; the Contractor will, and will cause its Subcontractors to protect carefully all work and materials against damage or injury from the weather. If, in the opinion of the City, any work or materials shall have been damaged or injured by reason of failure on the part of the Contractor or any of its Subcontractors so to protect its work, such materials shall be removed and replaced at the expense of the Contractor.

17. SAFETY PROVISIONS

The Contractor shall comply with the Department of Labor Safety and Health Regulations for construction promulgated under the Occupational Safety and Health Act of 1970 (PL 91-596) and under Sec. 107 or the Contract Work Hours and Safety Standards Act (PL 91-54).

The Contractor shall be responsible for the safety, efficiency, and adequacy of his plant, appliances and methods, and for any damage which may result from its failure or their improper construction, maintenance and operation.

The Contractor shall employ, when necessary, watchmen on the work and shall, when necessary, erect and maintain such strong and suitable barriers and such light as will effectually prevent the happening of any accident to health, limb or property.

18. USE OF EXPLOSIVES

When the use of explosives is necessary for the prosecution of the work, the Contractor shall use the utmost care not to endanger life or property, and whenever directed or otherwise indicated, the number and size of the charges shall be reduced. The Contractor shall notify the proper representatives of any public service corporation, any company, or any individual at least eight (8) hours in advance of any blasting which may endanger his or their property on, along, or adjacent to the site of the work. All explosives shall be stored in a secure manner and all storage places shall be marked clearly "DANGEROUS EXPLOSIVES", and shall be in the care of competent watchmen at all times.

19. SANITARY PROVISIONS

The Contractor shall provide and maintain in a neat and sanitary condition such accommodations for the use of his employees as may be necessary to comply with the regulations of the State Board of Health and all local ordinances. No nuisance will be permitted.

20. PUBLIC CONVENIENCE AND SAFETY

Materials stored at the site of the work shall be so placed and the work shall, at all times, be so conducted as to cause no greater obstruction to traffic than is considered permissible by the City. No roadway shall be closed or opened except by express permission of the City and the Contractor's proper notification of local fire and police departments. Precaution shall be exercised at all times for the protection of persons and property. The safety provisions of applicable laws, building and construction codes shall be observed. Machinery, equipment and other hazards shall be guarded in accordance with the safety provisions of the manual of Accident Prevention in Construction, published by the Associated General Contractors of America to extent that such provisions are not in contravention of applicable laws.

21. PROTECTION OF WORK AND PROPERTY - EMERGENCY

The Contractor shall at all times safely guard the City's property from injury or loss in connection with this Contract. The Contractor shall at all times safely guard and protect its own work, and that of adjacent property from damage. The Contractor shall replace or make good any such damage, loss or injury unless such be caused directly by errors contained in the Contract or by the City, or its duly authorized representative.

In case of an emergency which threatens loss or injury of property, and/or safety of life, the Contractor will be allowed to act, without previous instructions from the City in a diligent manner. Contractor shall notify the City immediately thereafter. Any claim for compensation by the Contractor due to such extra work shall be promptly submitted to the City for approval.

Where the Contractor has not taken action but has notified the City of an emergency threatening injury to persons or damage to the work or any adjoining property, it shall act as instructed or authorized by the City.

The amount of reimbursement claimed by the Contractor on account of any emergency action shall be determined in the manner provided in Paragraph 27 of the General Conditions.

22. INSPECTION

The authorized representatives and agents of the City, shall be permitted to observe all work, materials, payrolls, records of personnel, invoices of materials and other relevant data and records.

23. REPORTS, RECORDS AND DATA

The Contractor shall submit to the City such schedule of quantities and costs, progress schedules, payrolls, reports, estimates, records and other data as the City may request concerning work performed or to be performed under this Contract.

24. SUPERINTENDENCE BY CONTRACTOR

At the site of the work, the Contractor shall employ a construction superintendent or foreman who shall have full authority to act for the Contractor. It is understood that such representative shall be acceptable to the City and shall be one who can be continued in that capacity for the particular job involved unless he ceases to be on the Contractor's payroll.

25. COMPETENT LABOR

The Contractor shall employ only competent and skilled workers on the Project. The Contractor shall have a competent superintendent or foreman present at all times when the work is in progress and with authority to receive orders and execute the work. The Contractor shall, upon demand from the City, immediately remove any superintendent, foreman or worker whom the City may consider incompetent or undesirable.

26. CONSTRUCTION EQUIPMENT

The Contractor shall provide all necessary equipment in good repair for the expeditious construction of the work. Any equipment not adapted for the work, in such repair as to be dangerous to the Project or workers, shall not be used.

27. CHANGES IN THE WORK

27.1 Without invalidating the Agreement, the City may, at any time or from time to time, order additions, deletions or revisions in the Work; these will be authorized by Change Orders. Upon receipt of a Change Order, the Contractor will proceed with the Work involved. All such Work shall be executed under the applicable conditions of the Contract Documents. If any Change Order causes an increase or decrease in the Contract Price or an extension or shortening of the Contract Time, an equitable adjustment will be made as provided in Article 28. A Change Order signed by the Contractor indicates his agreement therewith.

27.2 The City may authorize minor changes or alterations in the Work not involving extra cost and not inconsistent with the overall intent of the Contract Documents. These may be accomplished by a Field Order. If the Contractor believes that any Field Order authorized by the City entitles him to an increase in the Contract Price or extension of Contract Time, Contractor shall inform the City in writing of the amount of increased price or time associated with the Field Order, and it shall include reference to appropriate Contract Documents supporting the basis for the claim, and it shall not proceed with the work in question until a written decision has been rendered by the City.

27.3 Any changes or additional work performed by the Contractor without authorization of a Change Order will not entitle it to an increase in the Contract Price or an extension of the Contract Time, except in the case of an emergency.

27.4 It is the Contractor's responsibility to notify its surety of any changes affecting the general scope of the Work or change in the Contract Price and the amount of the applicable bonds shall be adjusted accordingly. The Contractor will furnish proof of such adjustment to the City.

27.5 The term Change Order is defined as a written order to the Contractor signed by the City which authorizes a change in the work or the Contract price or the Contract time issued after execution of the Contract.

27.6 The Contract Price constitutes the total compensation payable to the Contractor for performing the Work. All duties, responsibilities and obligations assigned to or undertaken by the Contractor shall be at its expense without changing the Contract Price, except where authorized by Change Order.

28. CHANGE IN CONTRACT PRICE

28.1 The value of any Work covered by a Change Order or of any claim for an increase or decrease in the Contract Price shall be determined in one of the following ways:

28.1.1 Where the Work involved is covered by unit prices contained in the Contract Documents, by application of unit prices to the quantities of the items involved.

28.1.2 By mutual acceptance of a lump sum (which may include an allowance for overhead and profit not necessarily in accordance with paragraph 28.4.2.1).

28.1.3 On the basis of the Cost of the Work (determined as provided in paragraphs 28.4 and 28.5) plus a Contractor's Fee for overhead and profit (determined as provided in paragraphs 28.4 and 28.5).

28.2 The term Cost of the Work means the sum of all costs necessarily incurred and paid by the Contractor in the proper performance of the Work. Except as otherwise may be agreed to in writing by City, 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 28.3.

28.2.1 Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by City 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, 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 Sunday or legal holidays shall be included in the above to the extent authorized by City.

28.2.2 Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and manufacturers' field services required in connection therewith.

28.2.3 Payments made by Contractor to the Subcontractors for Work performed by Subcontractors. If required by City, Contractor shall obtain competitive bids from Subcontractors acceptable to it and shall deliver such Bids to City who will then determine with the advice of City, which Bids will be accepted.

