

Mayor

Derek Easterling

City Manager

Jeff Drobney, ICMA-CM

City Clerk

Lea Alvarez, CMC

**Council**

Madelyn Orochena

Tracey Viars

Pat Ferris

Antonio Jones

Anthony Gutierrez

City Council**Meeting Agenda**

December 2, 2024 6:30 PM

Council Chambers

(2529 J.O. Stephenson Avenue, Kennesaw, GA 30144)

Livestream: www.kennesaw-ga.gov/publicmeetings/

- 1. Invocation**
- 2. Pledge of Allegiance**
- 3. Call to Order**
- 4. Announcements**
- 5. Presentations**
 - A. Update: Taste of Kennesaw**

Update on the Taste of Kennesaw provided by Mike Everhart of the Kennesaw Business Association.
- 6. Public Comment/Business from the Floor**
- 7. Old Business**
- 8. New Business**
 - A. Resolution: Transfer 2022 SPLOST Funds**

Consideration of approval for a Resolution to transfer excess 2022 SPLOST funds to the Public Safety Facility SPLOST fund for an amount not to exceed \$7 million.
- 9. Committee and Board Reports**
 - A. Update: Kennesaw City Cemetery**

Year in Review to be provided by Lewis Bramlett, Chair of the Cemetery Preservation Commission.
- 10. Public Hearing(s)**

11. Consent Agenda

- A. **Minutes: November 12, 2024 Executive Session**
Approval of the November 12, 2024, City Council executive session minutes.
- B. **Minutes: November 12, 2024 Work Session**
Approval of the November 12, 2024, City Council work session minutes.
- C. **Minutes: November 18, 2024 Regular Meeting**
Approval of the November 18, 2024, City Council regular meeting minutes.
- D. **Resolution: City Clerk Contract Renewal**
Approval of a Resolution authorizing a contract renewal with the City Clerk.
- E. **Resolution: City Manager Contract Renewal**
Approval of a Resolution authorizing a contract renewal with the City Manager.
- F. **Resolution: City Hall Entrance Improvements**
Approval of a Resolution approving the bid and awarding the contract for City Hall Entrance Improvements to S.H. Creel Contracting, LLC.

12. General and Administrative

13. Public Safety

14. Information Technology

15. Public Works and Building Maintenance

- A. **Resolution: Right of Way Abandonment Process for 2995 and 2997 North Main Street**
Consideration of approval for a Resolution authorizing the start of the Right of Way Abandonment Process for 2995 and 2997 North Main Street.

16. Recreation and Culture

17. Community Development

18. Public Comment/Business from the Floor

19. City Manager's Report

- A. Reports, Discussions, and Updates

20. Mayor's Report

- A. Mayor and Council (re)appointments to Boards and Commissions. This item is for (re)appointments made by the Mayor to any Board, Committee, Authority, or Commission requiring an appointment to fill any vacancies, resignations, and to create or dissolve boards and commissions, as deemed necessary.

21. Council Reports & Discussions

22. Executive Session

Pursuant to the provisions of O.C.G.A 50-14-3, the City Council could, at any time during the meeting, vote to close the public meeting and move to executive session to discuss matters relating to litigation, legal actions and/or communications from the City Attorney; and/or personnel matters; and/or real estate matters.

23. Adjourn



Item Report

TO: The Honorable Mayor and City Council

FROM: Jeff Drobney, City Manager

DATE: December 2, 2024

TITLE: **Update: Taste of Kennesaw**
Update on the Taste of Kennesaw provided by Mike Everhart of the Kennesaw Business Association.

Summary:

Recommendation:

Fiscal Impact:

Attachments:
None



Item Report

TO: The Honorable Mayor and City Council
FROM: Jeff Drobney, City Manager
DATE: December 2, 2024
TITLE: **Resolution: Transfer 2022 SPLOST Funds**
Consideration of approval for a Resolution to transfer excess 2022 SPLOST funds to the Public Safety Facility SPLOST fund for an amount not to exceed \$7 million.

Summary:

The total estimated cost to complete the Public Safety Facility has increased from approximately \$8.8 million to approximately \$15.2 million. To address the unexpected cost increase, excess funds from the 2022 SPLOST account can be reallocated to the 2022 SPLOST Public Safety account.

Recommendation:

The City Manager recommends approval.

Fiscal Impact:

Funds will be transferred to budget line 310.4228.54.1507.

Attachments:

1. RES 2024 - 2022 SPLOST Transfer to Public Safety Facility Fund

**CITY OF KENNESAW
GEORGIA**

RESOLUTION NO. 2024-____, 2024

**RESOLUTION AUTHORIZING THE TRANSFER OF 2022 SPLOST EXCESS FUNDS
TO THE SPLOST 2022 PUBLIC SAFETY FACILITY ACCOUNT**

**BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF KENNESAW,
COBB COUNTY, GEORGIA, AS FOLLOWS:**

WHEREAS, the City Council has the authority to move SPLOST funds between accounts that are within the same referendum; and

WHEREAS, the 2022 SPLOST revenues have thus far exceeded expectations resulting in a \$328,902 average of excess funds monthly; and

WHEREAS, at 33 months into the 2022 SPLOST cycle the City has received 79% of the total original projected revenues, and with 39 months left in the cycle, the City expects continued growth in the excess fund balance; and

WHEREAS, due to the continued rising industry costs of construction and materials, the total estimated cost to complete the Public Safety Facility has increased by approximately \$6.4 million; and

WHEREAS, the City can address the unexpected cost increase by reallocating excess funds from the 2022 SPLOST account to the 2022 SPLOST Public Safety Facility account.

NOW THEREFORE, BE IT RESOLVED, the Kennesaw City Council authorizes the transfer of excess funds, not to exceed \$7 million, from the 2022 SPLOST account to the 2022 SPLOST Public Safety Facility account.

PASSED AND ADOPTED by the Kennesaw City Council on this ____ day of December 2024.

ATTEST:

CITY OF KENNESAW

Lea Alvarez, City Clerk

Derek Easterling, Mayor



Item Report

TO: The Honorable Mayor and City Council

FROM: Lea Alvarez, City Clerk

DATE: December 2, 2024

TITLE: **Update: Kennesaw City Cemetery**
Year in Review to be provided by Lewis Bramlett, Chair of the Cemetery Preservation Commission.

Summary:

Recommendation:

Fiscal Impact:

Attachments:
None



Item Report

TO: The Honorable Mayor and City Council
FROM: Lea Alvarez, City Clerk
DATE: December 2, 2024
TITLE: **Minutes: November 12, 2024 Executive Session**
Approval of the November 12, 2024, City Council executive session minutes.

Summary:

Recommendation:

Fiscal Impact:

Attachments:
None



Item Report

TO: The Honorable Mayor and City Council
FROM: Lea Alvarez, City Clerk
DATE: December 2, 2024
TITLE: **Minutes: November 12, 2024 Work Session**
Approval of the November 12, 2024, City Council work session minutes.

Summary:

Recommendation:

Fiscal Impact:

Attachments:

1. 2024-11-12 City Council Work Session Minutes - DRAFT

**MINUTES OF CITY COUNCIL WORK SESSION MEETING
CITY OF KENNESAW
Council Chambers
(2529 J.O. Stephenson Avenue, Kennesaw, GA 30144)**

**Livestream: www.kennesaw-ga.gov/publicmeetings/
November 12, 2024
6:30 PM**

Present	Mayor Derek Easterling Mayor Pro Tem Antonio Jones Councilmember Madelyn Orochena Councilmember Tracey Viars Councilmember Pat Ferris Councilmember Anthony Gutierrez City Clerk Lea Alvarez Assistant City Manager Marty Hughes City Attorney Randall Bentley, Sr.
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1. Invocation
2. Pledge of Allegiance
3. Call to Order

Mayor Easterling called the meeting to order at 6:30 p.m.

4. Announcements
5. Presentations
6. Old Business
7. New Business

A. **Resolution: Master Fee Schedule Updates**

Consideration for approval of a Resolution to update various portions of the Master Fee Schedule.

City Clerk Lea Alvarez presented a resolution updating various portions of the Master Fee Schedule. Ms. Alvarez provided an overview of the proposed amendments.

After receiving confirmation from the Council, Mayor Easterling suggested moving the item to the Consent Agenda for the regular meeting.

8. Committee and Board Reports
9. Public Hearing(s)

A. Ordinance: Unified Development Code Text Amendment

Consideration for approval of a text amendment request as submitted by the City of Kennesaw. Said request is to amend the Unified Development Code, Appendix A, Chapter 2 "Zoning Districts", Section 2.03.00 and Unified Development Code, Appendix A, Chapter 8 "Boards and Agencies", Section 8.04.00 of said chapters regarding public art exhibits and the City of Kennesaw Art and Culture Commission as submitted by the City of Kennesaw. Case #MISC2024-03

Planning and Zoning Administrator Darryl Simmons presented an ordinance to amend the Unified Development Code, Appendix A, Chapter 2 "Zoning Districts," Section 2.03.00 and Unified Development Code, Appendix A, Chapter 8 "Boards and Agencies," Section 8.04.00 of said chapters regarding public art exhibits and the City of Kennesaw Art and Culture Commission.

Councilmember Ferris mentioned that the Council typically ratifies the appointments of any boards or committees that are created, but in the proposed ordinance, the Kennesaw Public Art Advisory Committee will be appointed by the City Manager. He asked the Council their thoughts on applying the ratification process to the proposed Advisory Committee. Overall, the Council decided to leave the process as currently written in the ordinance.

Mr. Simmons noted the first public hearing for this item was at the November 6, 2024, Planning Commission meeting, which unanimously recommended approval. The second and final public hearing for the text amendment will be held on Monday, November 18, 2024, at 6:30 p.m. at the regular City Council meeting. The public hearings were properly advertised.

B. Ordinance: Rezoning Request for 2112 & 2114 Old 41 Highway, 1620 North Roberts Road

Consideration for approval of an ordinance authorizing a rezoning request submitted by Fabric Housing Acquisitions, LLC, for the property located at 2112 & 2114 Old 41 Hwy, and 1620 N. Roberts Rd (20017501190, 20017501210, 20017500210, 20017400080). Case #RZ2024-04

Planning and Zoning Administrator Darryl Simmons spoke about a rezoning request submitted by Fabric Housing Acquisitions, LLC for the property located at 2112 and 2114 Old 41 Highway and 1620 North Roberts Road. Mr. Simmons noted this request is a master plan amendment and is the second request since its origin back in 2018. This amendment is to change previously approved conditions. After going through the staff analysis and ongoing discussions with the applicant, there were still some unresolved issues with the project, which led to staff's recommendation for denial of the application.

After the Planning Commission meeting, Mr. Simmons met with the applicant's attorney and received a letter requesting the Council postpone the hearing to the December 9, 2024, work session and the December 16, 2024, regular meeting. The intent of this postponement is for the applicant to meet with staff and solve some of the outstanding

items that were not accomplished in the previous agreements and to work on a more detailed site plan.

10. Consent Agenda

A. Minutes: October 28, 2024 Work Session

Approval of the October 28, 2024, City Council work session minutes.

B. Minutes: November 4, 2024 Regular Meeting

Approval of the November 4, 2024, City Council regular meeting minutes.

11. General and Administrative

12. Public Safety

A. Crime Statistics: October 2024

Consideration to accept the October 2024 Crime Statistics.

Chief Bill Westenberger presented the October 2024 crime statistics [see **Exhibit A**].

13. Information Technology

14. Public Works and Building Maintenance

A. Resolution: Cobb County Water and Sewer Easement Agreements

Consideration to approve a Resolution authorizing Water and Sewer Easement Agreements with Cobb County Water System

Public Works Director Ricky Stewart presented a resolution authorizing water and sewer easement agreements with Cobb County Water System. Mr. Stewart shared that the developer of Ross Pointe, a proposed development on McCollum Parkway, has requested a water and sewer easement for Cobb County Water System. The closest tie-in for the development is on Lee Court, which is separated from it by a city park.

Mayor Pro Tem Jones asked how long the park would be out of commission. Mr. Stewart stated probably two to three months, but there is not a schedule that has been put together yet.

After receiving confirmation from the Council, Mayor Easterling suggested moving the item to the Consent Agenda for the regular meeting.

B. Resolution: Emergency Stormwater Repair

Consideration to approve a Resolution authorizing a proposal for Emergency Stormwater Repair from Proshot Concrete, Inc.

Public Works Director Ricky Stewart presented a resolution authorizing a proposal for emergency stormwater repair from Proshot Concrete, Inc. Shortly after Hurricane Helene, the owner of 2979 Pine Hill Drive reached out to Public Works about a storm drain that runs through their property. After evaluation, the bottom of the pipe is completely gone, and there are sections of exposed pipe. The City currently has a contract with Proshot Concrete, Inc., which is relining pipes throughout the City. Mr.

Stewart asked the company if they could look at the pipe and provide a proposal for reline. He considers it an emergency repair because it is causing damage to private property and does not want it to pose a safety risk. Proshot Concrete, Inc. offered two different methods of repair, with the lowest cost being \$96,500, which is what Mr. Stewart is requesting the Council authorize.

Councilmember Ferris stated he hears the urgency and the need for repair, but does not see it as an emergency. He thinks a better way to approach this issue is as an addendum to the current contract. Mr. Stewart said the problem with making a change order is that there is a maximum percentage that you can change an original contract, which is about 24 - 25%. The proposed cost exceeds that percentage.

Mayor Pro Tem Jones asked about various options to repair the pipe, and Mr. Stewart shared that the proposed relining was the least intrusive and expensive option.

Councilmember Ferris requested this item remain where it is on the agenda for the regular meeting.

15. Recreation and Culture

16. Community Development

A. Final Plat Application: 2652 South Main Street

Consideration for approval of a final plat application submitted by Kennesaw Development Owner, LLC for 2652 S. Main St. (Parcel 20016700020); this application intends to revise the final plat to include sewer and water easements. Case #FP2024-05

Assistant Planning and Zoning Administrator Chanelle Campbell presented a final plat application submitted by Kennesaw Development Owner, LLC for 2652 South Main Street. The application is to revise the final plat that was approved and recorded in 2022. This revised plat notates updated sewer and water easements as requested by Cobb County Water System. The Plan Review Committee, along with Cobb Fire and Cobb Water, have reviewed the plat and deemed it in compliance.

