City of Flowery Branch
City Council Meeting
Thursday, February 02, 2023, 6:00 PM
City of Flowery Branch City Hall
5410 West Pine Street, Flowery Branch, GA 30542

CALL WORK SESSION TO ORDER:

PLEDGE OF ALLEGIANCE:

ADOPTION OF AGENDA:

NEW BUSINESS -WORK SESSION:

- Award Contract to Legacy Water Group, LLC for the Connection to Gainesville's Sanitary Sewer System and Declaration of an Emergency
  Oakwood FM Proposal.pdf
  Contract Documents - Flowery Branch - Sewer System Connection.pdf
  ES - Line to Gainesville and Emergency Declaration.pdf
- Consider Executing a Performance Agreement for Swingin' Medallions on Saturday, September 23, 2023 at the September Fall Event
  Executive Summary Swingin' Medallions Agreement 2023.pdf
  Swingin Medallions Performance Agreement.pdf

DEPARTMENT REPORTS: - a. City Manager Report
b. City Clerk Report
c. Community Relations Report
d. Finance Department Report
e. Planning Department Report
f. Police Department Report
g. Public Works & Utilities Report
h. Attorney Report
i. Council Report

ADJOURNMENT WORK SESSION:

VOTING SESSION AGENDA

CALL VOTING SESSION TO ORDER:

PUBLIC COMMENTS: - Please limit to two minutes

CONSENT AGENDA:

- Consider January 17, 2023 Special Called City Council Meeting Minutes
  Unofficial January 17, 2023 Special Called City Council Meeting Minutes.pdf

- Consider January 19, 2023 City Council Meeting Minutes
  Unofficial January 19, 2023 Minutes.pdf

UNFINISHED BUSINESS - VOTING SESSION:

- Consider Second Reading of Ordinance 686 and Ordinance 687 for Variance Requests submitted by Mr. Jason Jackson for relief from the Zoning Ordinance Requirements set forth in Table 6.2 for 6027 and 6031 Morrow Drive.
  Variance Staff Report lots 32 & 33.pdf
  Ordinance 686.pdf
  Ordinance 687.pdf
- Consider Second Reading of Ordinances 678 - 683 for Variance Requests submitted by Jason Jackson: Ordinance 678 for 6005 Lights Ferry Road, Ordinance 679 for 6006 Lights Ferry Road, Ordinance 680 for 6010 Lights Ferry Road, Ordinance 681 for 6014 Lights Ferry Road, Ordinance 682 for 6016 Lights Ferry Road, and Ordinance 683 for 6018 Lights Ferry Road, Flowery Branch, GA.
  Variance Staff Report .pdf
  Combined 678-683.pdf

NEW BUSINESS - VOTING SESSION:

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EXECUTIVE SESSION:

ADJOURNMENT:

If you have a disability or impairment and need special assistance please contact the City Clerk prior to the meeting at 770-967-6371 - Meeting agenda is subject to change

FLOWERY BRANCH CITY COUNCIL

EXECUTIVE SUMMARY

SUBJECT: Award Contract to Legacy Water Group, LLC for the Connection to Gainesville's Sanitary Sewer System and Declaration of an Emergency

COUNCIL MEETING DATE: February 2, 2023

HISTORY:
The City of Flowery Branch has been near capacity at its wastewater treatment plant and staff sought out several alternatives for more capacity while a new plant was being designed and constructed.

FACTS AND ISSUES:
Trey Gavin with ESG Engineering, has been working with staff to identify the lines to connect to Gainesville's sanitary sewer system and a potential route for the new pipeline. The cost of the lines and connections are anticipated to be $2,066,851.50 with funding to be provided from system development charges. An emergency exists because the current wastewater treatment plant, which is permitted to handle 910,000 gallons per day (GPD), is currently operating near capacity and the city has recently received violation notices and fines from EPD associated with these issues. Mr. Gavin believes this to be a "max not-to-exceed" price and will work to bring the project in below this total. The only unknown currently of concern is the potential for rock blasting during installation, but we believe this will not be an issue based on knowledge of the area.

OPTIONS:
1) Award contract to Legacy Water Group, LLC and declare an emergency so the work can begin immediately.
2) Do not award contract.