28.2.4 Costs of special consultants (including, but not limited to, engineers, architects, testing laboratories, surveyors, lawyers, and accountants) employed for services specifically related to the Work.

28.2.5 Supplemental costs including the following:

28.2.5.1 The proportion of necessary transportation, traveling and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.

28.2.5.2 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 workmen, 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.

28.2.5.3 Rentals of all construction equipment and machinery and the parts thereof whether rented from Contractor or others in accordance with rental agreements approved by City 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.

28.2.5.4 Sales, use or similar taxes related to the Work, and for which Contractor is liable, imposed by any governmental authority.

28.2.5.5 Deposits lost for causes other than Contractor's negligence, royalty payments and fees for permits and licenses. Costs for permits and licenses must be shown as a separate item.

28.2.5.6 Losses, damages and expenses, not compensated by insurance or otherwise, sustained by Contractor in connection with the execution of, and to, the Work, 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 City. No such losses, damages and expenses shall be included in the Cost of the Work for the purpose of determining Contractor's Fee.

28.2.5.7 The cost of utilities, fuel and sanitary facilities at the site.

28.2.5.8 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.

28.2.5.9 Cost of premiums for additional Bonds and Insurance required because of changes in the Work.

28.3 The term Cost of the Work shall not include any of the following:

28.3.1 Payroll costs and other compensation of Contractor's officers, executives, principals (of partnership and sole proprietorships), general managers, engineers, architects, estimators, lawyers, auditors, accountants, purchasing and Contracting agents, expeditors, timekeepers, clerks and other personnel employed by Contractor whether at the site or in its principal or a branch office for general administration of the Work and not specifically included in the schedule referred to in subparagraph 28.2.1 - all of which are to be considered administrative costs covered by the Contractor's Fee.

28.3.2 Expenses of Contractor's principal and branch offices other than his office at the site.

28.3.3 Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.

28.3.4 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.

28.3.5 Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in paragraph 28.4.

28.4 The Contractor's Fee which shall be allowed to Contractor for its overhead and profit shall be determined as follows:

28.4.1 a mutually acceptable firm fixed price; or if none can be agreed upon;

28.4.2 a fee based on the following percentages of the various portions of the Cost of the Work.

28.4.2.1 for costs incurred under paragraphs 28.2.1 and 28.2.2, the Contractor's Fee shall be fifteen percent (15%).

28.4.2.2 for costs incurred under paragraph 28.2.3, the Contractor's Fee shall be five percent (5%); 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 (15%):

28.4.2.3 no fee shall be payable on the basis of costs itemized under paragraphs 28.2.4, 28.2.5, and 28.3;

28.4.2.4 the amount of credit to be allowed by Contractor to City 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 (10%) of the net decrease; and

28.4.2.5 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 28.4.2.1 through 28.4.2.4, inclusive.

28.5 Whenever the cost of any Work is to be determined pursuant to paragraph 28.2 or 28.3. Contractor will submit in form acceptable to City an itemized cost

breakdown together with supporting data.

29. CHANGE OF THE CONTRACT TIME

29.1 The Contract Time may only be changed by a Change Order. Any claim for an extension in the Contract Time shall be based on written notice delivered to City and City within ten (10) calendar days of the occurrence of the event giving rise to the claim. Notice of the extent of the claim with supporting data shall be delivered within forty-five days (45) of such occurrence unless City allows an additional period of time to ascertain more accurate data. All claims for adjustment in the Contract Time shall be determined by City if City and Contractor cannot otherwise agree. Any change in the Contract Time resulting from any such claim shall be incorporated in a Change Order.

29.2 The Contract Time will be extended in an amount equal to time lost due to delays beyond the control of Contractor if he makes a claim therefor as provided in paragraph 29.1. Such delays shall include, but not be restricted to, acts or neglect by any separate Contractor employed by City, fires, floods, labor disputes, epidemics, abnormal weather conditions, or acts of God.

29.3 All time limits stated in the Contract Documents are of the essence of the Agreement. The provisions of this Article 29 shall not exclude recovery for damages (including compensation for additional professional services) for delay by either party.

30. CORRECTION OF WORK

All work, all materials, whether incorporated in the work or not, all processes of manufacture, and all methods of construction shall be at all times and places subject to the review of the City who shall be the final judge of the quality and suitability of the work, material, processes of manufacture and methods of construction for the purposes for which they are used. Should any fail to meet its approval, it shall be forthwith reconstructed, made good, replaced and/or corrected, as the case may be, by the Contractor at his own expense. Rejected material shall immediately be removed from the site. If, in the opinion of the City, it is undesirable to replace any defective or damaged materials or to reconstruct or correct any portion of the work injured or not performed in accordance with the

Contract Documents, the compensation to be paid to the Contractor hereunder shall be reduced by such amount as in the judgement of the City shall be equitable. It is not intended that the City should be liable for the Contractor's performance of the work nor for safety during construction.

31. EXISTING UNDERGROUND UTILITIES AND STRUCTURES

- (a) The City and/or operators of private or public utilities shall have access to such utility at all times, for the installation, maintenance, adjustment, repair and operation of said utility. No extra compensation will be allowed because of the delay or interference caused by such work.
- (b) In preparing the plan drawings there has not been an all-inclusive search for identifying existing underground utilities. Therefore, any information pertaining to existing utilities is provided only for preliminary purposes and implies no guarantee as to accuracy or completeness. Prior to blasting or excavation the Contractor is responsible for contacting all utility owners in the area. Specifically, the Contractor shall contact the "one-call notification center" SEVENTY-TWO (72) hours in advance of blasting or excavation as required by Georgia Law.
- (c) Wherever existing utilities are encountered which conflict in actual position and location with the proposed work, the Contractor shall promptly notify the City for resolution of the conflict.
- (d) Temporary supports, beams or bridging for utilities shall be left in place during backfill operations unless otherwise directed by the City.
- (e) All costs in connection with supporting, protecting, relocating, removal, repair of damage, restoration and other work on affected existing utilities and other existing underground structures whether or not they are shown on the plans, not borne by the City or owners of the utilities, shall be borne by the Contractor. No separate payment will be made for any work performed as herein above specified unless otherwise stated in the proposal as a separate payment item. All costs in connection therewith shall be included in the Contract price for the item to which the work

pertains.

- (f) The Contractor shall be solely and directly responsible to the City and/or other operator of such utility properties for any damage, injury, expense, loss, inconvenience or delay, or for any suits, actions, claims of any character brought on account of any injuries or damages which may result from the carrying out of the work.

32. SUBSURFACE CONDITIONS FOUND DIFFERENT

Should the Contractor encounter sub-surface and/or latent conditions at the site materially differing from those shown on the plans or indicated in the specifications, it shall immediately give notice to the City of such conditions before they are disturbed. The City will thereupon promptly investigate the conditions, and if it finds that they materially differ from those shown on the plans or indicated in the specifications, it will at once make such changes in the plans and/or specifications as he may find necessary, any increase or decrease of cost resulting from such changes to be adjusted in the manner provided in Paragraph 27 of the General Conditions.

33. CLAIMS FOR EXTRA WORK

No claim for extra work or cost shall be allowed unless the same was one in pursuance of a written order of the City approved by the City, as aforesaid, and the claim presented with the first estimate after the changed or extra work is done. When work is performed under the terms of subparagraph 27.3, of the General Conditions, the Contractor shall furnish satisfactory bills, payrolls and vouchers covering all items of cost and when requested by the City, give the City access to accounts relating thereto.