After receiving confirmation from the Council, Mayor Easterling suggested moving the item to the Consent Agenda for the regular meeting.

B. Discussion: Presentation of concepts for downtown parcels (2831 South Main, 2861 North Main, 2871 North Main and 2881 North Main).

Economic Development Director Luke Howe introduced Dale Hughes, the owner of 2831 South Main, 2861 South Main, 2871 North Main, and 2881 North Main Street, to give a presentation on his concepts for the properties. Mr. Howe shared that for the last year or two, the City and Mr. Hughes have worked together to try to figure out how to get the financing necessary to proceed, but staff has arrived at the fact that the financing won't happen any time soon unless the Kennesaw Downtown Development Authority and the City get involved. Mr. Howe's plan was to allow Mr. Hughes the opportunity to present his plan for the properties tonight. At the next work session on

November 25, have Raymond James, the City's financial advisor, give a brief on what the financing would look like and the risks involved, and on December 9, Mr. Howe would come back and give his recommendation and share what other cities have done regarding similar projects. After giving the Council some time to think it over, in January, Mr. Howe would come back to ask for a decision on whether to proceed.

Mr. Hughes presented his concepts for the properties, including having Reformation Brewery as the anchor tenant at the corner of J.O. Stephenson Avenue and Main Street.

17. Public Comments

7:43 p.m. Floor Open for Public Comments

No comments.

7:44 p.m. Floor Closed for Public Comments

18. City Manager's Report

A. Reports, Discussions, and Updates

Mr. Hughes had nothing to report tonight.

19. Mayor's Report

A. Mayor and Council (re)appointments to Boards and Commissions. This item is for (re)appointments made by the Mayor to any Board, Committee, Authority, or Commission requiring an appointment to fill any vacancies, resignations, and to create or dissolve boards and commissions, as deemed necessary.

20. Council Reports & Discussions

Councilmember Ferris mentioned the Christmas lights in Depot Park are in and look amazing.

Mayor Pro Tem Jones mentioned Veterans Day and asked if information on who has served in Kennesaw could be compiled and recognized somehow.

Councilmember Viars cannot believe we are already so close to A Day with Santa!

A. **Public Comment: Work Sessions**

Consideration to approve the continuation of the public comment section(s) for work sessions.

Mayor Easterling stated this item would be discussed and voted on at the regular meeting.

21. Executive Session

Pursuant to the provisions of O.C.G.A 50-14-3, the City Council could, at any time during the meeting, vote to close the public meeting and move to executive session

to discuss matters relating to litigation, legal actions and/or communications from the City Attorney; and/or personnel matters; and/or real estate matters.

Motion by Councilmember Gutierrez to enter into Executive Session as allowed by O.C.G.A § 50-14-3 for the purpose of discussing land. Motion seconded by Councilmember Viars.

Vote taken, motion unanimously approved 5-0. Motion passed.

7:46 p.m. Recess to Executive Session

The Mayor, City Council, Assistant City Manager, City Clerk, Deputy City Clerk, Economic Development Director, and Assistant City Attorney attended the Executive Session.

7:54 p.m. Reconvene to Open Session

Councilmember Gutierrez read the Council back into Open Session and directed the Mayor and City Council to execute an affidavit in compliance with O.C.G.A § 50-14-4. Motion seconded by Councilmember Viars.

Vote taken, motion unanimously approved 5-0. Motion passed.

22. Adjourn

Mayor Easterling adjourned the meeting at 7:53 p.m. The regular meeting will be held on Monday, November 18, 2024, at 6:30 p.m. in the Council Chambers. The public is encouraged to attend.

Lea Alvarez, City Clerk

Names and Addresses will be disclosed in the Permanent Minutes of the
City of Kennesaw

PLEASE MAKE SURE YOUR NAME IS LEGIBLE AND CLEAR

**City Council Work Session
11/12/2024
Public Comment Sign-in**

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DRAFT



Item Report

TO: The Honorable Mayor and City Council
FROM: Lea Alvarez, City Clerk
DATE: December 2, 2024
TITLE: **Minutes: November 18, 2024 Regular Meeting**
Approval of the November 18, 2024, City Council regular meeting minutes.

Summary:

Recommendation:

Fiscal Impact:

Attachments:

1. 2024-11-18 City Council Minutes - DRAFT

**MINUTES OF CITY COUNCIL MEETING
CITY OF KENNESAW
Council Chambers
(2529 J.O. Stephenson Avenue, Kennesaw, GA 30144)**

**Livestream: www.kennesaw-ga.gov/publicmeetings/
November 18, 2024
6:30 PM**

Present	Mayor Derek Easterling Mayor Pro Tem Antonio Jones Councilmember Madelyn Orochena Councilmember Tracey Viars Councilmember Pat Ferris Councilmember Anthony Gutierrez City Clerk Lea Alvarez City Manager Jeff Drobney City Attorney Randall Bentley, Sr.
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1. Invocation

City Attorney Randall Bentley, Sr. led the invocation.

2. Pledge of Allegiance

Scout Troop #422 led the Pledge of Allegiance.

3. Call to Order

Mayor Easterling called the meeting to order at 6:33 p.m.

4. Announcements

5. Presentations

6. Public Comment/Business from the Floor

6:33 p.m. Floor Open for Public Comments

No comments.

6:34 p.m. Floor Closed for Public Comments

7. Old Business

8. New Business

9. Committee and Board Reports

10. Public Hearing(s)

A. Ordinance: Unified Development Code Text Amendment

Consideration for approval of a text amendment request as submitted by the City of Kennesaw. Said request is to amend the Unified Development Code, Appendix A, Chapter 2 "Zoning Districts", Section 2.03.00 and Unified Development Code, Appendix A, Chapter 8 "Boards and Agencies", Section 8.04.00 of said chapters regarding public art exhibits and the City of Kennesaw Art and Culture Commission as submitted by the City of Kennesaw. Case #MISC2024-03

Zoning Administrator Darryl Simmons presented an ordinance to amend the Unified Development Code, Appendix A, Chapter 2, "Zoning Districts," Section 2.03.00 and Unified Development Code, Appendix A, Chapter 8, "Boards and Agencies," Section 8.04.00 of said chapters. Mr. Simmons noted that keeping the Art and Culture Commission afloat, as well as following the process for public art exhibits, had become arduous. The original intent of the ordinance in 2013 was to have a regulatory process for the review of art, but art has since grown into a downtown amenity and a way to market the City. The result of this proposal would be the dissolution of the current Art and Culture Commission and the process would be restructured to where public art exhibits are reviewed by staff and approved by the City Manager's office. Additionally, a Kennesaw Public Art Advisory Committee will be created that will assist the City in propelling and advocating for the arts program. The new advisory committee will meet as needed and will be vetted by the City Manager's office. Mr. Simmons emphasized that City staff would provide updates to the City Council on proposed art exhibits.

The Planning Commission held a public hearing at their November 6, 2024, regular meeting and recommended approval.

Motion by Councilmember Viars to approve [Ordinance No. 2024-09](#) amending the Unified Development Code, Appendix A, Chapter 2, "Zoning Districts," Section 2.03.00 and Unified Development Code, Appendix A, Chapter 8, "Boards and Agencies," Section 8.04.00 of said chapters as presented. Seconded by Councilmember Gutierrez.

6:37 p.m. Floor Open for Public Comments

No comments.

6:38 p.m. Floor Closed for Public Comments

Mayor Pro Tem Jones asked if meetings of the Advisory Committee would be subject to the Open Meetings Act. Mr. Simmons said staff would follow proper meeting protocols for the Committee's meetings.

Vote taken, motion unanimously approved 5-0. Motion passed.

B. Ordinance: Rezoning Request for 2112 & 2114 Old 41 Highway, 1620 North Roberts Road

Consideration for approval of an ordinance authorizing a rezoning request submitted by Fabric Housing Acquisitions, LLC, for the property located at 2112 & 2114 Old 41 Hwy, and 1620 N. Roberts Rd (20017501190, 20017501210, 20017500210, 20017400080). Case #RZ2024-04

Assistant Zoning Administrator and Planner Chanelle Campbell presented a request to postpone a rezoning request for 2112, 2114 Old 41 Highway, and 1620 North Roberts Road submitted by Fabric Housing Acquisitions, LLC to the December 9, 2024, City Council work session and the December 16, 2024, City Council regular meeting. Ms. Campbell shared that on November 8, 2024, Zoning staff received a formal request from the legal representative of the applicant to postpone the application until the aforementioned City Council meeting dates. The application seeks to amend zoning conditions approved under ordinances #2018-10 and #2022-09. The request was received after the Planning Commission's regular meeting held on November 6, 2024, where the Commission voted 3-2 to approve the request with conditions. City staff had recommended denial of the request as submitted and has been meeting with the applicant to resolve outstanding concerns before being considered by the Mayor and City Council. All public notice requirements and procedures were completed in preparation for tonight's public hearing. Updated public notice signs with the new dates will be placed on the property and updated, written notices will be mailed to adjacent property owners.

Attorney Kevin Moore, of Moore Ingram Johnson & Steele LLP and representative for the applicant, provided a few words to the Council. Mr. Moore shared his appreciation for the Council's consideration to postpone the application to the December meetings. The applicant and staff were able to have a productive conversation regarding the City's expectations for the project earlier in the day.

Motion by Councilmember Orochena to postpone the rezoning request submitted by Fabric Housing Acquisitions, LLC for the property located at 2112 and 2114 Old 41 Highway and 1620 North Roberts Road to the December 9, 2024, City Council work session and the December 16, 2024, City Council regular meeting. Seconded by Councilmember Viars.

6:42 p.m. Floor Open for Public Comments

No comments.

6:43 p.m. Floor Closed for Public Comments

Vote taken, motion unanimously approved 5-0. Motion passed.

11. Consent Agenda

A. Minutes: October 28, 2024 Work Session

Approval of the October 28, 2024, City Council work session minutes.

- B. **Minutes: November 4, 2024 Regular Meeting**
Approval of the November 4, 2024, City Council regular meeting minutes.
- C. **Resolution: Master Fee Schedule Updates**
Consideration for approval of a Resolution to update various portions of the Master Fee Schedule.

Resolution No. 2024-53

- D. **Resolution: Cobb County Water and Sewer Easement Agreements**
Consideration to approve a Resolution authorizing Water and Sewer Easement Agreements with Cobb County Water System

Resolution No. 2024-54

- E. **Final Plat Application: 2652 South Main Street**
Consideration for approval of a final plat application submitted by Kennesaw Development Owner, LLC for 2652 S. Main St. (Parcel 20016700020); this application intends to revise the final plat to include sewer and water easements. Case #FP2024-05

Motion by Councilmember Gutierrez to approve the Consent Agenda engross.
Seconded by Councilmember Viars.

Vote taken, motion unanimously approved 5-0. Motion passed.

12. General and Administrative

13. Public Safety

- A. **Crime Statistics: October 2024**
Consideration to accept the October 2024 Crime Statistics.

Captain Kevin Mitchell presented the October 2024 crime statistics [See **Exhibit A**].

Motion by Councilmember Ferris to accept the October 2024 crime statistics as presented. Seconded by Councilmember Orochena.

Vote taken, motion unanimously approved 5-0. Motion passed.

14. Information Technology

15. Public Works and Building Maintenance

- A. **Resolution: Emergency Stormwater Repair**
Consideration to approve a Resolution authorizing a proposal for Emergency Stormwater Repair from Proshot Concrete, Inc.

Public Works Director Ricky Stewart presented a resolution authorizing a proposal for emergency stormwater repair from Proshot Concrete, Inc. Three weeks ago, the owner of 2979 Pine Hill Drive notified Public Works about an issue she was having with an exposed storm drain in her yard causing sinkholes. After inspection, staff noticed there

was no bottom to the pipe and the water flow was carrying soil away from around the pipe. The City currently has a contract with Proshot Concrete, Inc., so they went out and took a look to provide a proposal to repair the pipe. Proshot Concrete, Inc. provided two proposals for two different linings. Mr. Stewart recommended going with the lowest proposal, for \$96,500.00. He is making this request based on it being an emergency repair.

Motion by Councilmember Viars to approve [Resolution No. 2024-55](#) authorizing a proposal for emergency stormwater repair from Proshot Concrete, Inc., for \$96,500.00 as presented. Seconded by Councilmember Orochena.

Councilmember Ferris does not see this request as being an emergency. He sees it as urgent and necessary. His personal preference would have been to go through the typical bid process for this project.

Mayor Pro Tem Jones asked if the City had gone through the typical bid process if Mr. Stewart thinks we would have received a better price. Mr Stewart thinks the price is fair. For the last six or seven years when the City has bid stormwater pipe relining, Proshot Concrete, Inc. has typically submitted the lowest bid. Following the history of this particular bid, in Mr. Stewart's opinion, Proshot Concrete, Inc., most likely would have been the lowest bid as they have been for years.

Vote taken, motion approved 4-1 (Councilmember Ferris opposed). Motion passed.

16. Recreation and Culture

17. Community Development

18. Public Comment/Business from the Floor

6:49 p.m. Floor Open for Public Comments

ANDREW BRAMLETT (City Resident): Mr. Bramlett shared the story of Lemuel Preston Whitfield (See **Exhibit B**).

6:50 P.M. Floor Closed for Public Comments

19. City Manager's Report

A. Reports, Discussions, and Updates

Dr. Drobney introduced Anna Trapp, the City's new Assistant to the City Manager, to the Council and the public. Welcome, Anna!

20. Mayor's Report

- A. Mayor and Council (re)appointments to Boards and Commissions. This item is for (re)appointments made by the Mayor to any Board, Committee, Authority, or Commission requiring an appointment to fill any vacancies, resignations,

and to create or dissolve boards and commissions, as deemed necessary.