IF FUNDING IS INVOLVED, ARE FUNDS APPROVED IN THE CURRENT BUDGET:
Yes

AMOUNT AND SOURCE OF FUNDS:
$2,066,851.50 - System Developmnet

RECOMMENDATION:
Award Contract to Legacy Water Group, LLC for the Connection to Gainesville's Sanitary Sewer System in an amount not to exceed $2,066,851.50 and Declaration of an Emergency as stated by staff.

SAMPLE MOTION:
I make a motion to award a contract to Legacy Water Group, LLC in amount not to exceed $2,066,851.50 for immediate construction of lines to connect to Gainesville's sanitary sewer system and to declare an emergency for the work to begin, subject to the City Attorney's approval.

COLLABORATING DEPARTMENT:
Water/Wastewater

DEPARTMENT: Administration

Prepared by: Shelia Cooper

ATTACHMENTS

- Oakwood FM Proposal.pdf
- Contract Documents - Flowery Branch - Sewer System Connection.pdf
- ES - Line to Gainesville and Emergency Declaration.pdf

LEGACY
WATER GROUP, LLC.
CONSTRUCTION SOLUTIONS

January 26, 2023

ESG Engineering
6400 Peake Road
Macon, GA 31210
ATTN: Mr. Trey Gavin

RE: Oakwood/Flowery Branch Emergency Force Main Installation
Pricing Proposal

Trey –

It is our pleasure to provide this proposal to install an emergency sanitary sewer force for the City of Flowery Branch. Our understanding of the scope of work involves the following items:

Part 1: Locate an existing force main along McEver Road and test the integrity of the pipe; connect to an existing force main along Mud Creek and install isolation plug valves in precast manholes; install a mag meter to measure the flows that will be sent to the City of Gainesville; make connections to the existing force main after it is located and tested; continue installation of a new 8" force main along the east side McEver Road and the north side of Flat Creek to a manhole connection at Flat Creek Road and Oakwood Road; testing and restoration.

Part 2: Connect to an existing force main and install isolation plug valves in precast manholes near Falcon Parkway and Cantrell Road; install new 8" force main from Cantrell Road to City of Flowery Branch property west of Thurman Tanner Parkway; connect to existing force main on City of Flowey Branch Property.

Included below is a breakdown of our pricing. We have provided a daily price for locating and testing the existing force main. Additionally, due to the unknown soil conditions, we have provided a unit price for rock excavation in the event it is encountered. If rock is encountered a jack and bored crossing, a unit price will have to be negotiated.

Our proposal is based on using PVC pipe. Once t5he final route is approved, we can evaluate the use of HDPE pipe and present any cost savings to the City. Our price is based on using a Templeton Ultra Mag meter for flow measurement. We have assumed three air release valves will be required. Our price is contingent on the existing unused force main being found and passing a pressure test. We have not included any electrical or SCADA costs for the mag meter if they are required. Our price does not include any modifications to the Industrial Park Lift Station.