34. RIGHT OF THE CITY TO TERMINATE CONTRACT

In the event that any of the provisions of this Contract are violated by the Contractor or by any of his Subcontractors, the City may serve written notice upon the Contractor and the surety of its intention to terminate the Contract, such notices to contain the reasons for such intention to terminate the Contract, and unless within ten (10) calendar days after the serving of such notice upon the Contractor such violation or delay shall cease and satisfactory arrangement of correction be made, the Contract shall, upon the expiration of said ten (10) calendar days, cease and terminate. In the event of any such termination the City shall immediately serve

notice thereof upon the Surety and the Contractor and the Surety shall have the right to take over and perform the Contract; provided, however, that if the Surety does not commence performance thereof within ten (10) calendar days from the date of the mailing to such Surety of notice of termination, the City may take over the work and prosecute the same to completion by Contract or by force for the account and at the expense of the Contractor and the Contractor and his Surety shall be liable to the City for any excess cost occasioned the City thereby, and in such event the City may take possession of and utilize in completing the work, such materials, appliances and plant as may be on the site of the work and necessary therefore.

35. CONSTRUCTION SCHEDULE AND PERIODIC ESTIMATES

Immediately after execution and delivery of the Contract, and before the first partial payment is made, the Contractor shall deliver to the City an estimated construction progress schedule in form satisfactory to the City showing the proposed dates of commencement and completion of each of the various subdivisions of work required under the Contract documents and the anticipated amount of each monthly payment that will become due the Contractor in accordance with the progress schedule. The Contractor shall also furnish on forms to be supplied by the City, (a) a detailed estimate giving a complete breakdown of the Contract price and (b) periodic itemized estimate of work done for the purpose of making partial payments thereon. The costs employed in making up any of these schedules will be used only for determining the basis of partial payments and will not be considered as fixing a basis for additions to or deductions from the Contract price.

36. PAYMENTS TO CONTRACTORS

- (a) No later than thirty (30) days after submittal of a progress payment request the City shall make a progress payment to the Contractor on the basis of a duly certified and approved estimate of the work performed during the preceding calendar month under this Contract, but to insure the proper performance of this Contract, the City shall retain ten percent (10%) of the amount of each estimate (as retainage).
- (b) At substantial completion of the work and as the City's authorized Contract representative determines the work to be reasonably satisfactory, the City shall within thirty (30) days after invoice and other appropriate documentation, as may be required by the Contract documents are provided pay the retainage to the Contractor. If at that time there are any

remaining incomplete minor items, an amount equal to two-hundred percent (200%) of the value of each item as determined by the City's authorized Contract representatives shall be withheld until such item or items are completed.

- (c) In preparing estimates the material delivered on the site and preparatory work done may be taken into consideration.
- (d) All material and work covered by partial payments made shall thereupon become the sole property of the City, but this provision shall not be construed as relieving the Contractor from the sole responsibility for the care and protection of materials and work upon which payments have been made or the restoration of any damaged work, or as a waiver of the right of the City to require the fulfillment of all of the terms of the Contract.
- (e) The Contractor agrees that he will indemnify and save the City harmless from all claims growing out of the lawful demands of Subcontractors, laborers, workmen, mechanics, material men, and furnishers of machinery and parts thereof, equipment, power tools, and all supplies, including commissary incurred in the furtherance of the performance of this Contract. The Contractor shall, at the City's request, furnish satisfactory evidence that all obligations of the nature hereinabove designated have been paid, discharged, or waived. If the Contractor fails to do so, then the City may, after having served written notice on the said Contractor, either pay unpaid bills, of which the City has written notice, direct, or withhold from the Contractor's unpaid compensation a sum of money deemed reasonably sufficient to pay any and all such lawful claims until satisfactory evidence is furnished that all liabilities have been fully discharged whereupon payment to the Contractor shall be resumed, in accordance with the terms of this Contract, but in no event shall the provisions of this sentence be construed to impose any obligations upon the City to either the Contractor or his Surety. In paying any unpaid bills of the Contractor, the City shall be deemed the agent of the Contractor, and any payment so made by the City shall be considered as a payment made under the Contract by the City to the Contractor and the City shall not be liable to the Contractor for any such payments made in good faith.
- (f) If at any time the City shall determine that the amount of work completed at that time is lagging behind the Contract schedule by more than twenty percent (20%), the City may determine that the Contractor is not faithfully

performing on the Contract and therefore the City may elect to withhold all monies and refrain from making any additional payments to the Contractor until such time as the City determines the work to be progressing satisfactorily.

(g) On all Contracts relating to installation, extension, improvement, maintenance or repair of any water or sewer facility, retainage shall be invested at the current market rate and any interest earned on the retained amount shall be paid to the Contractor when the Project has been completed within the time limits specified and for the price specified in the Contract, or in any amendments or change orders approved in accord with the terms of the Contract.

Final payment of the retained amounts to the Contractor under the Contract to which the retained amounts relate shall be made after certification by the City that the work has been, to the best of his knowledge, satisfactorily completed and is accepted.

37. ACCEPTANCE AND FINAL PAYMENT

Upon receipt of the corrections list the Contractor shall complete all items and submit the final payment request within thirty (30) days. Upon completion by the Contractor of The Work and correction list items, including the receipt of any final written submission of the Contractor and the approval thereof by the Cartersville Public Works Department, the City will pay the Contractor as set forth below.

When the Project provided for under this Contract shall have been completed by the Contractor, and all parts of the work have been approved by the City according to the Contract, the City shall, within ten (10) calendar days unless otherwise provided, make final inspection and advise the Contractor as to preparing a final estimate, showing the value of work as soon as the necessary measurements and computations can be made, all prior certificates or estimates upon which payments have been made are approximate only, and subject to correction in the final payment. The amount of the final estimates, less any sums that may have been deducted or retained under the provisions of this Contract, will be paid to the Contractor within sixty (60) days after approval by the City, provided that the Contractor has properly maintained and operated the Project as specified under these specifications, and provided, that he has furnished to the City a sworn affidavit to the effect that all bills are paid and no suits are pending in connection with the work done or labor and material furnished under this Contract.

38. PAYMENTS BY CONTRACTORS

The Contractor shall pay (a) for all transportation and utility services not later than the 20th day of the calendar month following that in which such services are rendered, (b) for all materials, tools, and other expendable equipment to the extent of ninety percent (90%) of the cost thereof, not later than the 20th day of the calendar month following that in which such materials, tools and equipment are delivered at the site of the Project, and the balance of the cost thereof not later than the 30th day following the completion of that part of the work in or on which such materials, tools and equipment are incorporated or used, and (c) to each of his Subcontractors, not later than the 5th day following each payment to the Contractor, the respective amounts allowed the Contractor on account of the work performed by his Subcontractors to the extent of each Subcontractor's interest therein.

39. CONTRACTOR'S AND SUBCONTRACTOR'S INSURANCE

The Contractor shall not commence work under this Contract until he has obtained all the insurance required under this paragraph and such insurance has been reviewed by the City, nor shall the Contractor allow any Subcontractor to commence work on his Subcontract until the insurance has been so obtained and reviewed.