21. Council Reports & Discussions

Councilmember Gutierrez shared he was on a work trip last week to Boston, Massachusetts.

Councilmember Ferris takes great pleasure looking at the Depot lights around Christmastime. Every night, he sees people walking around and enjoying them!

Councilmember Orochena has been a regular donor at the Atlanta Blood Services and just recently donated again.

Mayor Pro Tem Jones visited a friend in Griffin and enjoyed the city.

Councilmember Viars welcomed Ms. Trapp and went to The Lacy ribbon cutting last weekend.

A. Public Comment: Work Sessions

Consideration to approve the continuation of the public comment section(s) for work sessions.

The Mayor and Council discussed the continuation of public comment at work sessions.

Mayor Easterling believed it was under-utilized.

Councilmember Ferris shared he tracked the usage and that only one work session had public comment. He suggested discontinuing the practice. In his mind, for the citizens, the regular meetings are the place for them to speak that has the most impact.

Mayor Pro Tem Jones enjoys hearing from the citizens before they take actions on items. He doesn't think having public comment during work sessions is disruptive.

Councilmember Gutierrez supports extending the use of public comment during work sessions.

Councilmember Orochena agrees with both Mayor Pro Tem Jones and Councilmember Gutierrez.

Councilmember Viars doesn't mind either way.

Mayor Easterling shared that having a public comment section during work sessions would continue for another two months and then be revisited again.

22. Executive Session

Pursuant to the provisions of O.C.G.A 50-14-3, the City Council could, at any time during the meeting, vote to close the public meeting and move to executive session

to discuss matters relating to litigation, legal actions and/or communications from the City Attorney; and/or personnel matters; and/or real estate matters.

23. Adjourn

Mayor Easterling adjourned the meeting at 6: 58 p.m. The next work session will be held on Monday, November 25, 2024, at 6:30 p.m. in the Council Chambers. The public is encouraged to attend.

Lea Alvarez, City Clerk

DRAFT



October 2024 Crime Statistics

Crimes	Oct 2024	Oct 2023	YTD (01/01/24 - 10/31/24)	YTD (01/01/23 - 10/31/23)
Assault Offenses	45	37	289	326
Motor Vehicle Theft	5	0	27	11
Burglary	3	3	31	26
Homicide Offenses	0	0	2	0
Larceny	11	16	117	146
Sex Offenses	0	3	14	19
Robbery	1	1	3	9
Total	65	60	483	537

	Oct 2024	Oct 2023	YTD (01/01/24 - 10/31/24)	YTD (01/01/23 - 10/31/23)
Dispatched Calls for Service	854	797	7,731	8,281
Self-Initiated Activity	1,276	865	10,560	10,052
Traffic Citations	586 (-95)	681	5,680 (-2,086)	7,766
Traffic Warnings*	630(+330)	300	6,098 (+3,487)	2,611
Arrests**	59	81	881	860

* Warnings do not include verbal warnings

** Arrests do not include juvenile arrests

	Oct 2024	Oct 2023	YTD (01/01/24 - 10/31/24)	YTD (01/01/23 - 10/31/23)
Auto Accidents	138 (+28)	110	1079 (+1)	1078
Accident W/ Injury	8 (+4)	4	87 (-23)	110
Hit and Run	20 (+7)	13	120 (-33)	153
Hit and Run W/ Injury	0	0	1	1
Person Hit by Auto W/ Injury	0 (-1)	1	5	5

Bill Westenberger
Chief of Police



Kennesaw Police Department
2539 J. O. Stephenson Ave., Kennesaw, GA, 30144
911 Call Center: (770) 422-2505
Criminal Investigations Division: (770) 429-4533



KENNESAW HISTORY

L P. Whitfield

Whitfield Place runs by the Turquoise Otter, and is named after Lemuel Preston Whitfield. He lived at the corner of Whitfield Place and Moon Station Road, just opposite Lazy Guy Distillery. A detective, he was connected to one of the most infamous murder cases in Atlanta history.

In 1913, Whitfield worked in Atlanta for the Pinkerton Detective Agency. He was hired as the chief investigator for the defense attorneys of Leo M. Frank, who were trying to prove his innocence. Frank, a Jewish factory superintendent, had been accused of murdering factory worker Mary Phagan. Whitfield would work to gather evidence Frank was innocent, but a tide of antisemitism would lead to Frank's conviction and eventual lynching. Until the day he died, Whitfield would believe in Frank's innocence.

Following the Frank case, Whitfield would work for William J. Burns, founder of the FBI. He became known for his work in catching bank robbers and forgers. At the time of his death in 1942, he was working for the GBI. His papers about Leo Frank are now in the American Jewish Archives.



L. P. Whitfield
January 4, 1942 *Atlanta Journal*

Presented by Andrew J. Bramlett at the November 18, 2024,
City of Kennesaw Mayor & Council Meeting

Names and Addresses will be disclosed in the Permanent Minutes of the
City of Kennesaw

PLEASE MAKE SURE YOUR NAME IS LEGIBLE AND CLEAR

Mayor & Council Regular Meeting

11/18/2024

Public Comment Sign-in

	Name	Address	Topic
1	<u>Andrew D. Bramlett</u>	<u>2990 Hammerfield Ct.</u>	<u>Local history</u>
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DRAFT



Item Report

TO: The Honorable Mayor and City Council
FROM: Lea Alvarez, City Clerk
DATE: December 2, 2024
TITLE: **Resolution: City Clerk Contract Renewal**
Approval of a Resolution authorizing a contract renewal with the City Clerk.

Summary:

The City Clerk's original contract was adopted by Resolution No. 2020-06 and most recently renewed by Resolution No. 2023-46. This contract renewal is for a term of three years.

Recommendation:

The Mayor recommends approval.

Fiscal Impact:

Attachments:

1. RES 2024 - City Clerk Contract Renewal
2. Exhibit A

**CITY OF KENNESAW
GEORGIA**

RESOLUTION NO. 2024-__, 2024

RESOLUTION AUTHORIZING CONTRACT RENEWAL FOR CITY CLERK

BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF KENNESAW, COBB COUNTY, GEORGIA, AS FOLLOWS:

WHEREAS, the City Clerk's current contract was adopted by Resolution No. 2023-46, 2023, for a two-year term; and

WHEREAS, the City Council authorizes an employment contract renewal with City Clerk Lea Alvarez as shown on Attachment A.

NOW THEREFORE, BE IT RESOLVED, the Kennesaw City Council does hereby authorize the employment contract for City Clerk Lea Alvarez (Attachment A).

PASSED AND ADOPTED by the Kennesaw City Council on this __ day of December 2024.

ATTEST:

CITY OF KENNESAW:

Lea Alvarez, City Clerk

Derek Easterling, Mayor

CITY OF KENNESAW EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT (the “Agreement”) effective the 1st day of January 2025, by and between the City of Kennesaw, a Georgia municipal corporation (“City”), and Lea Alvarez, City Clerk (“City Clerk”).

WITNESSETH:

Section 1 Employment.

- a. This Agreement supersedes the prior City Clerk Employment Agreement as of the effective date set forth herein.
- b. The City Clerk shall be responsible for keeping and preserving the City seal and all records of the council; attending meetings of the council and keeping a journal of its proceedings at such meetings, including the names of members present and absent, the vote of each member on each question, each motion considered, and the text of each resolution or ordinance considered; preparing and certifying copies of official records in her office, for which fees may be prescribed by ordinance; and performing such other duties as may be required by law or as tasked or directed by the Mayor and Council.” In addition to Charter and ordinance provisions, she shall be subject to the terms and conditions of this Agreement. City Clerk agrees to remain in the exclusive employ of City and shall not accept employment by any other employer until termination of this Agreement, provided, however, the term "employed" shall not be construed to include occasional teaching, writing, consulting, and military reserve service performed on City Clerk's time off, as provided in Section 9 herein.

Section 2 Term. The Term of this Agreement shall be effective on January 1, 2025 for an Initial Term of one (1) year ending December 31, 2025, followed by two (2) one-year Renewal Terms which shall automatically renew on January 1st of each year unless terminated as set forth in this Agreement. The Final Expiration Date of this Agreement shall be December 31, 2027. Renewal Terms or contract extensions shall be discussed within ninety (90) days of the end of a Renewal Term or the Agreement’s end date. Information regarding termination, removal, and resignation as outlined in Sections 4 and 5 shall remain applicable.

Section 3 Duties. The City Clerk and shall perform the functions and duties specified by the Mayor and City Council under the Charter and Ordinances of the City of Kennesaw in accordance with state laws. Consistent with Section 2.10 of the City Charter of Kennesaw, as set forth in Section 1 above, the City Clerk serves at the pleasure, supervision, and direction of the Mayor and City Council. Unless expressly written in this Agreement, the City Clerk shall operate under the guidance of the City of Kennesaw, Personnel Policy and Procedures Manual (Ordinance #2014-11, September 2, 2014, as amended).

Section 4 Termination, Removal, and Resignation.

- a. The City may terminate the City Clerk for Good Cause at any time without prior notice. The City may terminate the City Clerk without Good Cause on sixty (60) days’ written notice of termination. The City Clerk may resign at any time and for any reason upon sixty (60) days’ written notice unless the parties otherwise agree in writing. The City shall

provide the City Clerk sixty (60) days' written notice of its intention to terminate the services of the City Clerk on the Final Expiration Date of this Agreement. In the event (i) the City Clerk is terminated without Good Cause or (ii) the City elects not to renew this Agreement during a Renewal Term, the City Clerk shall be entitled to Severance as set forth in Section 5 of this Agreement. In the event the City Clerk (i) is terminated with Good Cause, (ii) resigns, (iii) retires, (iv) elects not to renew this Agreement during a Renewal Term or (v) reaches the Final Expiration Date of this Agreement, the City Clerk shall not be entitled to salary or Insurance Benefits, but shall be entitled to Accrued Benefits only as set forth in this Agreement.

- b. For purposes of this Agreement, "Accrued Benefits" includes all vacation time, sick leave, and holiday time accrued.
- c. For purposes of this Agreement, "Good Cause" is defined as:
 - i. Conduct found to constitute a willful and intentional breach of the City Clerk's duties as set forth in the City Charter or this Agreement;
 - ii. City Clerk refuses on repeated occasions to comply with the reasonable policies, standards, and regulations of the City;
 - iii. A less than satisfactory annual evaluation as defined in Section 7;
 - iv. Conviction of Federal or State law constituting a felony or a crime of moral turpitude (City Clerk shall be suspended without pay during the time any such criminal prosecution or appeal is pending); or
 - v. Willful and intentional insubordination as to the Mayor or City Council so long as the requested action did not violate any ethical standards, federal law, state law, or local ordinance.
- d. In the event the City Clerk voluntarily resigns or retires from her position with the City and unless otherwise directed by City, the City Clerk agrees to provide prompt assistance in the hiring of a replacement City Clerk if so requested by Mayor and Council.

Section 5 Termination and Severance Pay.

- a. In the event City elects to terminate the City Clerk without Good Cause, the City Clerk shall be paid three (3) months of full salary and all Accrued Benefits, including all family Insurance Benefits, the City Clerk was receiving before notice of termination. Provided, however, that in the event the City Clerk (i) is terminated with Good Cause, (ii) resigns, (iii) retires, (iv) elects not to renew her Agreement during a Renewal Term, or (iv) reaches the Final Expiration Date of this Agreement or (v) is convicted of an act set forth in Section 4(c)(iv), the City shall have no obligation to give any notice of termination, and City Clerk shall not be entitled to three (3) months' salary or Insurance Benefits but shall be entitled to Accrued Benefits only.
- b. Payments in such case shall be made in periodic installments as set forth in Section 6 and shall include a continuation of all Accrued Benefits. City Clerk may take part-time or consulting work while receiving severance benefits, but Insurance Benefits would terminate upon the acceptance of full-time employment.

- c. If the City chooses not to renew this Agreement during a Renewal Term, the City Clerk's employment with the City of Kennesaw shall be ended and she shall be entitled to Severance as set forth in Section 5 of this Agreement.

Section 6 Salary.

- a. The City Clerk's Annual Salary shall be \$87,500.00 in year one (1) of this Agreement with an effective date of January 1, 2025, as outlined in Section 1. The City Clerk's shall receive an increase of \$2,500.00 in salary in year two (1), and an additional \$2,500.00 increase in year three (3).
- b. The City Clerk shall be paid in installments at the same time as other employees of the City are paid.
- c. The City reserves the right to increase or decrease the base salary and/or other benefits of City Clerk in such amounts and to such extent as the City may determine based upon the annual salary review made in conjunction with City Clerk's performance evaluation. Increased compensation can be in the form of a salary increase and/or bonus.
- d. The City Clerk shall be entitled to all cost-of-living increases afforded other employees of the City.

Section 7 Performance Evaluation.

- a. The Mayor and City Council shall review and evaluate the performance of the City Clerk at least once annually in advance of the adoption of the annual budget. Said review and evaluation shall be in accordance with specific criteria developed jointly by the Mayor and City Council in addition to the position's job description and conveyed to the City Clerk. Said criteria may be added to or deleted from as the Mayor and City Council may from time to time determine in consultation with the City Clerk. Further, the Mayor and City Council shall provide the City Clerk with a written statement of its findings and provide an adequate opportunity for the City Clerk to discuss the evaluation with the Mayor and City Council.
- b. Annually, Mayor and City Council shall define such goals and performance objectives which they determine necessary for the proper operation of the City and in attainment of the City's policy objectives and shall further establish a relative priority among those various goals and objectives, said goals and objectives to be reduced to writing. They shall generally be attainable within the time limitations as specified and the annual operating and capital budgets and appropriations provided.
- c. In the event of a renewal or extension of this Agreement, it shall be deemed that (a) and (b) above are in compliance by both parties.