Item #	Item Description	Estimated Quantity	Unit	Unit Price	Total Price
McEver Road					
01	Mobilization	1.00	LS	$50,000.00	$50,000.00
02	Locate/Test Integrity Of Exist. Force Main	5.00	DY	$3,500.00	$17,500.00
03	Clearing	500.00	LF	$18.00	$9,000.00
04	Connect To Exist. Force Main	3.00	EACH	$13,250.00	$39,750.00
05	Connect To Exist. Manhole	1.00	EACH	$6,500.00	$6,500.00
06	8" Force Main	10,200.00	LF	$96.00	$979,200.00
07	Ductile Iron Fittings	1,426.00	LB	$27.00	$38,502.00
08	8" Plug Valve	1.00	EACH	$14,450.00	$14,450.00
09	Air Release Valve Ass'y	3.00	EACH	$9,000.00	$27,000.00
10	Flow Meter Ass'y	1.00	EACH	$20,000.00	$20,000.00
11	16" Jack & Bore Steel Casing	390.00	LF	$450.00	$175,500.00
12	R/R Asphalt Driveway	125.00	LF	$82.00	$10,250.00
13	R/R Concrete Curb & Gutter	90.00	LF	$38.00	$3,420.00
14	R/R Concrete Driveway	465.00	LF	$70.00	$32,550.00
15	R/R Gravel Drive	75.00	LF	$20.00	$1,500.00
16	Traffic Control	1.00	LS	$60,000.00	$60,000.00
17	Type "S" Silt Fence	10,500.00	LF	$4.50	$47,250.00
18	Check Dams	60.00	EACH	$700.00	$42,000.00
19	Erosion Control Matting	2,900.00	SY	$1.60	$4,640.00
20	Permanent Grassing	5.00	ACRE	$2,100.00	$10,500.00
21	Sod Replacement	5,850.00	SY	$11.75	$68,737.50
		Total Price for McEver Road Items:			**$1,658,249.50**
Falcon Parkway					
01	Mobilization	1.00	LS	$14,000.00	$14,000.00
02	Clearing	850.00	LF	$9.00	$7,650.00
03	Connect To Exist. Force Main	2.00	EACH	$7,100.00	$14,200.00
04	8" Force Main	2,100.00	LF	$95.00	$199,500.00
05	Ductile Iron Fittings	276.00	LB	$27.00	$7,452.00
06	8" Plug Valve	4.00	EACH	$14,450.00	$57,800.00
07	16" Jack & Bore Steel Casing	240.00	LF	$450.00	$108,000.00
		Total Price for Falcon Parkway Items:			**$408,602.00**
		Total Bid Price:		**$2,066,851.50**	

Let me know if you have any questions or require any additional information.

Sincerely,
Legacy Water Group, LLC

Jeffrey R. Klebowski
Executive Vice President

ESG ENGINEERING

ESG Engineering
6400 Peake Rd
Macon, GA 31210
(P) 478-474-5025
www.esgengineering.com

SEWER SYSTEM CONNECTION FROM FLOWERY BRANCH TO GAINESVILLE

PREPARED FOR THE

Flowery Branch

CONTRACT DOCUMENTS

CONTRACT DOCUMENTS

Sewer System Connection from Flowery Branch to Gainesville

FOR THE

CITY OF FLOWERY BRANCH

ESG ENGINEERING

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CONTRACT DOCUMENTS

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SECTION 00210
Immigration and Security Form

IMMIGRATION AND SECURITY FORM

THE SUCCESSFUL BIDDER MUST PROVIDE THE OWNER WITH THE PROPERLY COMPLETED AND PROPERLY SIGNED IMMIGRATION AND SECURITY FORMS AS REQUIRED BY GEORGIA SENATE BILL 529 "GEORGIA SECURITY AND IMMIGRATION COMPLIANCE ACT OF 2006" O.C.G.A. § 13-10-90 AND § 13-10-91

THIS FORM MUST BE COMPLETED BY ALL CONTRACTORS AND SUBCONTRACTORS

THE FORM ATTACHED HERETO.

IMMIGRATION AND SECURITY FORM

A. In order to insure compliance with the Immigration Reform and Control Act of 1986 (IRCA), Pub.L. 99-603 and the Georgia Security and Immigration Compliance Act O.C.G.A. § 13-10-90 et. seq., Contractor must initial one of the sections below:

_____ Contractor has 500 or more employees and Contractor warrants that Contractor has complied with the Immigration Reform and Control Act of 1986 (IRCA) Pub.L. 99-603 and the Georgia Security and Immigration Compliance Act by registering at https://www.vis-dhs.com/EmployerRegistration and verifying information of all new employees; and by executing any affidavits required by the rules and regulation issued by the Georgia Department of Labor set forth at Rule 300-10-1-.01 et. seq.

_____ Contractor has 100-499 employees and Contractor warrants that no later than July 1, 2008, Contractor will register at https://www.vis-dhs.com/EmployerRegistration to verify information of all new employees in order to comply with the Immigration Reform and Control Act of 1986 (IRCA) Pub.L. 99-603 and the Georgia Security and Immigration Compliance Act; and by executing any affidavits required by the rules and regulation issued by the Georgia Department of Labor set forth at Rule 300-10-1-.01 et. seq.

_____ Contractor has 99 or fewer employees and Contractor warrants that no later than July 1, 2009, Contractor will register at https://www.vis-dhs.com/EmployerRegistration to verify information of all new employees in order to comply with the Immigration Reform and Control Act of 1986 (IRCA) Pub.L. 99-603 and the Georgia Security and Immigration Compliance Act; and by executing any affidavits required by the rules and regulation issued by the Georgia Department of Labor set forth at Rule 300-10-1-.01 et. seq.