- a. Contractor's Liability Insurance: Contractor shall purchase and maintain such comprehensive general liability and other insurance as will provide protection from claims set forth below which may arise out of or result from Contractor's performance of the work and Contractor's other obligations under the Contract Documents, whether such performance is indirectly employed by any of them, or by anyone for whose acts any of them may be liable.
1. Claims under workers' or workmen's compensation, disability benefits and other similar employees benefit acts;
 2. Claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees;
 3. Claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees;

4. Claims for damages insured by personnel injury liability coverage which are sustained (i) by any person as a result of an offense directly or indirectly related to the employment of such person by Contractor, or (ii) by any other person for any other reason.
5. Claims for damages, other than to the work itself because of injury to or destruction of tangible property, including loss of use resulting therefrom; and
6. 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 shall include the specific coverages and be written for not less than the limits of liability and coverages provided in these specifications, or required by law, whichever is greater. The comprehensive general liability insurance shall include completed operations insurance. All such insurance shall contain a provision that the coverage afforded will not be cancelled, materially changed or renewal refused until at least thirty (30) days prior written notice has been given to City and City. 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 addition, Contractor shall maintain such completed operations insurance for at least one year after final payment and furnish City with evidence of continuation of such insurance at final payment.

- b. Contractual Liability Insurance: The comprehensive general liability insurance required by paragraph (a) will include Contractual liability insurance applicable to Contractor's obligations under separate Contract and Subcontracting.
- c. Unless otherwise provided in these Supplementary Conditions, Contractor 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 these supplementary conditions or required by law). This insurance shall include the interest of City, Contractor and Subcontractors in the work, shall insure against the perils of fire and extended coverage, shall include "all risk" insurance for physical loss and damage including theft, vandalism and malicious mischief, collapse and water damage, and other perils as may be provided in these 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 fees and charges of City's, architects, attorneys and other professionals). If not covered under the "all risk" insurance or otherwise provided in these 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. The policies of insurance required to be purchased and maintained by Contractor in accordance with paragraphs c and d shall contain a provision that the coverage afforded will not be cancelled or materially changed until at least thirty days' prior written notice has been given to the City.

- d. Contractor shall purchase and maintain such boiler and machinery insurance as may be required by the Supplementary Conditions or by law. This insurance shall include the interest of City, Contractor and Subcontractors in the work and shall provide coverage for all installed and functional mechanical equipment for the full replacement value of the equipment.
- e. City shall not be responsible for purchasing and maintaining any property insurance to protect the interests of Contractor or Subcontractors in the work to the extent of any deductible amounts that are provided in the supplemental conditions. If Contractor wishes property insurance coverage within the limits of such amounts, Contractor may purchase and maintain it at his own expense.
- f. If City 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 a, b, c, and d, City will notify Contractor thereof within ten days of the date of delivery of such certificates, to City. Contractor will provide to the City such additional information in respect of insurance provided by him as City may reasonably request. The right of the City to review and comment on Certificates of Insurance is not intended to relieve the Contractor of his responsibility to provide insurance coverage as specified nor to relieve the Contractor of his liability for any claims which might arise.
- g. Partial Utilization - Property Insurance: If City 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 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 cancelled or lapse on account of any such partial use or occupancy.

- h. The limits of liability for the insurance required by paragraph (a) of the General Conditions shall provide coverage for not less than the following amounts or greater where required by law:

For claims under paragraph 39.a.1 and 39.a.2, Worker's Compensation:

- | | | |
|-----|--|--|
| (1) | State | Statutory |
| (2) | Applicable Federal (e.g.)
Longshoreman's: | Statutory |
| (3) | Employer's Liability: | \$500,000 per person
\$500,000 per occurrence |

For claims under 39.a.2 through 39.a.5,

- | | | |
|-----|--|---|
| (1) | Bodily Injury: | |
| | \$1,000,000 | Each person |
| | \$1,000,000 | Each Occurrence |
| | \$1,000,000 | Annual Aggregate,
Products and Completed
Operations |
| (2) | Property Damage: | |
| | \$1,000,000 | Each Person |
| | \$1,000,000 | Each Occurrence |
| (3) | Property Damage Liability
insurance will provide Explosion,
Collapse and Underground | |

coverages where applicable.

- (4) Personal Injury, with employment exclusion deleted

\$1,000,000 Annual Aggregate

For claims under 39.a.6, Comprehensive Automobile Liability:

- (1) Bodily Injury:

\$1,000,000 Each Person

\$1,000,000 Each Accident

- (2) Property Damage:

\$1,000,000 Each Occurrence

The Contractual Liability required by paragraph 39.b of the General Conditions shall provide coverage for not less than the following amounts:

Contractual Liability Insurance:

Bodily Injury:

\$1,000,000 Each Occurrence

Property Damage:

\$1,000,000 Each Occurrence

\$1,000,000 Annual Aggregate

- i. Scope of Insurance and Special Hazards - The amounts stated in subparagraph "h" above are minimum amounts of insurance to be carried. The Contractor shall carry such additional insurance as may be required to provide adequate protection of the Contractor and his Subcontractors, respectively, against any and all damage claims which may arise from operations under this Contract, whether such operations be by the insured

or by anyone directly or indirectly employed by his and, also, against any of the special hazards which may be encountered in the performance of this Contract.

40. CONTRACT SECURITY

The Contractor shall furnish a performance bond in an amount at least equal to one-hundred percent (100%) of the Contract prices as security for the faithful performance of this Contract and also a payment bond in an amount at least equal to one-hundred percent (100%) of the Contract price or in a penal sum not less than that prescribed by State, Territorial or local law, as security for the payment of all persons performing labor on the Project under this Contract and furnishing materials in connection with this Contract. The performance bond and the payment bond may be in one or in separate instruments in accordance with local law.

41. ADDITIONAL OR SUBSTITUTE BOND

If at any time the City for justifiable cause shall be or become dissatisfied with any Surety or Sureties, then upon the Performance or Payment Bonds, the Contractor shall within five (5) business days after notice from the City to do so, substitute an acceptable bond (or bonds) in such form and sum and signed by such other Surety or Sureties as may be satisfactory to the City. 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 such an acceptable bond to the City.

42. LIEN

Neither the final payment nor any part of the retained percentage will become due until the Contractor, if required, shall furnish the City a complete release from any liens which may arise out of this Contract, or receipts in full in lieu thereof, and if required in either case, an affidavit that insofar as he has knowledge or information, the release and receipts include all materials, for which a lien might be filed. The Contractor may, if any Subcontractor refuses to furnish a release or receipt in full, furnish a bond satisfactory to the City to indemnify it against any lien. If a lien shall remain unsatisfied after all payments are made, then the Contractor shall refund to the City all monies which the latter may be compelled to pay in discharging such lien, including all incidental costs and attorney's fees.

43. ASSIGNMENTS

The Contractor shall not assign the whole or any part of this Contract or any money due to or to become due hereunder without written consent of the City. In case the Contractor assigns all or 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 assigned in and to any money due or to become due to the Contractor shall be subject to prior liens of all persons, firms and corporations for services rendered or materials supplied for the performance of the work called for in this Contract.

44. MUTUAL RESPONSIBILITY OF CONTRACTORS

If through acts of negligence on the part of the Contractor, any other Contractor or Subcontractor, shall suffer loss or damage on the work, the Contractor agrees to settle with such other Contractor or Subcontractor by agreement or arbitration, if such other Contractor or Subcontractor will so settle. If such other Contractor or Subcontractor shall assert any claim against the City on account of any damage alleged to have been so sustained, the City shall notify the Contractor, who shall indemnify and save harmless the City against any such claim, including but not limited to Attorney fees and costs.