Section 8 Hours of Work. The City Clerk shall be expected to perform the duties of the position and be on the job during regular business hours and shall, in addition thereto, be expected to attend all regular and special meetings of the City, work sessions, commissions, and other meetings as are necessary. It is recognized the City Clerk may be required to work in addition to these specified times and shall be entitled to reasonable compensatory time off; provided, however,

that compensatory time shall be taken as City business permits and shall not necessarily be on any strict hour for hour or day for day basis for work performed above and beyond the indicated hours and duties in the first sentence of this section.

Section 9 Outside Activities. City Clerk shall not spend more than ten (10) hours per week in teaching, counseling or other non-City connected business without the prior approval of the Mayor and City Council and shall not undertake any functions, which would conflict, in any way, with her ability to provide undivided fidelity to her duties as City Clerk.

Section 10 Vacation, Sick, and Military Leave.

- a. Vacation time shall be determined at the same rate as other regular, full-time City employees, and is subject to any current or future policies or procedures, as set forth in the “City of Kennesaw Personnel Policy and Procedures Manual” (Ordinance # 2014-11, September 2, 2014, as amended); except that there shall be no cap limits.
- b. Sick leave, holidays, and all other leave shall be accrued at the same basis and at the same rate as regular, full-time City employees, and is subject to any current or future policies or procedures, as set forth in the “City of Kennesaw, Personnel Policy and Procedures Manual” (Ordinance # 2014-11, September 2, 2014, as amended); except that there shall be no cap limits.
- c. All accrued vacation, sick leave, and holiday time accumulated from employment with the City prior to the execution of this Agreement shall be credited to the City Clerk.

Section 11 Health, Disability, and Life Insurance.

“Insurance Benefits” include the following:

- a. The City agrees to allow the City Clerk and her family to participate in the health, hospitalization, surgical, vision, dental, and comprehensive medical insurance plans offered to the same extent as all other employees of the City of Kennesaw. The costs of the selected plans shall be incurred by the City Clerk and calculated at the same rate as all other City employees.
- b. The City agrees to allow the City Clerk to participate in insurance plans designed for short-term and long-term disability coverage. The costs of the selected plans shall be incurred by the City Clerk and calculated at the same rate as all other City employees.

Section 12 Retirement. City Clerk shall be entitled to retirement benefits under the terms and conditions of the City of Kennesaw’s retirement plan.

Section 13 Dues and Subscriptions. City agrees to pay dues for City Clerk for the International Institute of Municipal Clerks Association and Georgia City Clerks Association or any other such professional organizations that the City Clerk deems necessary upon approval of the Mayor and Council.

Section 14 Professional Development. City agrees to permit City Clerk to attend, during regular business hours, the Annual IIMC National Conferences and the state convention of the

Georgia Municipal Association. It is expected the City Clerk will make a determination as to the relevance to her duties of the matters covered before attending any of these meetings, but it shall be presumed that the above-specified sessions are relevant. City Clerk may attend such other conferences, meetings, etc. as are approved by the Mayor and City Council. City shall pay reasonable, ordinary, and necessary expenses related to the attendance of said conferences.

Section 15 Automobile, Cellular Phone, and Credit Card. In addition to the base salary, the City shall provide the City Clerk with the following:

- a. The City Clerk will be allowed an automobile mileage reimbursement at the rate given to City employees as set forth in the “City of Kennesaw, Personnel Policy and Procedures Manual” (Ordinance # 2014-11, September 2, 2014, as amended);
- b. The use of a City cellular telephone and other electronic devices to be used in the course of City business, and is subject to any current or future policies or procedures, as set forth in the “City of Kennesaw, Personnel Policy and Procedures Manual” (Ordinance # 2014-11, September 2, 2014, as amended);
- c. The City Clerk shall receive a City credit card that is to be used only for expenditures necessitated by the City Clerk’s employment and is subject to any current or future policies or procedures, as set forth in the “City of Kennesaw, Personnel Policy and Procedures Manual” (Ordinance # 2014-11, September 2, 2014, as amended).

Section 16 Indemnification. To the extent allowed by law, City shall defend, save harmless, and indemnify City Clerk from any tort, professional liability claim, or demand, or other legal action, whether groundless or otherwise, arising out of alleged acts or omissions incurred in the performance of duties as City Clerk. City may compromise and settle any such claim or suit and pay the amount of any settlement or judgment rendered thereon without prior approval of the City Clerk.

Section 17 Bonding. City shall bear the full cost of any fidelity or other bonds required of the City Clerk under the law or ordinances.

Section 18 Other Terms and Conditions of Employment.

- a. The Mayor and City Council, in consultation with the City Clerk, shall fix such other terms and conditions of employment, as it may determine from time to time, relating to the performance of City Clerk, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, the City Charter or any other law.
- b. All provisions of the City Charter, ordinances and regulations, and rules of the City relating to vacation and sick leave, retirement and pension system contributions, holidays and other fringe benefits and working conditions as they now exist or hereafter may be amended, also shall apply to City Clerk as they would apply to all employees of the City, in addition to said benefits enumerated specifically for the benefit of City Clerk except as herein provided.

Section 19 General Provisions.

- a. If any provision or any portion hereof shall be held to be unconstitutional, invalid, or unenforceable, the remainder of the Agreement or portion thereof, shall be deemed severable and shall not be affected and shall remain in full force and effect. In the event of a conflict between this Agreement and State Law or the Charter, the conflicting provision of this Agreement shall be void.
- b. This Agreement shall be deemed to be made in, and in all respects shall be interpreted, construed and governed by and in accordance with the laws of the State of Georgia and jurisdiction and venue for all disputes under this Agreement shall lie exclusively in the Superior Court of Cobb County, Georgia.

Section 20 Complete Agreement. This Agreement and the rights under the City Charter shall be the sole source of the City Clerk’s rights, benefits, and advantages, including but not limited to hearing rights prior to termination.

City of Kennesaw (“City”)

Lea Alvarez (“City Clerk”)

By: Derek Easterling
Its: Mayor
Dated: _____

Lea Alvarez
Dated: _____

Attested to:

By: Jeff Drobney,
Its: City Manager
Dated: _____



Item Report

TO: The Honorable Mayor and City Council
FROM: Lea Alvarez, City Clerk
DATE: December 2, 2024
TITLE: **Resolution: City Manager Contract Renewal**
Approval of a Resolution authorizing a contract renewal with the City Manager.

Summary:

The City Manager's original contract was adopted by Resolution No. 2015-26 and most recently renewed by Resolution No. 2021-56. This contract renewal will be for a term of three years.

Recommendation:

The Mayor recommends approval.

Fiscal Impact:

Attachments:

1. RES 2024 - City Manager Contract Renewal
2. Exhibit A

**CITY OF KENNESAW
GEORGIA**

RESOLUTION NO. 2024-__, 2024

RESOLUTION AUTHORIZING CONTRACT RENEWAL FOR CITY MANAGER

BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF KENNESAW, COBB COUNTY, GEORGIA, AS FOLLOWS:

WHEREAS, the City Manager's current contract was adopted by Resolution No. 2021-56, 2021, for a four-year term; and

WHEREAS, the City Council authorizes an employment contract renewal with City Manager Jeff Drobney as shown on Attachment A.

NOW THEREFORE, BE IT RESOLVED, the Kennesaw City Council does hereby authorize the employment contract for City Manager Jeff Drobney (Attachment A).

PASSED AND ADOPTED by the Kennesaw City Council on this __ day of December 2024.

ATTEST:

CITY OF KENNESAW:

Lea Alvarez, City Clerk

Derek Easterling, Mayor

CITY OF KENNESAW EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT (the “Agreement”) effective the 1st day of January, 2025, by and between the City of Kennesaw, a Georgia municipal corporation (“City”), and Jeff Drobney, City Manager (“City Manager”),

WITNESSETH:

Section 1 Employment. Jeff Drobney is duly appointed City Manager pursuant the Kennesaw Charter and City Ordinances. In addition to Charter and ordinance provisions, he shall be subject to the terms and conditions of this Agreement. City Manager agrees to remain in the exclusive employ of City and shall not accept employment by any other employer until termination of this Agreement, provided, however, that the term "employed" shall not be construed to include occasional teaching, writing, consulting and military reserve service performed on City Manager's time off, as provided in Section 9 herein.

Section 2 Term. The term of this Agreement shall be for an initial period ending on December 31, 2025, followed by two (2) automatic one (1) year Renewal Terms, through the Final Expiration Date of December 31, 2027. [This Agreement supersedes the prior City of Kennesaw City Manager Employment Agreement as of the effective date set forth herein].

Section 3 Duties. Pursuant to the Kennesaw Charter, Section 2-13 “The city manager shall serve at the pleasure and direction of the Kennesaw mayor and council and shall assume the position and duties as the chief administrative officer of the city and such other duties as may be assigned by the mayor and council from time to time, including but not limited to director of finance and administration, purchasing agent for all departments, coordinator of commissions and departments of the city, and the general management of city business under the direction and guidance of the mayor and council.” Unless expressly written in this agreement, City Manager shall operate under the guidance of the City of Kennesaw, Personnel Policy and Procedures Manual (Ordinance #2014-11, September 2, 2014, as amended).

Section 4 Termination, Removal and Resignation.

- (a) The City may terminate the City Manager for Good Cause at any time without prior notice. The City may terminate the City Manager without Good Cause on sixty (60) days written notice of termination. The City Manager may resign at any time and for any reason upon sixty (60) days written notice, unless the parties otherwise agree in writing. The City shall provide the City Manager sixty (60) days written notice of its intention to terminate the services of the City Manager on the Final Expiration Date of this Agreement. In the event (i) the City Manager is terminated without Good Cause or (ii) the City elects not to renew this Agreement during a Renewal Term, the City Manager shall be entitled to Severance as set forth in Section 5 of this Agreement.
- (b) For purposes of this Agreement, “Accrued Benefits” includes all vacation time, sick leave and holiday time accrued.

- (c) For purposes of this Agreement, “Good Cause” is defined as:
1. Conduct found to constitute a willful and intentional breach of the City Manager's duties as set forth in the City Charter or this Agreement;
 2. City Manager refuses on repeated occasions to comply with the reasonable policies, standards, and regulations of the City;
 3. A less than satisfactory annual evaluation as defined in Section 7;
 4. Conviction of Federal or State law constituting a felony or a crime of moral turpitude (City Manager shall be suspended without pay during the time any such criminal prosecution or appeal is pending); or
 5. Willful and intentional insubordination as to the Mayor or City Council so long as the requested action did not violate any ethical standards, federal or state law, or local ordinance.
- (d) Pursuant to the City’s Charter as amended, at any time during the term of this Agreement, the City may, if it chooses to do so, “remove the city manager from office upon a majority vote of the mayor and council” as prescribed by the Kennesaw Code of Ordinances, Section 2-52 as amended. Further, “after a majority vote to remove the city manager, the city manager shall have the right to request a public or private hearing within two weeks of the request. Such request shall be made within 48 hours after dismissal. After said hearing, the mayor and council may adopt a final resolution for removal, which may be made effective immediately, by an affirmative vote of a majority of the membership of the council and office of mayor or reinstate said city manager,” pursuant to Kennesaw Code of Ordinances, Section 2-52 as amended.
- (e) In the event the City Manager voluntarily resigns his position with City and unless otherwise directed by City, the City Manager agrees to provide prompt assistance in the hiring of a replacement City Manager if so requested by Mayor and Council.

Section 5 Termination and Severance Pay.

- (a) In the event City determines to terminate the City Manager without Good Cause, the City Manager shall be paid twelve (12) months of full salary and all Accrued Benefits, including all family Insurance Benefits (collectively “Severance”), the City Manager was receiving before notice of termination, plus one (1) additional month’s salary for every five (5) years of City service. Provided, however, that in the event the City Manager (i) is terminated with Good Cause, (ii) resigns, (iii) elects not to renew his Agreement during a Renewal Term, (iv) reaches the Final Expiration Date of this Agreement or (v) is convicted of an act set forth in Section 4(c)(4) above, the City shall have no obligation to give any notice of termination, and City Manager shall not be entitled to twelve (12) months’ salary or Insurance Benefits, but shall be entitled to Accrued Benefits only.
- (b) If the City chooses not to renew this Agreement, the City Manager’s employment with the City of Kennesaw shall be ended and he shall be entitled to Severance as set forth in Section 5 of this Agreement.

Section 6 Salary.

- (a) The City Manager's Annual Salary shall be \$187,500.00 during the first year, with an increase of \$10,000.00 in year two, and an increase of an additional \$10,000.00 in year three.
- (b) The City Manager shall be paid in installments at the same time as other employees of the City are paid.
- (c) The City reserves the right to increase the base salary and/or other benefits of City Manager in such amounts and to such extent as the City may determine based upon the annual salary review made in conjunction with City Manager's performance evaluation.
- (d) The City Manager shall be entitled to all cost of living increases afforded other employees of the City during the Renewal Terms.

Section 7 Performance Evaluation.

- (a) The City shall review and evaluate the performance of the City Manager at least once annually in advance of the adoption of the annual budget. Said review and evaluation shall be in accordance with specific criteria developed jointly by the City Council and Mayor and conveyed to the City Manager. Said criteria may be added to or deleted from as the City may from time to time determine in consultation with the City Manager. Further, the City shall provide the City Manager with a written statement of its findings and provide an adequate opportunity for the City Manager to discuss the evaluation with the City.
- (b) Annually, City Council and Mayor shall define such goals and performance objectives which they determine necessary for the proper operation of the City and in attainment of the City's policy objectives and shall further establish a relative priority among those various goals and objectives, said goals and objectives to be reduced to writing. They shall generally be attainable within the time limitations as specified and the annual operating and capital budgets and appropriations provided.
- (c) In the event of a renewal or extension of this Agreement, it shall be deemed that (a) and (b) above are in compliance by both parties.

Section 8 Hours of Work. The City Manager shall be expected to perform the duties of the position and be on the job during regular business hours and shall, in addition thereto, be expected to attend all regular and special meetings of the City, work sessions, etc. and regular meetings of the Planning Commission and other Councils and commissions as are necessary. It is recognized that the City Manager may be required to work in addition to these specified times and shall be entitled to reasonable compensatory time off; provided, however, that compensatory time shall be taken as City business permits and shall not necessarily be on any strict hour for hour or day for day basis for work performed above and beyond the indicated hours and duties in the first sentence of this section.