B. Contractor warrants that Contractor has included a similar provision in all written agreements with any subcontractors engaged to perform services under its Contract(s) with the City of Flowery Branch.

_____ _____

Signature Title

Firm Name:

_____

Street/Mailing Address:

_____

City, State, Zip Code:

_____

Telephone Number:

_____

Email Address:

CONTRACTOR AFFIDAVIT AND AGREEMENT

By executing this affidavit, the undersigned contractor verifies its compliance with O.C.G.A. 13-10-91, stating affirmatively that the individual, firm, or corporation which is contracting with City of Flowery Branch 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 Act of 1986 (IRCA), P.L. 99-603], in accordance with the applicability provisions and deadlines established in O.C.G.A. 13-10-91.

The undersigned further agrees that, should it employ or contract with any subcontractor(s) in connection with the physical performance of services pursuant to this contract with City of Flowery Branch, 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 City of Flowery Branch at the time the subcontractor(s) is retained to perform such service.

_____
EEV / Basic Pilot Program* User Identification Number

_____
BY: Authorized Officer or Agent
(Contractor Name)

_____
Title of Authorized Officer or Agent of Contractor

_____
Printed Name of Authorized Officer or Agent of Contractor

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)

(End of Form)

SUBCONTRACTOR AFFIDAVIT

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 engaged in the physical performance of services under a contract with City of Flowery Branch 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 Act of 1986 (IRCA), P.L. 99-603], in accordance with the applicability provisions and deadlines established in O.C.G.A. 13-10-91.

_____
EEV / Basic Pilot Program* User Identification Number

_____
BY: Authorized Officer or Agent
(Contractor Name)

_____
Title of Authorized Officer or Agent of Contractor

_____
Printed Name of Authorized Officer or Agent of Contractor

SUBSCRIBED AND SWORN
BEFORE ME ON THIS THE
_____ DAY OF _____, 200___

_____
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)

(End of Form)

END OF SECTION

SECTION 00480
CERTIFICATION OF NONSEGREGATED FACILITIES

(To be completed and submitted with Bid)

Bidder certifies that he does not maintain or provide for his employees any segregated facilities at any of his establishments, and that he does not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. The Bidder agrees that a breach of this certification will be a violation of the Equal Opportunity clause in any contract resulting from acceptance of this bid. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, timeclocks, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin, because of habit, local custom, or otherwise. The Bidder agrees that (except where he has obtained identical certification from proposed subcontractors for specific time periods) he will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding $10,000 which are not exempt from the provisions of the Equal Opportunity clause, and that he will retain such certification in his files.

Note: The penalty for making false statements in offers is prescribed in 18 U.S.C. & 1001.

Date _____, 20___ _____
(Name of Bidder)

Official Address

_____

_____

BY:_____

TITLE:_____

SECTION 00410
BID FORM

PROJECT IDENTIFICATION:
Sewer System Connection from Flowery Branch to Gainesville

CONTRACT IDENTIFICATION AND NUMBER:
F0002.004

THIS BID IS SUBMITTED TO:
City of Flowery Branch
5410 Pine Street
Flowery Branch, GA 30542

THIS BID IS SUBMITTED FROM:

Bidder: Legacy Water Group, LLC

Address: 10130 Bob Williams Parkway

Covington, GA 30014

Phone: (678) 712-2132

State of Georgia Utility Contractor's License No.: UC302290

1. The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into an agreement with Owner in the form included in the Contract Documents to perform and furnish all Work as specified or indicated in the Contract Documents for the Contract Price and within the Contract Time indicated in this Bid and in accordance with the other terms and conditions of the Contract Documents.

2. Bidder will sign and submit the Agreement with the Bonds and other documents required by the Bidding Requirements within fifteen days after the date of Owner's Notice of Award.

3. In submitting this Bid, Bidder represents, as more fully set forth in the Agreement, that:

   (a) Bidder has familiarized itself with the nature and extent of the Contract Documents, Work, site, locality, and all local conditions and Laws and Regulations that in any manner may affect cost, progress, performance or furnishing of the

Work.