45. COORDINATION WITH OTHER CONTRACTORS

The Contractor shall coordinate his operations with those of other Contractors. Cooperation will be required in the arrangement for the storage of materials and in the detailed execution of the work. The Contractor, including his Subcontractors shall keep informed of the progress and the detail work of other Contractors and shall notify the City immediately of lack of progress or defective workmanship on the part of other Contractors. Failure of a Contractor to keep informed of the work progressing on the site and failure to give notice of lack of progress or defective workmanship by others shall be construed as acceptance by the Contractor of the status of the work as being satisfactory for proper coordination with the Contractor's own work.

46. SUBCONTRACTING

(a) The Contractor shall utilize the service of a specialty Subcontractor on those parts of the work which, under normal Contracting practices, are performed by specialty Subcontractors. Provided - that if the City shall determine that the specialty work in question has been customarily performed by the Contractor's own

organization and that such organization is presently competent to perform such work, the Contractor shall be permitted to do so. Provided, further - that if the City shall determine that the performance of any specialty work by specialty Subcontractors will result in materially increased costs or inordinate delays, the requirements of this paragraph shall not apply.

(b) The Contractor shall not be allowed to award work to any Subcontractor prior to written approval of the City, which approval will not be given until the Contractor submits to the City, a written statement concerning the proposed award to the Subcontractor, which statement shall contain such information as the City may require.

(c) The Contractor shall be as fully responsible to the City for the acts and omissions of his Subcontractors, and of persons either directly or indirectly employed by them, as he is for the acts and omissions of persons directly employed by him.

(d) The Contractor shall cause appropriate provisions to be inserted in all Subcontracts relative to the work to bind Subcontractors to the Contractor by the terms of the General Conditions and other Contract documents insofar as applicable to the work of Subcontractors and to give the Contractor the same power as regards terminating any subcontract that the City may exercise over the Contractor under any provision of the Contract Documents.

(e) Nothing contained in this Contract shall create any contractual relation between any Subcontractor and the City.

47. CITY'S AUTHORITY

The City will have authority to disapprove or reject work which is defective, and will also have authority to require special inspection or testing of the work.

The City 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 execution and progress of the work shall be referred initially to City in writing with a request for a formal decision in accordance with this paragraph, which the City will render in writing within a reasonable time. Written notice of each such claim, dispute and other matter shall be delivered by the claimant to City and the other party to the

Agreement within fifteen (15) days of the occurrence of the event giving rise thereto, and written supporting data will be submitted to the City and the other party within forty-five (45) days of such occurrence unless City allows an additional period of time to ascertain more accurate data. In his capacity as interpreter and judge, City will not show partiality to City or Contractor, and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity.

The City may authorize minor changes in the work not involving an adjustment in the Contract price or the Contract time, which are consistent with the overall intent of the Contract Documents. These may be accomplished by a Field Order and shall be binding on City, and also on Contractor who shall perform the change promptly. If Contractor believes that a Field Order justifies an increase in the Contract price or Contract time, Contractor may make a claim therefor as provided in Article 27.

48. LIMITATIONS ON CITY'S RESPONSIBILITIES

Neither the City's authority to act under this Contract, nor any decision made by the City in good faith either to exercise or not exercise such authority shall give rise to any duty or responsibility of the City to the Contractor, any Subcontractor, any manufacturer, fabricator, supplier or distributor, or any of their agents or employees or any other person performing any of the work.

Whenever in the Contract Documents the terms "as ordered", "as directed", "as required", "as allowed" or terms of like effect or import are used, or the adjectives "reasonable", "suitable", "acceptable", "proper" or "satisfactory" or adjectives of like effect or import are used, to describe requirements, direction, review or judgement of the City as to the work, it is intended that such requirement, direction, review or judgement will be solely to evaluate the work for compliance with the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective never indicates that the City shall have authority to supervise or direct performance of the work.

The City will not be responsible for Contractor's means, methods, techniques, sequences or procedures of construction, or the safety precautions and programs incident thereto, and the City will not be responsible for Contractor's failure to perform the work in accordance with the Contract Documents.

The City will not be responsible for the acts or omissions of the Contractor or of any Subcontractors, or of the agents or employees of any Contractor of

Subcontractor, or of any other persons at the site or otherwise performing any of the work.

49. USE OF PREMISES AND REMOVAL OF DEBRIS

The Contractor expressly undertakes at its own expense:

- (a) To take every precaution against injuries to persons or damage to property;
- (b) To store its apparatus, materials, supplies and equipment in such orderly fashion at the site of the work as will not unduly interfere with the progress of its work or the work of any other Contractors;
- (c) To place upon the work or any part thereof only such loads as are consistent with the safety of that portion of the work;
- (d) To clean up frequently all refuse, rubbish, scrap materials, and debris caused by his operations, to the end that at all times the site of the work shall present a neat, orderly and workmanlike appearance;
- (e) Before final payment to remove all surplus material, falsework, temporary structures, including foundations thereof, plant of any description and debris of every nature resulting from its operations, and to put the site in a neat orderly condition; and
- (f) To effect all cutting, fitting or patching of its work required to make the same to conform to the plans and specifications and, except with the consent of the City, not to cut or otherwise alter the work of any other Contractor.

50. ESTIMATE OF QUANTITIES

Wherever the estimated quantities of work to be done and materials to be furnished under this Contract are shown in any of the documents including the proposal, they are given for use in comparing bids and the right is especially reserved except as herein otherwise specifically limited, to increase or diminish them as may be deemed reasonably necessary or desirable by the City to complete the work contemplated by this Contract, and such increase or diminution shall in no way vitiate this Contract, nor shall any such increase or diminution give cause for claims or liability for damages.

51. RIGHTS-OF-WAY AND SUSPENSION OF WORK

The City shall furnish all land and rights-of-way necessary for the carrying out of this Contract and the completion of the work herein contemplated and will use due diligence in acquiring said land and rights-of-way as speedily as possible. But it is possible that all lands and rights-of-way may not be obtained as herein contemplated before construction begins, in which event the Contractor shall begin its work upon such land and rights-of-way as the City may have previously acquired, and no claim for damages whatsoever will be allowed by reason of the delay in obtaining the remaining lands and rights-of-way. Should the City be prevented or enjoined from proceeding with the work, or from authorizing its prosecution, either before or after the commencement, by reason of any litigation, or by reason of its inability to procure any lands or rights-of-way for the said work, the Contractor shall not be entitled to make or assert claim for damage by reason of said delay, or, to withdraw from the Contract except by consent of the City, but time for completion of the work will be extended to such time as the City determines will compensate for the time lost by such delay, such determination to be set forth in writing.

52. GUARANTY

(a) All structures erected under this Contract shall be fully guaranteed by the Contractor for a period of one year from the date of final inspection and acceptance by the City. This guarantee shall cover any and all defects in workmanship or materials that may develop in this specified time, and any failure in such workmanship or materials shall be repaired or replaced to the satisfaction of the City by the Contractor at his own expense.

(b) All equipment of whatever nature incorporated in the work covered by this Contract shall carry the same guarantee as outlined above for construction. Failure of any equipment or part thereof within the specified time shall be corrected to the satisfaction of the City, at the Contractor's expense. This guarantee does not apply to manufacturing defects of equipment furnished by the City.

It is the intent of these specifications that all pipe lines, both underground and above ground, together with all appurtenances attached thereto, under this Contract, shall be classified as structures.

Neither the final certificate of payment nor any provision in the Contract Documents nor partial or entire occupancy of the premises by the City shall constitute an

acceptance of work not done in accordance with the Contract Documents or relieve the Contractor of liability in respect to any express warranties or responsibility for faulty materials or workmanship.