Section 9 Outside Activities. City Manager shall not spend more than ten (10) hours per week in teaching, counseling or other non-City connected business without the prior approval of the City and shall not undertake any functions, which would conflict, in any way, with his ability to provide undivided fidelity to his duties as City Manager.

Section 10 Vacation, Sick and Military Leave.

- (a) Vacation time shall be determined at the same rate as other regular, full-time City employees, and is subject to any current or future policies or procedures, as set forth in the “City of Kennesaw, Personnel Policy and Procedures Manual” (Ordinance # 2014-11, September 2, 2014, as amended); except that there shall be no cap limits.
- (b) Sick leave, holidays, and all other leave shall be accrued at the same basis and at the same rate as regular, full-time City employees, and is subject to any current or future policies or procedures, as set forth in the “City of Kennesaw, Personnel Policy and Procedures Manual” (Ordinance # 2014-11, September 2, 2014, as amended); except that there shall be no cap limits.
- (c) All accrued vacation, sick leave and holiday time accumulated from employment with the City prior to the execution of this Agreement shall be credited to the City Manager.

Section 11 Health, Disability and Life Insurance.

“Insurance Benefits” include the following:

- (a) The City agrees to provide and to pay the premiums for health, hospitalization, surgical, vision, dental and comprehensive medical insurance for the City Manager and his dependents equal to that provided to all other employees of the City of Kennesaw.
- (b) The City agrees to put into force and to make required premium payments for short-term and long-term disability coverage for the City Manager.
- (c) The City agrees to pay the amount of premium due for term life insurance in the amount of three (3) times the City Manager’s annual base salary, including all increases in the base salary during the life of this Agreement. The City Manager shall name the beneficiary of the life insurance policy.

Section 12 Retirement. City Manager shall be entitled to retirement benefits pursuant to the City of Kennesaw’s retirement plan. In addition to the base salary paid by the City to the City Manager, City agrees to pay an amount equal to eight percent (8%) of City Managers base salary into a supplemental retirement plan on the City Managers behalf in year one of this Agreement, ten percent (10%) in year two of this Agreement, and twelve percent (12%) in year three of this Agreement, as currently offered by the City of Kennesaw, in equal proportionate amounts each pay period.

Section 13 Dues and Subscriptions. City agrees to pay dues for City Manager for the International City Managers Association and Georgia City Managers Association or any other such professional organizations that the City Manager deems necessary upon approval of the mayor and council.

Section 14 Professional Development. City agrees to permit City Manager to attend, during regular business hours, the Annual ICMA National Conferences, Conferences of the Georgia City Management Association, and the state convention of the Georgia Municipal Association. It is expected that City Manager will make a determination as to the relevance to his duties of the matters covered before attending any of these meetings, but it shall be presumed that the above-specified sessions are relevant. City Manager may attend such other conferences, meetings, etc. as are approved by the mayor and council. City shall pay reasonable ordinary and necessary expenses related to the attendance of said conferences.

Section 15 Automobile, Cellular Phone and Credit Card. In addition to the base salary, the City shall provide the City Manager with the following:

- (a) The City Manager shall receive a monthly payment of Five Hundred and 00/100 dollars (\$500.00) for the City Manager's use of a personal automobile for business use with no additional allowance for auto insurance coverage ("Vehicle Allowance"). The Vehicle Allowance shall be subject to all required federal, state, and local withholding.;
- (b) The use of a City cellular telephone and other electronic devices to be used in the course of City business, and is subject to any current or future policies or procedures, as set forth in the "City of Kennesaw, Personnel Policy and Procedures Manual" (Ordinance # 2014-11, September 2, 2014, as amended);
- (c) The City Manager shall receive a City credit card that is to be used only for expenditures necessitated by the City Manager's employment, and is subject to any current or future policies or procedures, as set forth in the "City of Kennesaw, Personnel Policy and Procedures Manual" (Ordinance # 2014-11, September 2, 2014, as amended);

Section 16 Indemnification. City shall defend, save harmless and indemnify City Manager from any tort, professional liability claim or demand or other legal action, whether groundless or otherwise, arising out of alleged acts or omissions incurring in the performance of duties as City Manager. City may compromise and settle any such claim or suit and pay the amount of any settlement or judgment rendered thereon.

Section 17 Bonding. City shall bear the full cost of any fidelity or other bonds required of the City Manager under the law or ordinances.

Section 18 Other Terms and Conditions of Employment.

- (a) The mayor and council, in consultation with the City Manager, shall fix such other terms and conditions of employment, as it may determine from time to time, relating to the

performance of City Manager, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, the City Charter or any other law.

- (b) All provisions of the City Charter, ordinances and regulations and rules of the City relating to vacation and sick leave, retirement and pension system contributions, holidays and other fringe benefits and working conditions as they now exist or hereafter may be amended, also shall apply to City Manager as they would apply to all employees of the City, in addition to said benefits enumerated specifically for the benefit of City Manager except as herein provided.

Section 19 General Provisions.

- (a) If any provision or any portion hereof shall be held to be unconstitutional, invalid or unenforceable, the remainder of the Agreement or portion thereof, shall be deemed severable and shall not be affected and shall remain in full force and effect. In the event of a conflict between this Agreement and State Law or the Charter, the conflicting provision of this Agreement shall be void.
- (b) This Agreement shall be deemed to be made in, and in all respects shall be interpreted, construed and governed by and in accordance with the laws of the State of Georgia and venue for all disputes under this Agreement lies in the Superior Court of Cobb County, Georgia.

Section 20 Complete Agreement. This Agreement and the rights under the City charter shall be the sole source of the City Manager’s rights, benefits and advantages, including but not limited to hearing rights prior to termination.

City of Kennesaw (“City”)

Jeff Drobney (“City Manager”)

By: Derek Easterling
Its: Mayor
Dated: December ____, 2024.

Jeff Drobney
Dated: December ____, 2024.

Attested to:

By: Lea Alvarez
Its: City Clerk



Item Report

TO: The Honorable Mayor and City Council

FROM: Ricky Stewart, Public Works Director

DATE: December 2, 2024

TITLE: **Resolution: City Hall Entrance Improvements**
Approval of a Resolution approving the bid and awarding the contract for City Hall Entrance Improvements to S.H. Creel Contracting, LLC.

Summary:

Staff solicited bids from qualified contractors for improvements to the front entrance area of City Hall. The project will consist of installing a new sidewalk, removing existing plant material and trees, improving the handicap parking lot, and installing new landscaping. The bid announcement was advertised in the Marietta Journal pursuant to City procurement policy. Three bids were received: S. H. Creel Contracting - \$154,801.50; Tri-Scapes - \$305,090.24; and WB Construction - \$200,629.43.

Recommendation:

The Public Works Director recommends approval of the bid and award of the contract to S. H. Creel Contracting for the amount of \$154,801.50 and requests the Mayor to sign the attached resolution and contract.

Fiscal Impact:

230-1025-54-1416 Sidewalk Improvements

Attachments:

1. RES 2024 - City Hall Entrance Improvements Project
2. Contract
3. Bid Tab
4. Recommendation of Award

**CITY OF KENNESAW
GEORGIA**

RESOLUTION NO. 2024-____, 2024

**RESOLUTION TO APPROVE A CONTRACT WITH S. H. CREEL CONTRACTING
FOR CITY HALL ENTRANCE IMPROVEMENTS**

**BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF KENNESAW,
COBB COUNTY, GEORGIA, AS FOLLOWS:**

WHEREAS, the City of Kennesaw desires to improve the accessibility and aesthetics of the front entrance to City Hall; and

WHEREAS, S. H. Creel Contracting is the lowest bid to perform the work associated with this project which includes constructing sidewalks, improving the handicap lot and installing new landscape material; and

BE IT RESOLVED the Kennesaw City Council authorizes the Mayor to execute a contract with S. H. Creel Contracting for an amount not to exceed \$154,801.50 to perform this project.

BE IT FURTHER RESOLVED this Resolution shall become effective from and after its adoption and execution by the mayor.

PASSED AND ADOPTED by the Kennesaw City Council on this ____ day of December, 2024.

ATTEST:

CITY OF KENNESAW

Lea Alvarez, City Clerk

Derek Easterling, Mayor

City of Kennesaw, Georgia

City Hall Entrance Improvements Project



CITY:

City of Kennesaw, Georgia

2529 J. O. Stephenson Avenue

Kennesaw, Georgia 30144

First Advertisement: October 18, 2024

Second Advertisement: November 1, 2024

Proposal Opening: November 15, 2024

10:00am Local Time, City Hall Training Room



200 Cobb Parkway North
Building 400, Suite 413
Marietta, GA 30062

o | 770.971.5407

f | 770.971.0620

croyengineering.com

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ATTACHMENTS

Exhibit A – Itemized Bid Proposal	END
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REQUEST FOR PROPOSAL

Sealed proposals will be received by the City of Kennesaw, Georgia, herein referred to as the City, at the office of the City Clerk located at 2529 J.O. Stephenson Avenue, Kennesaw, Georgia, 30144 until: Friday, November 15, 2024, 10:00 am, Local Time, at which time all received proposals will be opened and recorded, for the furnishing of all materials, labor, tools, skills, equipment, and incidentals necessary for the completion of the:

CITY HALL ENTRANCE IMPROVEMENT PROJECT

A total of three (3) paper copies, and one (1) digital copy provided on a USB/flash drive device, of the proposal shall be required. Factors used in evaluating proposals will include: Firm Qualifications, References, Experience, Litigation Record, and Project Cost. Proposals received after the designated time will not be considered.

The principal items required for the project shall include all materials and labor necessary for the demolition of existing paved areas and landscaping, the installation of new walkways and landscaping, milling and repaving a portion of JO Stephenson Pkwy., and the demolition and rebuilding of a new ADA parking lot at the Kennesaw City Hall building.

General conditions, specifications and contract documents shall be obtained at no cost from the Kennesaw City Clerk's Office upon request via email to Lea Alvarez lalvarez@kennesaw-ga.gov. **Only a proposal submitted by a Contractor on record with the City Clerk's Office as having received general conditions, specifications and contract documents from the Issuing Office will be opened.**

General conditions, specifications and contract documents are open to public inspection at the office of Croy Engineering located at 200 Cobb Pkwy N, Bldg. 400, Suite 413, Marietta, Georgia, 30062. Contract time for final completion shall be negotiated at time of Contract award.

Payment will be made to the contractor each calendar month based on the estimated work completed and in place as described by the standard specifications. Final payment of amounts withheld or deposited in escrow will not be made until the City of Kennesaw has certified that the work has been satisfactorily completed and accepted.

Each proposal must be accompanied by a cashier's check or certified check on a duly organized bank made payable to City of Kennesaw or a bidding bond executed by the bidder, and a surety company authorized to transact business in the State of Georgia, in the sum of not less than five percent (5%) of the total amount of the bid.

All proposals must be made out on the bid form furnished with the Contract Documents, in accordance with the instructions in the information for bidders. No interlineations, additions or deletions shall be made in the bid form by the Bidder.

No proposal may be withdrawn after the scheduled closing time for receiving bids for a period of sixty (60) days.

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.

City of Kennesaw, Georgia
2529 J.O. Stephenson Avenue
Kennesaw, Georgia, 30144

Advertisement Run Dates:
October 18, 2024
November 1, 2024

SECTION ONE

INFORMATION FOR BIDDERS

1. RECEIPT AND OPENING OF PROPOSALS

The City of Kennesaw, Georgia (hereinafter called the City), invites competitive cost sealed proposals for CITY HALL ENTRANCE IMPROVEMENTS PROJECT. Proposals will be received by the City at City Hall, 2529 J. O. Stephenson Avenue, Kennesaw, GA 30144 until Friday, November 15, 2024, 10:00 am, Local Time, and then at said City Hall opened and recorded. The envelope containing the proposals must be sealed and designated on the outside of the envelope as proposal for:

City of Kennesaw

CITY HALL ENTRANCE IMPROVEMENTS PROJECT

The City may consider informal any proposal not prepared and submitted in accordance with the provisions hereof and may waive any informalities to reject 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 PROPOSAL

Each proposal must be submitted on the prescribed form/s. If unit pricing form is contained within, all blank spaces for unit 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 proposal must be submitted in a sealed envelope bearing on the outside the name of the bidder, his/her 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 three (3) paper copy of proposal documents as well as one (1) digital copy provided on a USB/flash drive device.

3. QUALIFICATIONS OF BIDDERS

The City may make such investigations as it 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:

SUBMISSION OF STATEMENT OF QUALIFICATIONS

Responses must be submitted in a sealed envelope bearing on the outside the name of the Firm, the Firm's address, and the name of the Project for which the Response is submitted. If forwarded by mail, the sealed envelope containing the Response must be enclosed in another envelope addressed as specified above. All sealed Responses shall include three (3) paper copies and one (1) digital copy provided on a USB/flash drive device. Responses shall include and/or address all submittal requirements listed below. Please note maximum page limit for some sections.

1. Cover Page

- a. Include the project name (CITY HALL ENTRANCE IMPROVEMENTS PROJECT)

2. Table of Contents

3. Required Documents

- a. Provide items specified in the "Submission of Statement of Qualifications"

4. Firm Qualifications (15 Page Limit)

- a. Capability of the firm to progress and complete the work, taking into consideration size of work force, current workload, in house staff capabilities and the like. At a minimum, Responses should provide the following information:
 - i. Provide proof of Georgia General Contractor license and Business License.

- ii. Provide Summary of firm history. Include founding date and years of continuous operation.
- iii. Identify the primary point of contact for the overall administration of this project.
- iv. Identify key team members available for this project.
- v. List qualifications of staff to be assigned to this project.
- vi. List years in construction and years with firm for staff to be assigned to this project.
- vii. Provide the office location for each listed team member. Preference will be given to teams with a local presence.