(b) Bidder has studied carefully all reports and drawings of subsurface conditions and drawings of physical conditions which are identified in the Supplementary Conditions as provided in paragraph 4.2 of the General Conditions, and accepts the determination set forth in paragraph 4.2.1 of the Supplementary Conditions of the extent of the technical data contained in such reports and drawings upon which Bidder is entitled to rely.

(c) Bidder has obtained and carefully studied (or assumes responsibility for obtaining and carefully studying) all such examinations, investigations, explorations, tests and studies (in addition to or to supplement those referred to in (c) above) which pertain to the subsurface or physical conditions at the site or otherwise may affect the cost, progress, performance or furnishing of the Work as Bidder considers necessary for the performance or furnishing of the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of paragraph 4.2 of the General Conditions; and no additional examinations, investigations, explorations, tests, reports or similar information or data are or will be required by Bidder for such purposes.

(d) Bidder has reviewed and checked all information and data shown or indicated on the Contract Documents with respect to existing Underground Facilities at or contiguous to the site and assumes responsibility for the accurate location of said Underground Facilities. No additional examinations, investigations, explorations, tests, reports or similar information or data in respect of said Underground Facilities are or will be required by Bidder in order to perform and furnish the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of paragraph 4.3 of the General Conditions.

(e) Bidder has correlated the results of all such observations, examinations, investigations, explorations, tests, reports and studies with the terms and conditions of the Contract Documents. Bidder has given Engineer written notice of all conflicts, errors or discrepancies that it has discovered in the Contract Documents and the written resolution thereof by Engineer is acceptable to Bidder.

(f) This Bid is genuine and not made in the interest of or on behalf of any undisclosed person, firm or corporation and is not submitted in conformity with an agreement or rules of any group, association, organization or corporation; Bidder has not directly or indirectly induced or solicited any other corporation to refrain from bidding; and Bidder has not sought by collusion to obtain for itself any advantage over any other Bidder or over Owner.

(g) Bidder agrees to commence work under this Agreement on or before a date to be specified in a written "Notice to Proceed" of the Owner.

Bidder accepts the provisions of the Agreement as to liquidated damages in the event of failure to complete the Work on time.

4. Bidder will complete the Work in accordance with the Contract Documents for the following price(s):

(a) BASE BID:

Item #	Item Description	Estimated Quantity	Unit	Unit Price	Total Price
McEver Road					
01	Mobilization	1.00	LS	$50,000.00	$50,000.00
02	Locate/Test Integrity Of Exist. Force Main	5.00	DY	$3,500.00	$17,500.00
03	Clearing	500.00	LF	$18.00	$9,000.00
04	Connect To Exist. Force Main	3.00	EACH	$13,250.00	$39,750.00
05	Connect To Exist. Manhole	1.00	EACH	$6,500.00	$6,500.00
06	8" Force Main	10,200.00	LF	$96.00	$979,200.00
07	Ductile Iron Fittings	1,426.00	LB	$27.00	$38,502.00
08	8" Plug Valve	1.00	EACH	$14,450.00	$14,450.00
09	Air Release Valve Ass'y	3.00	EACH	$9,000.00	$27,000.00
10	Flow Meter Ass'y	1.00	EACH	$20,000.00	$20,000.00
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13	R/R Concrete Curb & Gutter	90.00	LF	$38.00	$3,420.00
14	R/R Concrete Driveway	465.00	LF	$70.00	$32,550.00
15	R/R Gravel Drive	75.00	LF	$20.00	$1,500.00
16	Traffic Control	1.00	LS	$60,000.00	$60,000.00
17	Type "S" Silt Fence	10,500.00	LF	$4.50	$47,250.00
18	Check Dams	60.00	EACH	$700.00	$42,000.00
19	Erosion Control Matting	2,900.00	SY	$1.60	$4,640.00
20	Permanent Grassing	5.00	ACRE	$2,100.00	$10,500.00
21	Sod Replacement	5,850.00	SY	$11.75	$68,737.50
				Total Price for McEver Road Items:	**$1,658,249.50**