53. CONFLICTING CONDITIONS

Any provisions in any of the Contract documents which may be in conflict or inconsistent with any of the paragraphs in these General Conditions shall be void to the extent of such conflict or inconsistency.

54. NOTICE AND SERVICE THEREOF

Any notice to any Contractor from the City relative to any part of this Contract shall be in writing and considered delivered and the service thereof completed, when said notice is posted, by certified or registered mail, to the said Contractor at his last given address, or delivered in person to the said Contractor or his authorized representative on the work.

55. PROVISIONS REQUIRED BY LAW DEEMED INSERTED

Each and every provision of law and clause required by law to be inserted in this Contract shall be deemed to be inserted herein and the Contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party the Contract shall forthwith be physically amended to make such insertion or correction.

56. SUSPENSION OF WORK

Should the City be prevented or enjoined from proceeding with work either before or after the start of construction by reason of any litigation or other reason beyond the control of the City, the Contractor shall not be entitled to make or assert claim for damage by reason of said delay; but time for completion of the work will be extended to such reasonable time as the City may determine will compensate for time lost by such delay with such determination to be set forth in writing.

57. MAINTENANCE OPERATIONS

The Contractor shall schedule and execute his work so as to avoid interruption of existing services or operations, public or private. The Contractor will use every

precaution to prevent damage of any existing facility, and in the event of damage will, at no expense to the City, repair and otherwise make good any damage to facilities resulting from his operations in connection with the Contract. The Contractor will take whatever measures necessary to accurately determine the exact location of existing underground facilities prior to commencing construction.

58. MAINTENANCE

The Contractor will be required to maintain all work done by him in a first-class condition for sixty (60) days after the same has been completed as a whole, and the Citys have notified the Contractor in writing that the work has been finished to their satisfaction. The retained percentage will not be due or payable to the Contractor until the sixty (60) day maintenance period is up.

59. PROTECTION AND RESTORATION OF PROPERTY

- a. The Contractor shall not enter upon private property for any purpose without first obtaining permission, and it shall use every precaution necessary to prevent damage or injury to any public or private property, trees, fences, monuments, underground structures, etc., on and adjacent to the site of the work. Contractor shall protect carefully, from disturbance or damage, all land monuments and property marks until an authorized agent has witnessed or otherwise referenced their location, and shall not remove them until directed.
- b. Except as specifically provided in the Contract Documents, the Contractor shall not do any work that would affect any railway track, pipeline, telephone, telegraph, or electric or transmission line, or other structure nor enter upon the right-of-way or other lands appurtenant thereto, until authority therefore has been secured from the proper parties. The Contractor shall not be entitled to any extension of time or any extra compensation on account of any postponement, interference, or delay resulting from his requirement, except as specifically provided in the Contract.
- c. The Contractor shall be responsible for all damage or injury to property of any character resulting from any act, omission, neglect, or misconduct in its manner or method of executing said work, or due to the non-execution of said work, or at any time due to defective work or materials, and Contractor shall not be released from said responsibility until the work shall have been completed and accepted.

- d. When or where any direct or indirect damage or injury is done to public or private property by, or on account of any act, omission, neglect, or misconduct in the execution of the work, or in consequence of the non-execution thereof on the part of the Contractor, it shall restore at its own expense, such property to a condition similar or equal to that existing before such damage or injury was done, by repairing, rebuilding, or otherwise restoring, as may be directed, or Contractor shall make good such damage or injury in an acceptable manner.

60. INDEMNIFICATION

To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless City and City, and the elected officials, officers, directors, members, partners, employees, agents, consultants, attorneys and Subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of City, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, provided that any such claim, cost, loss, or damage 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 by only to the extent caused by any negligent act or omission of Contractor, any Subcontractor, and Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable, regardless of whether or not caused in part by any negligence or omission of a person or entity indemnified hereunder or whether liability is imposed upon such indemnified party by Laws and Regulations regardless of the negligence of any such person or entity. If through the negligent act or omission on the part of Contractor, any other Contractor or any Subcontractor shall suffer loss or damage on the Work, Contractor shall settle with such Contractor or Subcontractor by agreement or arbitration if such other Contractor or Subcontractor will so settle. If such other Contractor or Subcontractor shall assert any claim against City and/or City on account of any damage alleged to have been sustained, City shall notify Contractor, who shall indemnify and save harmless City and City against any such claims, including but not limited to Attorney fees and costs.

61. USE AND OCCUPANCY PRIOR TO ACCEPTANCE BY CITY

The Contractor agrees to the use and occupancy of a portion or unit of the Project before formal acceptance by the City, provided the City:

- (a) Secures written consent of the Contractor except in the event, in the opinion of the City, the Contractor is chargeable with unwarranted delay in completing the Contract requirements;
- (b) Secures consent of the Surety;
- (c) Secures endorsement from the insurance carrier(s) permitting occupancy of the building or use of the Project during the remaining period of construction; or
- (d) When the Project consists of more than one building, and one of the buildings is occupied, secures permanent fire and extended coverage insurance, including a permit from the insurance carrier to complete construction.

62. INTEREST OF FEDERAL, STATE OR LOCAL OFFICIALS

No Federal, State or Local official shall be admitted to any share or part of this Contract or to any benefit that may arise therefrom, but this provision shall not be construed to extend to this Contract if made with a corporation for its general benefit.

63. OTHER PROHIBITED INTERESTS

No official of the City who is authorized in such capacity and on behalf of the City to negotiate, make, accept or approve or to take part in negotiating, making, accepting, or approving any architectural, City inspection, construction or material supply Contract or any Subcontract in connection with the construction of the Project, shall become directly or indirectly interested personally in this Contract or in any part hereof. No officer, employee, architect, attorney, City or inspector of or for the City who is authorized in such capacity and on behalf of the City to exercise any legislative, executive, supervisory or other similar functions in connection with the construction of the Project, shall become directly or indirectly interested personally in this Contract or in any part thereof, any material supply Subcontract, insurance Contract, or any other Contract pertaining to the Project.

64. USE OF CHEMICALS

All chemicals used during Project construction or furnished for Project operation,

whether herbicide, pesticide, disinfectant, polymer, reactant or of other classification, must show approval of either E.P.A. or U.S.D.A. Use of all such chemicals and disposal of residues shall be in strict conformance with instructions.

65. MAINTENANCE OF TRAFFIC

Traffic is to be maintained on all roads and streets which must be crossed by lines. If the open-cut method is used, two separate cuts must be made leaving one lane open to traffic at all times.

The Contractor shall notify the City and D.O.T. prior to performing any work which disrupts normal flow of traffic, and shall utilize appropriate warning signs, flagmen and other procedures necessary to ensure safety and minimize inconvenience to the public.

66. SPECIAL HAZARDS

The Contractor's and his Subcontractor's Public Liability and Property Damage Insurance shall provide adequate protection against the following special hazards: excavation, shoring, underpinning, blasting, and explosion to the extent to which such risks are present.

67. CITY'S DIRECTIONS REGARDING WORK PARTIALLY COMPLETED

The City may direct that any section or part of the Project considered to be in serviceable condition be placed in use or operation, even though not entirely completed. Such use or operation shall not be held to be an acceptance of the work, or section thereof, so placed in operation, or a waiver of any of the provisions of the Contract Documents.