5. References and Relationships (10 Page Limit)

- a. Four references from clients detailing level of prior satisfaction.
- b. Four references from sub-contractors, listing projects (with dates) completed with your firm and detailing level of prior satisfaction.

6. Experience (10 Page Limit)

- a. Previous experience of the firm or key team members with similar projects. List awards or commendations, cost effective performance, timely completion, and demonstrated ability.
- b. Experience on projects of similar scope.
- c. Experience within the City of Kennesaw and Cobb County.
 - i. Please list any projects in which the City of Kennesaw was the owner.

7. Litigation Record

- a. Provide a comprehensive ten (10) year summary of the firm's litigation, arbitration, and negotiated/settled history with previous clients. State the issues in the litigation, the status of the litigation, names of parties, and outcome.

8. Project Cost

- a. A Bid Proposal must be completed using both Exhibit A and pages 2-3 through 2-5 in the Program Manual and is only required be included with the paper submittal of the response and should be submitted in a separately sealed envelope. The Bid proposal should NOT be included with the digital copy of the Response provided on a USB/flash drive device.

CITY QUESTIONS

Any Firm that submits a Response may be requested to provide additional information to the City of Kennesaw. Such information is only for the purpose of clarification and in no way changes the Firm's Response as originally submitted. The City of Kennesaw reserves the right to ask any or all Firms to clarify any portion of their Response after submission.

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 project completion date will be negotiable upon contract award. Bidder further agrees to pay as liquidated damages, beyond the negotiated completion date, in the sum of \$500 per each consecutive calendar day that the Contractor shall be in default after the negotiated date stipulated in the Contract for completing the 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 Mr. Roy Acree, email: racree@croyeng.com and to be given consideration must be received by Monday, November 11, 2024, 5:00pm Local Time. 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

The contract shall be awarded pursuant to O.C.G.A. § 36-91-21, to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth herein. The information requested in the "Submission of Statement of Qualifications" section of this RFP will serve as the selection criteria and is surmised below.

Selection Criteria

Firm Qualifications

Experience

Project Cost

References

Litigation Record

In the event the City Council approves the selection of the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth herein, the City intends to enter into a contractual agreement with the selected Firm.

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 three (3) unsigned counterparts of the Contract and all other Contract Documents. Within ten (10) calendar days thereafter Contractor shall sign and deliver at least three (3) 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-bid meeting will not be required for this project.

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 Kennesaw, 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 Kennesaw, 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 Kennesaw

CITY HALL ENTRANCE IMPROVEMENTS PROJECT

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 Kennesaw, Georgia
(Hereinafter called "City")

Gentlemen:

The Bidder in compliance with your request for qualifications for the construction of:

City of Kennesaw

CITY HALL ENTRANCE IMPROVEMENTS PROJECT

having examined the scope 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 project completion date will be negotiable upon contract award. Bidder further agrees to pay as liquidated damages, beyond the negotiated completion date, in the sum of \$500 per each consecutive calendar day that the Contractor shall be in default after the negotiated date stipulated in the Contract for completing the work.

Bidder acknowledges receipt of the following addenda:

Scope of Services – CITY HALL ENTRANCE IMPROVEMENTS PROJECT:

The property identified for the City Hall Entrance Improvement Project is located at 2529 J.O. Stephenson Ave, Kennesaw, Ga. 30144.

The improvements to the Kennesaw City Hall entrance will include the demolition of the existing walkways and landscaping, milling and repaving a portion of JO Stephenson Ave after the removal of crosswalks, tree removal, demolition and rebuilding of an existing ADA parking lot, and the installation of new concrete walkways, planter/seating walls, and new landscaping.

All necessary specifications, details, and engineered requirements can be found in the *City Hall Entrance* Construction Documents.

BID PROPOSAL (Continued)

Note: Please complete Exhibit A – Itemized Bid Proposal Form, to calculate Grand Total for the project.

Grand Total	\$		
(From Exhibit A)	(Numerals)		(Words)

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:

Dated at: _____

The _____ day of _____, 20____.

Signature

Printed

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 Kennesaw, 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 Kennesaw

CITY HALL ENTRANCE IMPROVEMENTS PROJECT

in accordance with exhibits and specifications prepared by Croy Engineering, LLC, Marietta, 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 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 Cobb 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 Cobb County, Georgia.

In witness whereof, this instrument is executed in Three (3) 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

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 Kennesaw, 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

this _____ day of _____ 20_____, entered into a Contract with City
for:

City of Kennesaw

CITY HALL ENTRANCE IMPROVEMENTS PROJECT

In accordance with exhibits and specifications prepared by Croy Engineering, LLC,
Marietta, 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 Cobb 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 Cobb 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 Three (3) 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 Kennesaw, 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 Kennesaw

CITY HALL ENTRANCE IMPROVEMENTS PROJECT

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 Croy Engineering, LLC., here entitled the "Engineers" 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 project completion date will be negotiable upon contract award. Bidder further agrees to pay as liquidated damages, beyond the negotiated completion date, in the sum of \$500 per each consecutive calendar day that the Contractor shall be in default after the negotiated 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 Three (3) counterparts, each of which shall be deemed an original, in the year and day first above mentioned.

City of Kennesaw, 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
CITY HALL ENTRANCE IMPROVEMENTS PROJECT

COBB COUNTY, GEORGIA

1. The City of Kennesaw is entering into a contract for CITY HALL ENTRANCE IMPROVEMENTS PROJECT (the "Contract") with:

_____.

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

BY: _____

Name: R. Randall Bentley, Sr.

Title: City Attorney for the City of Kennesaw

CONTRACTOR'S AFFIDAVIT OF INDIVIDUAL EXECUTING

(Name of Individual Executing Contract)

CONCERNING THE CONTRACT FOR
CITY HALL ENTRANCE IMPROVEMENTS PROJECT

COBB 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 CITY HALL ENTRANCE IMPROVEMENTS PROJECT (the "Contract") with the City of Kennesaw, Georgia.
3. That the organizational documents of the Company provided to the City of Kennesaw 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 Kennesaw.
5. That I acknowledge that this Affidavit is to be a part of the Contract with the City of Kennesaw. The City of Kennesaw 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 Kennesaw 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 Kennesaw's execution of the Contract.

FURTHER AFFIANT SAYETH NOT.

Signed:_____

Printed:_____

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 Kennesaw 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 Kennesaw, 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 e-Verify 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).

SUBCONTRACTOR AFFIDAVIT

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 Kennesaw 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 e-Verify 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 Kennesaw, 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 Croy Engineering, LLC, the Engineers appointed by the City as representatives of the City, and to their properly authorized agents, limited to the particular duties entrusted to them.
- (e) Project - Refers to the Work to be performed as set forth in the Contract Documents for CITY HALL ENTRANCE IMPROVEMENT PROJECT.
- (f) Project Representative - Refers to the authorized representative of the Engineers, 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.
- (h) 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 anyone 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 Engineers will decide which shall govern. Special specifications stated on the Drawings govern that 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 Engineer 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 Engineer 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 Engineer six (6) copies of each shop or setting drawing prepared in accordance with the schedule predetermined as previously mentioned. After examination of such drawings by the Engineer and the return thereof, the Contractor shall make such corrections to the drawings as have been indicated and shall furnish the Engineer with two corrected copies. If requested by the Engineer, the Contractor must furnish additional copies. Regardless of corrections made in or approval given to such drawings by the Engineer, the Contractor shall nevertheless be responsible for the accuracy of such drawings and for their conformity to the Plans and Specifications at the time it 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 the seller retains an interest. 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 the Engineer has approved them. 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 City shall select the laboratory or inspection agency. 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 Engineer, of equal substance and function. It shall not be purchased or installed by the Contractor without the Engineer'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 benchmark data from previous engineering 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 Engineer and 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

Benchmarks 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 Engineer 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 Engineer 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 Engineer and 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 Engineer shall direct; the Contractor will and will cause its Subcontractors to carefully protect all work and materials against damage or injury from the weather. If, in the opinion of the Engineer, 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 Engineer. No roadway shall be closed or opened except by express permission of the Engineer 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 the Engineer and shall be one who can be continued in that capacity for the job involved unless the representative 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 Engineer, immediately remove any superintendent, foreman or worker whom the Engineer 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 Engineer 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 Engineer entitles him to an increase in the Contract Price or extension of Contract Time, Contractor shall inform the Engineer 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 Engineer.

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 (or the Engineer acting as the City's agent) 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 Engineer, 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 with the advice of Engineer, 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 based on 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 Engineer 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 Engineer 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 Engineer allows an additional period to ascertain more accurate data. All claims for adjustment in the Contract Time shall be determined by Engineer 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 Engineer 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 by the Contractor at his own expense. Rejected material shall immediately be removed from the site. If, in the opinion of the Engineer, 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 Engineer shall be equitable. It is not intended that the Engineer 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 Engineer 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 Engineer.
- (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 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 Engineer of such conditions before they are disturbed. The Engineer 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 Engineer approved by the City, as previously mentioned, 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 the 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 it 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

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 the 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.
- (h) 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 Engineer 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 Kennesaw 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 Engineer according to the Contract, the Engineer 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 Engineer, provided that the Contractor has properly maintained and operated the Project as specified under these specifications, and provided, that Contractor 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 its 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 because 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 Engineer. 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 engineers, 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.) | Statutory |
| | Longshoreman's: | |
| (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
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Property Damage:

\$1,000,000	Each Occurrence
-------------	-----------------

\$1,000,000	Annual Aggregate
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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 Engineer 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 its Subcontractors, and of persons either directly or indirectly employed by Contractor, as it is for the acts and omissions of persons directly employed by Contractor.

(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. ENGINEER'S AUTHORITY

In addition to the authority granted elsewhere in this contract, the Engineer will have authority to disapprove or reject defective work and will also have authority to require special inspection or testing of the work.

The Engineer 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 Engineer in writing with a request for a formal decision in accordance with this paragraph, which the Engineer 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 Engineer 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 Engineer and the other party within forty-five (45) days of such occurrence unless Engineer allows an additional period of time to ascertain more accurate data. In his capacity as interpreter and judge, Engineer 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.

48. LIMITATIONS ON ENGINEER'S RESPONSIBILITIES

Neither the Engineer's authority to act under this Contract, nor any decision made by the Engineer in good faith either to exercise or not exercise such authority shall give rise to any duty or responsibility of the Engineer 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 Engineer 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 Engineer shall have authority to supervise or direct performance of the work.

The Engineer 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 Engineer will not be responsible for Contractor's failure to perform the work in accordance with the Contract Documents.

The Engineer 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 or 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 affect 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 Engineer, 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 a claim for damages 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 pipelines, 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 its last given address, or delivered in person to the said Contractor or its 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 a claim for damages 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 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 Engineers 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 this 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 Engineer, 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 engineers, 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 but 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 Engineer on account of any damage alleged to have been sustained, City shall notify Contractor, who shall indemnify and save harmless City and Engineer 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 Engineer, 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 entitled 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, engineering, 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, engineer 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. ENGINEER'S DIRECTIONS REGARDING WORK PARTIALLY COMPLETED

The Engineer 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. ENGINEER'S EXAMINATION OF WORK COMPLETED

At the request of the Engineer, 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. ENGINEER'S LIABILITY

In carrying out any of the provisions of this Contract or in exercising any power or authority granted to Engineer by the Contract, there shall be no liability upon the Engineer or its authorized agents and representatives, it being understood that in such matters the Engineer 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 Engineer'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 its sureties from any obligations under this Contract or the Performance and Payment Bond.

72. OWNER'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 ensure 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

In the event work is delayed due to inclement weather, the Contractor must request an extension in writing. 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 monthly with progress payment request. Failure to submit documentation monthly may result in requests for weather day extensions to be rejected.

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

Engineer's Decision Required: All claims shall be referred to the Engineer for decision. A written decision by Engineer shall be required as a condition precedent to any exercise by City or Contractor of any rights or remedies either 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 Engineer 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 Engineer 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 Engineer 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 Engineer and the claimant within thirty (30) days after receipt of the claimant's last submittal (unless Engineer allows additional time).

Engineer's Action: Engineer 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 Engineer is unable to resolve the Claim if, in the Engineer's sole discretion, it would be inappropriate for the Engineer to do so. For purposes of further resolution of the Claim, such notice shall be deemed a denial.

If Engineer does not take action on a Claim within said thirty (30) days, the Claim shall be deemed denied.

Engineer'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 COBB 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

PAYMENTS AND COMPLETION

1. APPLICATIONS FOR PROGRESS PAYMENT

Payments will be made monthly in the amount of sums earned based upon the quantity complete, and/or as otherwise provided in this Contract, less previous partial payments and less an established retainage of **ten percent (10%)** of the sums earned, said retainage amount to be held by the City. The final application shall reflect the cost of the Work accomplished by the Contractor under the terms of this Contract and shall be the base for the final payment. All payments shall be made on the quantity of the Work completed and/or as otherwise provided for in this Contract. It is further agreed that upon completion of the Work by the Contractor, approval by the Engineer, and acceptance thereof by the City, the City shall pay to the Contractor a sum equal to the one hundred percent of the total compensation as set forth in the all approved payment applications, less the total of all previous partial payments paid or in the process of being paid.

At least **ten (10)** days before each progress payment falls due (but not more often than once a month), Contractor will submit to City for review by Engineer a certified/approved application for payment also filled out and signed by Contractor covering the Work completed as of the date of the application and supported by such data as City and Engineer may reasonably require. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the site or at another location agreed to in writing, the application for payment shall also be accompanied by such supporting data, satisfactory to City and Engineer, as will establish City's title to the material and equipment and protect its interest, including applicable insurance.

2. CONTRACTOR'S WARRANTY OF TITLE

Contractor warrants and guaranties that title to all Work, materials and equipment covered by an application for payment, whether incorporated in the Project or not, will have passed to City prior to the making of the application for payment, free and clear of all liens, claims, security interests and encumbrances (referred to below as "liens"); and that no work, materials or equipment covered by an application for payment will have been acquired by Contractor or by any other person performing the Work at the site or furnishing materials and equipment for the Project, subject to a Contract under which an interest or encumbrance is retained by the seller or otherwise imposed by Contractor or such other person.