Falcon Parkway					
01	Mobilization	1.00	LS	$14,000.00	$14,000.00
02	Clearing	850.00	LF	$9.00	$7,650.00
03	Connect To Exist. Force Main	2.00	EACH	$7,100.00	$14,200.00
04	8" Force Main	2,100.00	LF	$95.00	$199,500.00
05	Ductile Iron Fittings	276.00	LB	$27.00	$7,452.00
06	8" Plug Valve	4.00	EACH	$14,450.00	$57,800.00
07	16" Jack & Bore Steel Casing	240.00	LF	$450.00	$108,000.00
				Total Price for Falcon Parkway Items:	**$408,602.00**

Total Bid Price:	**2,066,851.50**

5. Bidder agrees that the Work will be substantially complete and ready for final payment in accordance with paragraph 14.13 of the General Conditions within 180 calendar days after the date when the Contract Times commence to run.

6. Bidder accepts the provisions of the Agreement as to liquidated damages in the event of failure to complete the Work within the times specified in the Agreement.

7. The undersigned further agrees that in case of failure on his part to execute the said contract and the Bond within fifteen (15) consecutive calendar days after written notice being given of the award of the contract, the check or bid bond accompanying this bid, and the monies payable thereon shall be paid into the funds of the Owner as liquidated damages for such failure, otherwise, the check or bid bond accompanying this proposal shall be returned to the undersigned.

8. Communications concerning this Bid shall be addressed to:
   ESG Engineering, Inc
   6400 Peake Rd
   Macon, GA 31210
   Attn: Margaret Hildebrand
   mhildebrand@esgengineering.com

Terms used in this Bid which are defined in the General Conditions or Instructions to Bidders will have the meanings indicated in the General Conditions of Instructions.

SUBMITTED on January 27, 2023.

BIDDER: Legacy Water Group, LLC

BY: _____

TITLE: Executive Vice President

STATE CONTRACTOR
LICENSE NO. UC302290

ADDRESS: 10130 Bob Williams Parkway

Covington, GA 30014

PHONE: (678) 712-2132

Seal: (if bid by a Corporation)

END OF SECTION

SECTION 00500
AGREEMENT

THIS AGREEMENT is dated as of the ___ day of _____ in the year 20___, by and between the City of Flowery Branch (hereinafter called OWNER) and Legacy Water Group, LLC (hereinafter called CONTRACTOR).

OWNER and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

Article 1. WORK.

CONTRACTOR shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

Part 1: Locate an existing force main along McEver Road and test the integrity of the pipe; connect to an existing force main along Mud Creek and install isolation plug valves in precast manholes; install a mag meter to measure the flows that will be sent to the City of Gainesville; make connections to the existing force main after it is located and tested; continue installation of a new 8" force main along the east side McEver Road and the north side of Flat Creek to a manhole connection at Flat Creek Road and Oakwood Road; testing and restoration.

Part 2: Connect to an existing force main and install isolation plug valves in precast manholes near Falcon Parkway and Cantrell Road; install new 8" force main from Cantrell Road to City of Flowery Branch property west of Thurman Tanner Parkway; connect to existing force main on City of Flowey Branch Property.

Article 2. ENGINEER.

The Project has been designed by **ESG Engineering** who is hereinafter called ENGINEER and who is to act as OWNER's representative, assume all duties and responsibilities and have the rights and authority assigned to ENGINEER in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

Article 3. CONTRACT TIME.

3.1. CONTRACTOR agrees to commence Work under this Agreement on or before a date to be specified on a written "Notice to Proceed" of the OWNER and to fully complete

the Work within 180 consecutive calendar days from the "Notice to Proceed" date.

3.2. Liquidated Damages. OWNER and CONTRACTOR recognize that time is of the essence of this Agreement and that OWNER will suffer financial loss if the Work is not completed within the times specified in paragraph 3.1 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. They also recognize the delays, expense and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by OWNER if the Work is not completed on time. Accordingly, instead of requiring any such proof, OWNER and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty) CONTRACTOR shall pay OWNER Five Hundred Dollars ($500.00) for each day that expires after the time specified in paragraph 3.1.

Article 4. CONTRACT PRICE.

OWNER shall pay CONTRACTOR for completion of the Work in accordance with the Contract Documents in current as follows:

Two Million Sixty Six Thousand Eight Hundred Fifty One and 50/100 Dollars
($2,066,851.50)

Article 5. PAYMENT PROCEDURES.