68. CITY'S EXAMINATION OF WORK COMPLETED

At the request of the City, the Contractor shall, at any time before final acceptance of the work, remove, or uncover such portions of the finished work as may be directed. After examination the Contractor shall restore said portions of the work to the standard required by the Specifications. Should the work thus exposed or examined prove acceptable, the uncovering or removing, and the replacing or making good of the parts removed, shall be paid for as Extra Work, but should the work so exposed or examined prove unacceptable, the uncovering or removing, and the restoration shall be at the Contractor's expense.

69. CITY'S LIABILITY

In carrying out any of the provisions of this Contract or in exercising any power or authority granted to him by it, there shall be no liability upon the City or its authorized agents and representatives, it being understood that in such matters he acts solely as the City's representative.

70. EROSION AND SEDIMENT CONTROL

Care shall be exercised in grading operations to minimize erosion. Temporary sediment control structures will be erected at the City's direction where necessary. Also Contractor shall comply with the State of Georgia and any applicable local regulations for erosion control.

71. ACCEPTANCE OF FINAL PAYMENT CONSTITUTES RELEASE

The acceptance by the Contractor of final payment shall be and shall operate as a release to the City of all claims and all liability to the Contractor for all things done or furnished in connection with this work and for every act and neglect of the City and others relating to or arising out of this work. No payment, however, final or otherwise, shall operate to release the Contractor or his sureties from any obligations under this Contract or the Performance and Payment Bond.

72. CITY'S RIGHT TO SUSPEND WORK

The City shall have the authority to suspend the work, wholly or in part as he may deem necessary because of conditions unsuitable for proper prosecution of the work or failure on the part of the Contractor to carry out the provisions or to meet the specified requirements. The Contractor shall not suspend operations without the City's permission.

73. TIME FOR COMPLETION AND LIQUIDATED DAMAGES

It is hereby understood and mutually agreed, by and between the Contractor and the City, that the date of beginning and the time for completion as specified in the Contract Documents of the work to be done hereunder are ESSENTIAL CONDITIONS of this Contract; and it is further mutually understood and agreed that the work embraced in this Contract shall be commenced on a date to be specified in the "NOTICE TO PROCEED."

The Contractor agrees that said work shall be prosecuted regularly, diligently, and uninterruptedly at such rate of progress as will insure full completion thereof within the time specified. It is expressly understood and agreed, by and between the Contractor and the City, that the time for the completion of the work described herein is a reasonable time for the completion of the same, taking into consideration the average climatic range and usual industrial conditions prevailing in this locality.

If the said Contractor shall neglect, fail or refuse to complete the work within the time herein specified, or any proper extension thereof granted by the City, then the Contractor does hereby agree, as a part consideration for the awarding of this Contract, to pay to the City the amount specified in the Contract, not as a penalty but as liquidated damages for such breach of Contract as hereinafter set forth, for each and every calendar day that the Contractor shall be in default after the time stipulated in the Contract for completing the work.

The said amount is fixed and agreed upon by and between the Contractor and the City because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages the City would in such event sustain, and said amount is agreed to be the amount of damages which the City would sustain and said amount shall be retained from time to time by the City from current periodical estimates.

It is further agreed that time is of the essence of each and every portion of this Contract and of the specifications wherein a definite and certain length of time is fixed for the performance of any act whatsoever; and where, under the Contract, an additional time is allowed for the completion of any work, the new time limit fixed by such extension shall be of the essence of this Contract. Provided, that the Contractor shall not be charged with liquidated damages or any excess cost when the City determines that the Contractor is without fault and the Contractor's reasons for the time extension are acceptable to the City; provided, further, that the Contractor shall not be charged with liquidated damages or any excess cost when the delay in completion of the work is due:

- (a) To any preference, priority or allocation order duly issued by the Government;
- (b) To unforeseeable cause beyond the control and without the fault or negligence of the Contractor, including but not restricted to, acts of God, or of the public enemy, acts of the City, acts of another Contractor in the

performance of a Contract with the City, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and severe weather; and

(c) To any delays of Subcontractors or suppliers occasioned by any of the causes specified in subsections (a) and (b) of this article.

Provided, further, that the Contractor shall, within ten (10) calendar days from the beginning of such delay, unless the City shall grant a further period of time prior to the date of final settlement of the Contract, notify the City, in writing, of the causes of the delay, who shall ascertain the facts and extent of the delay, and notify the Contractor within a reasonable time of its decision in this matter.

74. INCLEMENT WEATHER

The following bad weather calendar days shall be anticipated and included in the contractual time period given for project completion. The Contractor's request for additional time due to weather shall only be granted for days beyond those listed below, considering the full term of the contract. The burden of proof and documentation for such request for additional time shall rest solely upon the Contractor. Requests shall be submitted to the City on a monthly basis with progress payment request. Failure to submit documentation on a monthly basis may result in requests for weather day extensions to be rejected.

January 10 days	July 4 days
February 10 days	August 2 days
March 7 days	September 2 days
April 6 days	October 3 days
May 4 days	November 5 days
June 3 days	December 9 days

Data submitted in support of a request for contract extension due to inclement weather shall include, but not be limited to: documentation of impact on the critical path; daily high and low temperatures at the jobsite; daily rainfall amount at the jobsite; time that rainfall started and stopped; documented snow or ice accumulation; specific work impacted by inclement weather and date stamped photos of the impacted work or work area. A rain gauge and thermometer shall be placed at the jobsite to accurately record rainfall and temperature data.

Contractor shall maintain a Daily Record of weather conditions and their effect on the work progress. These daily records shall be used to verify any claims for weather delays.

75. CLAIMS AND DISPUTES

City's Decision Required: All claims shall be referred to the City for decision. A written decision by City shall be required as a condition precedent to any exercise by City or Contractor of any rights or remedies whether may otherwise have under the Contract Documents or by Laws and Regulations in respect of such Claims.

Notice: Written notice stating the general nature of each Claim shall be delivered by the claimant to City and the other party to the Contract promptly (but in no event later than fourteen (14) days after the start of the event giving rise thereto. The responsibility to substantiate a Claim shall rest with the party making the Claim. Notice of the amount or extent of the Claim, with written supporting data shall be delivered to the City and the other party to the Contract within twenty-one (21) days (and monthly thereafter for continuing events) after the start of such event (unless City allows additional time for claimant to submit additional or more accurate data in support of such Claim. The opposing party shall submit any response to City and the claimant within thirty (30) days after receipt of the claimant's last submittal (unless City allows additional time).

City's Action: City will review each Claim and, within thirty (30) days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any, take one of the following actions in writing:

- (a) Deny the Claim in whole or in part;
- (b) Approve the Claim in whole or in part; or
- (c) Notify the parties that the City is unable to resolve the Claim if, in the City's sole discretion, it would be inappropriate for the City to do so. For purposes of further resolution of the Claim, such notice shall be deemed a denial.

In the event that City does not take action on a Claim within said thirty (30) days, the Claim shall be deemed denied.

City's written action hereunder will be final and binding upon City and Contractor.

If an issue remains unresolved after completing all procedures set forth above, either party may exercise such rights or remedies as they may have under the laws of the State of Georgia. No suit or action shall be commenced hereunder by any claimant other than in the Superior Court of Cobb County, Georgia. This Agreement shall be interpreted under the laws of the State of Georgia. Jurisdiction and venue shall lie exclusively in the Superior Court of Cobb County, Georgia.