3. APPROVAL OF PAYMENTS

- (a) City will, within **ten (10)** days after receipt of each duly certified and approved application for payment, either indicate in writing its approval of payment or return the application to Contractor indicating in writing the reasons for refusing to approve payment. In the latter case, Contractor may make the necessary corrections and resubmit the application, and City will, within **thirty (30)** days of presentation to it of an approved application for payment, pay Contractor the amount so approved.
- (b) City may refuse to approve the whole or any part of any payment because of subsequently discovered evidence or the results of subsequent inspections or tests which nullify the grounds for any payment previously approved, to such extent as may be necessary in its opinion to protect itself from loss because:
 - (i) The Work is defective;
 - (ii) Claims have been filed or there is reasonable evidence indicating the probable filing of claims;
 - (iii) The Contract price has been reduced because of Modifications;
 - (iv) City has been required to correct defective Work or complete the Work in accordance with Paragraph 34 of this Agreement; or
 - (v) Of unsatisfactory prosecution of the Work, including failure to clean up as required by Paragraph 49 of this Agreement.

4. SUBSTANTIAL COMPLETION

- (a) Prior to final payment, Contractor may, in writing to Engineer, certify that the entire Project is substantially complete and request that the Engineer issue a certificate of substantial completion. Within a reasonable time thereafter, Engineer and Contractor will inspect the Project to determine the status of completion. If Engineer does not consider the Project substantially complete, Engineer will notify Contractor in writing, giving its reasons for such determination. If it is determined that the Project is substantially complete, the Engineer will prepare a tentative Certificate of Substantial Completion which shall fix the date of Substantial Completion and the responsibilities between City and Contractor for maintenance. There shall be attached to the certificate a tentative list of items to be completed or collected before final payment, and the certificate shall fix the time within which such items shall be completed or collected, the time to be within the Contract Time. Upon the completion and correction of the items on the tentative list, if Engineer considers the Project substantially complete, it shall issue the definitive Certificate of Substantial Completion.

- (b) City shall have the right to exclude Contractor from the Project after the date of Substantial Completion, but City will allow Contractor reasonable access to complete or collect items on the tentative list.

5. PARTIAL UTILIZATION

Prior to final payment, City may request Contractor in writing to permit it to use a specified part of the Project which it believes it may use without significant interference with construction of the other parts of the Project. If Contractor agrees, it will certify to City that such part of the Project is substantially complete and request the Engineer to issue a Certificate of Substantial Completion for that part of the Project. Within a reasonable time thereafter, Engineer and Contractor will make all inspection of that part of the Project to determine its status of completion. If Engineer does not consider that it is substantially complete, Engineer will notify Contractor in writing, giving it the reasons therefore. If Program considers that part of the Project to be substantially complete, it will execute and deliver to Contractor a Certificate to that effect, fixing the date of Substantial Completion as to that part of the Project, attaching to it a tentative list of items to be completed or corrected before final payment and fixing the responsibility between City and Contractor for maintenance as to that part of the Project. City shall have the right to exclude Contractor from all or part of the Project which Engineer has certified to be substantially complete, but City will allow Contractor reasonable access to complete or collect items on the tentative list. It is contemplated that City may desire to begin use of each portion of the Project as said portion is substantially completed rather than wait until all the entire Project is substantially complete.

6. FINAL INSPECTION

Upon written notice from Contractor that the Project is complete, Engineer will make a final inspection with Contractor and Engineer will notify Contractor in writing of any particulars in which this inspection reveals that the Work is defective. Contractor shall immediately make such corrections as are necessary to remedy such defects.

7. FINAL APPLICATION FOR PAYMENT

After Contractor has completed any such corrections to the satisfaction of City and Engineer and delivered all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection and other documents required, it may make application for final payment following the procedure for progress payments. The final application for payment shall be accompanied by such supporting data as City and Engineer may require, together with complete and legally effective releases or waivers (satisfactory to the City and Engineer) of all liens arising out of the Contract and the labor and services performed and the material and equipment furnished thereunder. In lieu of this and as approved by City, Contractor may furnish receipts or releases in full; all affidavits of Contractor shall state that the

releases and receipts include all labor, services, material and equipment for which a lien could be filed, and that all payrolls, material and equipment bills, and other indebtedness connected with the Work for which City or its property might in any way be responsible, have been paid or otherwise satisfied; and consent of the surety, if any, to final payment. If any Subcontractor or supplier fails to furnish a release or receipt in full, Contractor may furnish a bond satisfactory to City, indemnifying City against any lien.

Any Contractor or Subcontractor are prohibited from filing a lien or encumbrance against the items delivered to or against the owned property of the City.

8. APPROVAL OF FINAL PAYMENT

- (a) If, on the basis of its observation and review of the Work during construction, its final inspection and its review of the final application for payment, all as required by the Contract, City and Engineer are satisfied that the Work has been completed, and Contractor has fulfilled all of its obligations under the Contract, the City will, within **ten (10)** days after receipt of the final application for payment, indicate in writing its approval of payment and process the application for payment. Otherwise, the City will return the application to Contractor, indicating in writing its reasons for refusing to approve final payment, in which case Contractor will make the necessary corrections and resubmit the application. City will, within **thirty (30)** days of presentation to it of an approved final application for payment, pay Contractor the amount approved.
- (b) If, after Substantial Completion of the Work, final completion is materially delayed through no fault of Contractor and City so agrees, City shall make payment of the balance due for that portion of the Work fully completed and accepted. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

9. CONTRACTOR'S CONTINUING OBLIGATION

Contractor's obligation to perform the Work and complete the Project in accordance with the Contract shall be absolute. Neither approval of any progress or final payment by City, nor the issuance of a Certificate of Substantial Completion, nor any payment by City to Contractor, nor any use or occupancy of the Project or any part by City, nor any act of acceptance by City nor any failure to do so, nor any correction of defective Work by City shall constitute an acceptance of Work not in accordance with the Contract.

10. WAIVER OF CLAIMS

The making and acceptance of final payment shall constitute a waiver of all claims by Contractor against City other than those previously made in writing and still unsettled.

11. VERIFICATION OF COSTS

The Contractor shall, upon request, allow the examination and verification of costs by the Engineer or other representatives of the City before final payment is due. If the examination of the Contract cost records results in the determination that unallowable expenses were charged to the City by the Contractor, the Contractor shall be immediately responsible for reimbursing the City for the full amount of such unallowable expenses. The Contractor shall maintain all books, documents, papers, accounting records and other evidence pertaining to costs incurred for the Work and Project and used in support of its Proposal and shall make such documents available at all reasonable times during the period of the Contract and for **three (3)** years from the date of final payment under the Contract, for inspection by the City and any reviewing agencies, and copies thereof shall be furnished upon request. The Contractor agrees that the provisions of this Section shall be included in any Contract it may make with any Subcontractor, assignee, or transferee.

END OF SECTION

EXHIBIT A: ITEMIZED BID PROPOSAL FORM

CONTRACTOR NAME:

DATE:

1. BASE BID:

PROJECT NAME: City Hall Entrance Improvement Project

ITEM NO.	DESCRIPTION	EST. QTY.	UNIT	UNIT PRICE	TOTAL AMOUNT
1	DEMOLITION	1	LS	\$ Numerals	\$ Numerals
				Words(unit price only)	
2	GRADING COMPLETE - (INCL MOVING SIGN AND BENCHES)	1	LS	\$ Numerals	\$ Numerals
				Words(unit price only)	
3	EROSION CONTROL	1	LS	\$ Numerals	\$ Numerals
				Words(unit price only)	
4	LANDSCAPING	1	LS	\$ Numerals	\$ Numerals
				Words(unit price only)	
5	TEMPORARY ADA ACCESS	1	LS	\$ Numerals	\$ Numerals
				Words(unit price only)	

EXHIBIT A: ITEMIZED BID PROPOSAL FORM

ITEM NO.	DESCRIPTION	EST. QTY.	UNIT	UNIT PRICE	TOTAL AMOUNT
6	BRICK PLANTER	1	LS	\$ _____ Numerals	\$ _____ Numerals
				_____ Words(unit price only)	
7	CONC SIDEWALK, 4 IN	212	SY	\$ _____ Numerals	\$ _____ Numerals
				_____ Words(unit price only)	
8	MILL ASPH CONC PVMT, 2 IN DEPTH	336	SY	\$ _____ Numerals	\$ _____ Numerals
				_____ Words(unit price only)	
9	RECYCLED ASPH CONC 19 MM SUPERPAVE, GP 1 OR 2, INCL BIT	42	TN	\$ _____ Numerals	\$ _____ Numerals
				_____ Words(unit price only)	
10	RECYCLED ASPH CONC 12.5 MM SUPERPAVE, GP1 OR 2, INCL B	52	TN	\$ _____ Numerals	\$ _____ Numerals
				_____ Words(unit price only)	
11	GR AGGR BASE CRS, 6 INCH, INCL MATL	232	SY	\$ _____ Numerals	\$ _____ Numerals
				_____ Words(unit price only)	
12	TACK COAT	31	GL	\$ _____ Numerals	\$ _____ Numerals
				_____ Words(unit price only)	
13	CONC CURB & GUTTER, 6 IN X 24 IN, TP 2	232	LF	\$ _____ Numerals	\$ _____ Numerals
				_____ Words(unit price only)	

EXHIBIT A: ITEMIZED BID PROPOSAL FORM

ITEM NO.	DESCRIPTION	EST. QTY.	UNIT	UNIT PRICE	TOTAL AMOUNT
14	PAVEMENT MARKING, HANDICAP SYMBOL	3	EA	\$ Numerals	\$ Numerals
				Words(unit price only)	
15	4 IN BLUE STRIPING	160	LF	\$ Numerals	\$ Numerals
				Words(unit price only)	
16	5 IN YELLOW STRIPING	253	LF	\$ Numerals	\$ Numerals
				Words(unit price only)	
17	ADA SIGNAGE	3	EA	\$ Numerals	\$ Numerals
				Words(unit price only)	
18	ADA RAMP	4	EA	\$ Numerals	\$ Numerals
				Words(unit price only)	
19	STAIRS, INCL RAIL	1	EA	\$ Numerals	\$ Numerals
				Words(unit price only)	

EXHIBIT A: ITEMIZED BID PROPOSAL FORM

ITEM NO.	DESCRIPTION	EST. QTY.	UNIT	UNIT PRICE	TOTAL AMOUNT
TOTAL AMOUNT				\$	Numerals
					Words
CONTINGENCY (5%)				\$	Numerals
					Words
GRAND TOTAL OF AMOUNTS				\$	Numerals
					Words

No.	Item No.
1	0
2	0
3	0
4	0
5	0
6	0
7	0
8	0
9	0
10	0
11	0
12	0
13	0
14	0
15	0
16	0
17	0
18	0
19	0

Description	Quantity
DEMOLITION	1
GRADING COMPLETE - (INCL MOVING SIGN AND BENCHES)	1
EROSION CONTROL	1
LANDSCAPING	1
TEMPORARY ADA ACCESS	1
BRICK PLANTER	1
CONC SIDEWALK, 4 IN	212
MILL ASPH CONC PVMT, 2 IN DEPTH	336
RECYCLED ASPH CONC 19 MM SUPERPAVE, GP 1 OR 2, INCL BITUM MATL	42
RECYCLED ASPH CONC 12.5 MM SUPERPAVE, GP1 OR 2, INCL BITUM MATL	52
GR AGGR BASE CRS, 6 INCH, INCL MATL	232
TACK COAT	31
CONC CURB & GUTTER, 6 IN X 24 IN, TP 2	232
PAVEMENT MARKING, HANDICAP SYMBOL	3
4 IN BLUE STRIPING	160
5 IN YELLOW STRIPING	253
ADA SIGNAGE	3
ADA RAMP	4
STAIRS, INCL RAIL	1

Subtotal

5% Contingency

Grand Total

Units	1 SH Creel		2 Tri-Scapes		3 WB Construction	
	Unit Price	Item Cost	Unit Price	Item Cost	Unit Price	Item Cost
LS	\$19,170.00	\$19,170.00	\$51,699.00	\$51,699.00	\$36,903.00	\$36,903.00
LS	\$4,865.00	\$4,865.00	\$93,175.63	\$93,175.63	\$8,250.00	\$8,250.00
LS	\$2,590.00	\$2,590.00	\$1,264.96	\$1,264.96	\$2,970.00	\$2,970.00
LS	\$10,820.00	\$10,820.00	\$4,760.62	\$4,760.62	\$14,448.00	\$14,448.00
LS	\$6,930.00	\$6,930.00	\$6,000.00	\$6,000.00	\$800.00	\$800.00
LS	\$7,810.00	\$7,810.00	\$40,962.00	\$40,962.00	\$22,000.00	\$22,000.00
SY	\$65.00	\$13,780.00	\$106.30	\$22,535.60	\$96.70	\$20,500.40
SY	\$75.00	\$25,200.00	\$41.32	\$13,883.52	\$6.75	\$2,268.00
TN	\$200.00	\$8,400.00	\$325.85	\$13,685.70	\$430.86	\$18,096.12
TN	\$210.00	\$10,920.00	\$301.85	\$15,696.20	\$548.29	\$28,511.08
SY	\$35.00	\$8,120.00	\$18.54	\$4,301.28	\$45.00	\$10,440.00
GL	\$10.00	\$310.00	\$26.36	\$817.16	\$200.00	\$6,200.00
LF	\$40.00	\$9,280.00	\$42.00	\$9,744.00	\$32.27	\$7,486.64
EA	\$45.00	\$135.00	\$180.00	\$540.00	\$90.00	\$270.00
LF	\$5.00	\$800.00	\$2.40	\$384.00	\$1.45	\$232.00
LF	\$5.00	\$1,265.00	\$2.40	\$607.20	\$1.97	\$498.41
EA	\$540.00	\$1,620.00	\$330.00	\$990.00	\$1,334.00	\$4,002.00
EA	\$2,425.00	\$9,700.00	\$1,296.00	\$5,184.00	\$1,200.00	\$4,800.00
EA	\$5,715.00	\$5,715.00	\$4,331.26	\$4,331.26	\$2,400.00	\$2,400.00
		\$147,430.00		\$290,562.13		\$191,075.65
		\$7,371.50		\$14,528.11		\$9,553.78
		\$154,801.50		\$305,090.24		\$200,629.43



Mr. Ricky Stewart
Public Works Director
City of Kennesaw
3080 Moon Station Rd.
Kennesaw, GA 30144

November 18, 2024

Re: Recommendation of Award: City Hall Entrance Improvements

Mr. Stewart:

Bids were opened for the above referenced project on November 15, 2024. The lowest bid received was submitted by S.H. Creel Contracting in the amount of \$154,801.50. A reference check has been completed, and qualifications of this bidder have been verified. Therefore, it is our recommendation that the contract be awarded to S.H. Creel Contracting.