76. INDEPENDENT CONTRACTOR STATUS

- (a) The Parties intend that the Contractor be engaged as an independent Contractor of the City. Nothing contained in this Contract will be construed to create the relationship of employer and employee, principal and agent, partnership or joint venture, or any other fiduciary relationship.
- (b) The Contractor may not act as agent for, or on behalf of, the City, or to represent the City, or bind the City in any manner.
- (c) The Contractor will not be entitled to worker's compensation, retirement, insurance or other benefits afforded to employees of the City.

77. ENTIRE AGREEMENT

The Contract Documents, and any accompanying appendices, duplicates, or copies, constitutes the entire agreement between the Parties with respect to the subject matter of this Agreement, and supersedes all prior negotiations, agreements, representations, and understandings of any kind, whether written or oral, between the Parties, preceding the date of this Agreement.

78. AMENDMENT

This Agreement may be amended only by written agreement duly executed by an authorized representative of each party.

79. SEVERABILITY

If any provision or provisions of this Contract shall be held unenforceable for any reason, then such provision shall be modified to reflect the parties' intention. If modification is not possible, the provision shall be severed. All remaining provisions of this Contract shall remain in full force and effect for the duration of this Contract.

80. NO WAIVER

A failure or delay in exercising any right, power or privilege in respect of this Contract will not be presumed to operate as a waiver, and a single or partial exercise of any right, power or privilege will not be presumed to preclude any subsequent or further exercise, of that right, power or privilege or the exercise of any other right, power or privilege.

81. VENUE AND JURISDICTION

This Agreement is governed by and construed in accordance with the laws of the State of Georgia without reference to any principles of conflicts of laws, which might cause the application of the laws of another state. Any legal action instituted by either party arising out of this Contract shall only be brought, tried and resolved in the Superior Court of Cobb County, Georgia. EACH PARTY HEREBY CONSENTS TO THE EXCLUSIVE PERSONAL JURISDICTION AND VENUE OF THE SUPERIOR COURT OF BARTOW COUNTY, GEORGIA.

82. NONDISCRIMINATION

Contractor will not discriminate against any person employed or applying for employment concerning the performance of Contractor's responsibilities under this Contract. This discrimination prohibition will apply to all matters of initial employment, tenure, and terms of employment, or otherwise with respect to any matter directly or indirectly relating to employment concerning race, color, religion, national origin, age, sex, sexual orientation, ancestry, disability that is unrelated to the individual's ability to perform the duties of a particular job or position, height, weight, marital status, or political affiliation. Contractor will post, where appropriate, all notices related to nondiscrimination as may be required by applicable law.

83. E-VERIFY COMPLIANCE

The Contractor and any Subcontractors thereof, are required and hereby agree to use a federal immigration verification system to determine the work eligibility status of all employees performing services under this Agreement and shall execute Affidavits to that effect on the forms provided in Section 2 of the Contract Documents. A federal immigration system means the electronic verification of the work authorization program authorized by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. 1324a, known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of an employee.

84. BENEFIT OF PARTIES

This Contract is entered into solely for the benefit of the Parties. No third party will be deemed a beneficiary of this Contract, and no third party will have the right to make any claim or assert any right under this Contract.

END OF SECTION

SECTION FOUR

MEASUREMENT AND PAYMENT

1. MEASUREMENT AND PAYMENT

Only those items listed in the proposal shall be considered for payment unless the Owner has approved “extra” work in accordance with the Contract Documents and has so advised the Contractor before the work is actually performed. However, the fact that an item is listed in the proposal, or described in the specifications does not obligate the City to any item or quantity. The City may increase or decrease the quantity of any item as the situation warrants.

The unit price bid for each payment item shall be full compensation for all labor, tools, equipment, and materials necessary to complete that item of work as shown in the Contract drawings and as described in the Contract Documents. Any and all materials, labor, equipment, etc., not listed in the proposal but furnished by the Contractor or required by the nature of the work, shall be considered as incidental to the payment items listed, and no additional payment will be made

For any item referred to by the term “Remove and replace,” only the actual material replaced shall be considered as a payment item.

The methods of construction for the project shall be as specified in the Georgia Department of Transportation, Standard Specifications, Construction of Transportation Systems, (most current edition at time of contract). The method of measurement and payment for work shall also be as specified in the Georgia DOT Specifications, unless modified by this section of the Contract Documents. In general, all portions of the Georgia DOT Specifications pertaining to construction shall govern construction on the project

unless stated or modified by the preceding Sections of the Contract Documents. In order to determine the construction requirements, and measurement and payment aspects of a bid item, most bid items have a "Ga. DOT Item Code #". The Item Code # has three numbers, a "-", and then four numbers. The first three numbers are the section number of the Georgia DOT specifications book where the construction requirements, measurement and payment aspects of that particular bid item is defined. The last four numbers are for organization of differing items in that section of the GA DOT Specifications, and do not reference a sub-section of the Specifications.

LUMP SUM: All Lump Sum items ("LS" as listed on the Bid Proposal Sheet) shall be paid for at the price indicated in the Bid. The lump sum bid price shall include furnishing all tools, labor, materials, equipment, methods, and incidentals necessary to complete the work for the specified bid item as detailed on the Plans, Specifications, and in the Project Manual. The Contractor is required to submit a Schedule of Values for each Lump Sum item.

SCHEDULE OF VALUES (Lump Sum Item Price Breakdown): Contractor shall submit a detailed price breakdown ("Schedule of Values") of all lump sum bid items indicated on the Bid Proposal Sheet. The price breakdown shall include specific item descriptions, quantities, unit prices and any other information required in sufficient detail to enable it to be used by Owner in reviewing and approving Contractor's progress pay estimates. In the event that the scope of work of a Lump Sum item either increases or decreases, and that should the quantities of any of the items of Lump Sum work be increased, the Contractor will be required to do the additional work at the unit price(s) stated in the Schedule of Values. Should the quantities be decreased, The Contractor also understands that payment will be made on actual quantities installed, at the unit at the unit price(s) stated in the Schedule of Values, and will make no claim for anticipated profits for any decrease in the quantities and that actual quantities will be determined upon completion of work, at which time adjustment will be made to the Lump Sum amount by direct increase or decrease. The Schedule of Values shall be subject to Owner approval.

END OF SECTION

Dellinger Park Pickleball Courts- Phase 1 Scorecard

1. Adherence to RFP Instructions	VENDOR 1	BASIS FOR SCORE
Timeliness	0	1-5pts Arrived by deadline receives all points
Completeness	0	1-5pts Completed sections in same order as RFP receives all points
Overall Quality & Level of Professionalism	0	1-5pts Technically compliant and attractive receives all points
Overall Response	0	1-5pts Overall quality very high receives all points
Average Score	0	
2. Company Information	VENDOR 1	BASIS FOR SCORE
Financial History, Credit Rating	0	1-3pts Proof of financial viability receives all points
Litigation record of Bidder	0	1-3pts Positive record will receive all points
Experience with Similar Projects	0	1-3pts Proof of similar sized and focused projects experience receives all points
Proximity of Bidder perm place of business	0	1-3pts Closer proximity to project as relates to bidders responsiveness to carry out contract receives all points
References	0	1-3pts Positive references from four provided (checked) receives all points
Resources pertaining to management, personnel, equipment	0	1-3pts Proven external partnerships receives all points
Average Score	0	
3. Fee Summary	VENDOR 1	BASIS FOR SCORE
Overall Cost	0	1 - 36pt
Itemized List	0	1 - 36pt
Average Score	0	
CRITERIA SCORES	WEIGHT	VENDOR 1 WEIGHTED SCORE
1. Adherence to RFP Instructions	20.00	
2. Company Information	18.00	
3. Fee Summary	72	
Total Score	100.00	