Upon receipt of the City's concurrence, we will prepare the contracts and forward them to the Contractor for execution.

Enclosed for your review is a copy of the bid log for the project.

Respectfully,

Roy Acree
Program Manager
Croy Engineering, LLC

Cc: Marty Hughes, City of Kennesaw
Lea Alvarez, City of Kennesaw



Item Report

TO: The Honorable Mayor and City Council

FROM: Ricky Stewart, Public Works Director

DATE: December 2, 2024

TITLE: **Resolution: Right of Way Abandonment Process for 2995 and 2997 North Main Street**
 Consideration of approval for a Resolution authorizing the start of the Right of Way Abandonment Process for 2995 and 2997 North Main Street.

Summary:

The City is in receipt of a request for right of way abandonment for a portion of the right of way fronting 2995 and 2997 North Main Street. The right of way line fronting these properties is currently 50 feet from the centerline of North Main Street on the eastern side. No other property along this portion of North Main Street has this amount of right of way. The proposed abandonment would be 30' of the existing right of way, reducing the right of way at the two addresses to 20' from the centerline of North Main Street. This reduction would match that of the adjoining property. Historical records indicate that this right of way may have been intended as a turn lane for a now abandoned right of way named Pine Street. In accordance with Georgia law O.C.G.A Title 32, Chapter 7, multiple steps must be followed to abandon public rights of way. The first step is approval from the governing body to start the abandonment process. With the Council's approval, the Public Works Department will proceed with the abandonment process.

Recommendation:

The Public Works Director recommends approval of beginning the abandonment process.

Fiscal Impact:

Attachments:

1. RES 2024 - Abandonment Process for Portions of 2995 & 2997 North Main Street
2. Homeowner Request
3. 2995& 2997 N. Main St ROW Exhibit

**CITY OF KENNESAW
GEORGIA**

RESOLUTION NO. 2024- __, 2024

**RESOLUTION TO APPROVE ABANDONMENT PROCESS FOR
A PORTION OF RIGHT OF WAY AT 2995 & 2997 NORTH MAIN STREET**

BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF KENNESAW, COBB COUNTY, GEORGIA, AS FOLLOWS:

WHEREAS, the City has received a request to abandon a portion of right of way at 2995 and 2997 North Main Street; and

WHEREAS, these two tracts have a larger right of way width than their neighboring tracts; and

WHEREAS, the City has the authority to abandon rights of way that are deemed unneeded; and

WHEREAS, in accordance with Georgia law O.C.G.A Title 32, Chapter 7, multiple steps must be followed to abandon public rights of way. The first step is approval from the governing body to start the abandonment process.

BE IT RESOLVED the Kennesaw City Council authorizes starting the process of right of way abandonment for portions of right of way at 2995 and 2997 North Main Street.

BE IT FURTHER RESOLVED this Resolution shall become effective from and after its adoption and execution by the mayor.

PASSED AND ADOPTED by the Kennesaw City Council on this __ day of December, 2024.

ATTEST:

CITY OF KENNESAW

Lea Alvarez, City Clerk

Derek Easterling, Mayor

Dear Ricky Stewart,

This letter serves as a formal request for partial ROW abandonment. The portion requested is as follows: The section of "right of way" that is approximately 30 ft x 215ft spanning both 2995 and 2997 main street that is my property.

Upon substantial research, we found a 2004 survey and one from 1946 showing a similar survey showing this strip as "right of way" of 50 ft from center of main street for an apparent purpose of "allowed for widening road". Also, I was not able to find any documentation that granted this additional "right of way". Over the years, the purpose of this apparent "right of way" expansion no longer exists for the following reasons:

1. Pine road no longer exists and was abandoned and deeded equally to my lot and Jerry Weeks next to me. Right side of plat.
2. Park Drive now has full access all the way through to Watts Dr. allowing 2 ways of egress.
3. Paulding street was re-routed to an intersection at Knightsbridge and now has a traffic light to control traffic
4. This expansion strip exists across my 2 lots and not my neighbors across from me or even north and south of me. Just a small section of main street.

My request is to allow for this abandoned "right of way" section to be deeded back to me so as to benefit both myself and the city of Kennesaw for these reasons:

1. The slope grade on both 2995 and 2997 are greater than 25% and dangerous to maintain by mowing.
2. The city would add to the tax base, by including this on my tax records
3. I would then maintain the property in a manner harmonious to the historic district of Kennesaw.
4. The whole community will benefit from this transaction.

Please review this and attached drawing from plat, and advise on approval status.

Respectfully,

Dean and Mary Klein

2995 North Main Street.



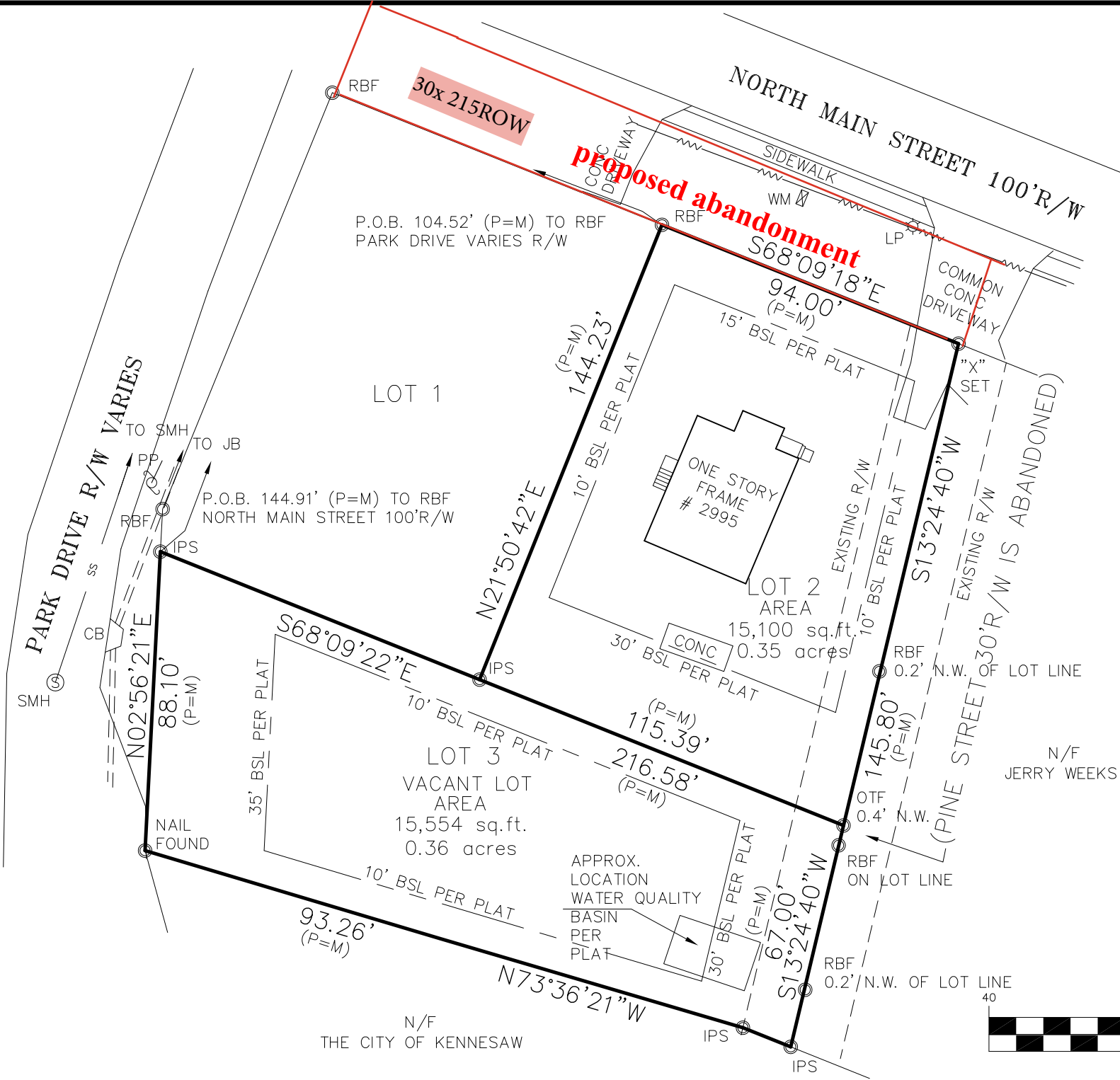
LEGEND AND SYMBOLS USED

- IPF - Iron Pin Found
- IPS - Iron Pin Set (1/2" Capped Rebar)
- RBF - Rebar Found
- OTF - Open Top Pipe Found
- CTF - Crimped Top Pipe Found
- MON - Monument Found
- CMF - Concrete Monument Found
- CP - Calculated Point
- ⊗ PP - Power Pole
- ⊗ LP - Light Pole
- ⊗ PED - Utility Pedestal
- ⊗ FH - Fire Hydrant
- ⊗ WM - Water Meter
- ⊗ WV - Water Valve
- ⊗ GM - Gas Meter
- ⊗ SMH - Sewer Manhole
- ⊗ CB - Catch Basin
- DI - Drop Inlet
- ⊗ C/O - Cleanout
- ⊗ PBX - Power Box
- ⊗ Deciduous Tree
- ⊗ Coniferous Tree
- CMP - Corrugated Metal Pipe
- RCP - Reinforced Concrete Pipe
- R/W - Right of Way
- N~F - Now or Formerly
- DB, PG - Deed Book and Page
- PB, PG - Plat Book and Page
- POB - Point of Beginning
- P = PLAT
- D =DEED
- M = MEASURED

SURVEYOR'S CERTIFICATION

This plat is a retracement of an existing parcel or parcels of land and does not subdivide or create a new parcel or make any changes to any real property boundaries. The recording information of the documents, maps, plats, or other instruments which created the parcel or parcels are stated hereon. RECORDATION OF THIS PLAT DOES NOT IMPLY APPROVAL OF ANY LOCAL JURISDICTION, AVAILABILITY OF PERMITS, COMPLIANCE WITH LOCAL REGULATIONS OR REQUIREMENTS, OR SUITABILITY FOR ANY USE OR PURPOSE OF THE LAND. Furthermore, the undersigned land surveyor certifies that this plat complies with the minimum technical standards for property surveys in Georgia as set forth in the rules and regulations of the Georgia Board of Registration for Professional Engineers and Land Surveyors and as set forth in O.C.G.A. Section 15-6-67.

John C. Groves, Jr. RLS 3237



SURVEYOR'S NOTES:

- The field data upon which this plat is based has a relative positional accuracy of 0.02 feet.
- This plat has been calculated for closure and has a mathematical error of 1: 300,000+.
- Field angles and measurements acquired for the production of this plat were obtained on 8/30/2022 using a Leica TCRP 1203 Total Station.
- This plat was prepared without benefit of a current title examination. Easements or other encumbrances may exist which are not shown hereon. All matters pertaining to title are excepted.
- No provisions have been made to secure the delineation of any wetlands, historical, or cultural features that may exist on this property.
- Information regarding the reputed presence, size, character, and location of existing underground utilities and structures is shown hereon. There is no certainty of the accuracy of this information and it shall be considered in that light by those using this drawing. The location and arrangement of underground utilities and structures shown hereon may be inaccurate and utilities and structures not shown may be encountered. The owner, his employees, his consultants, his contractors and/or his agents shall hereby distinctly understand that the surveyor is not responsible for the correctness or sufficiency of this information shown hereon as to such underground installations.
- The certification, as shown hereon, is purely a statement of professional opinion based on knowledge, information and belief; and based on existing field evidence and documentary evidence available. The certification is not an expressed or implied warranty or guarantee.

GRAPHIC SCALE



(IN FEET)
1 inch = 40 ft.

FOOTHILLS
LAND SURVEYING, LLC

8450 KNOX BRIDGE HWY
CANTON, GA 30114
(678) 533-8637
www.foothillslandsurveying.com
GA LSF #1152

BOUNDARY SURVEY PREPARED FOR
DEAN KLEIN & MARY KLEIN

ROCHWALSKYS CORNER
LOCATED IN LAND LOT 139
20TH DISTRICT, 2ND SECTION
COBB COUNTY, GEORGIA

DATE:10/10/2022
SCALE: 1"= 40'
DRAWING:22-206A
COORD:
REVISIONS:
SHEET #: 1 of 1



Item Report

TO: The Honorable Mayor and City Council
FROM:
DATE: December 2, 2024
TITLE: Reports, Discussions, and Updates

Summary:

Recommendation:

Fiscal Impact:

Attachments:
None



Item Report

TO: The Honorable Mayor and City Council

FROM:

DATE: December 2, 2024

TITLE: Mayor and Council (re)appointments to Boards and Commissions. This item is for (re)appointments made by the Mayor to any Board, Committee, Authority, or Commission requiring an appointment to fill any vacancies, resignations, and to create or dissolve boards and commissions, as deemed necessary.

Summary:

Recommendation:

Fiscal Impact:

Attachments:

None