CONTRACTOR shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by ENGINEER as provided in the General Conditions.

5.1 Progress Payments; Retainage. OWNER shall make progress payments on account of the Contract Price on the basis of CONTRACTOR'S Applications for Payment as recommended by ENGINEER, on or about the 25th day of each month during performance of the Work as provided in paragraphs 5.1.1, 5.1.1.2 and 5.2 below. All such payments will be measured by the schedule of values established in paragraph 14.1 of the General Conditions.

5.1.1 For Cost of Work: Progress payments on account of the Cost of the Work will be made:

5.1.1.1 Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below, but, in each case, less the aggregate of payments previously made and less such amounts as ENGINEER shall determine, or OWNER may withhold, including but not limited to liquidated damages, in accordance with

paragraph 14.2 of the General Conditions.

90% of the work completed (with balance being retainage). If Work has been 50% completed as determined by ENGINEER, and if the character and progress of the Work have been satisfactory to OWNER and ENGINEER, OWNER, on recommendation of ENGINEER, may determine that as long as the character and progress of the Work remain satisfactory to them, there will be no additional retainage on account of Work completed, in which case the remaining progress payments prior to Substantial Completion will be in an amount equal to 100% of the Work completed.

90% of the Cost of the Work (with the Balance being retainage) applicable to materials and equipment not incorporated in the Work (but delivered, suitably stored and accompanied by documentation satisfactory to OWNER as provided in paragraph 14.2 of the General Conditions).

5.1.1.2 Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to 100 percent of the Work completed, less 200 percent of the Market value of the Work remaining and less such amounts as Engineer shall determine in accordance with Paragraph 14.7 of the General Conditions.

5.2 Final Payment. Upon final completion and acceptance of the Work in accordance with paragraph 14.7 of the General Conditions, OWNER shall pay the remainder of the Contract Price as recommended by ENGINEER as provided in said paragraph 14.13.

Article 6. CONTRACTOR'S REPRESENTATIONS.

In order in induce OWNER to enter into this Agreement CONTRACTOR makes the following representations:

6.1 CONTRACTOR has familiarized itself with the nature and extent of the Contract Documents, Work, site, locality, and all local conditions and Laws and Regulations that in any manner may affect cost, progress, performance or furnishing of the Work.

6.2 CONTRACTOR has studied carefully all reports of explorations and tests of subsurface conditions and drawings of physical conditions which are identified in the Supplementary Conditions as provided in paragraph 4.2 of the General Conditions, and accepts the determination set forth in paragraph 5 of the

Supplementary Conditions of the extent of the technical data contained in such reports and drawings upon which CONTRACTOR is entitled to reply.

6.3 CONTRACTOR has obtained and carefully studied (or assumes responsibility for obtaining and carefully studying) all such examinations, investigations, explorations, tests, reports and studies (in addition to or to supplement those referred to in paragraph 6.2 above) which pertain to the subsurface or physical conditions at or contiguous to the site or otherwise may affect the cost, progress, performance or furnishing of the Work as CONTRACTOR considers necessary for the performance or furnishing of the Work at the Contract Price, within the Contract Time and in accordance of paragraph 4.2 of the General Conditions; and no additional examinations, investigations, explorations, tests, reports, studies or similar information or data are or will be required by CONTRACTOR for such purposes.

6.4 CONTRACTOR has reviewed and checked all information and data shown or indicated on the Contract Documents with respect to existing Underground Facilities at or contiguous to the site and assumes responsibility for the accurate location of said Underground Facilities. No additional examinations, investigations, explorations, tests, reports, studies or similar information or data in respect of said Underground Facilities are or will be required by CONTRACTOR in order to perform and furnish the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of paragraph 4.3 of the General Conditions.

6.5 CONTRACTOR has correlated the results of all such observations, examinations, investigations, explorations, tests, reports and studies with the terms and conditions of the Contract Documents.

6.6 CONTRACTOR has given ENGINEER written notice of all conflicts, errors or discrepancies that he has discovered in the Contract Documents and the written resolution thereof by ENGINEER is acceptable to CONTRACTOR.

Article 7. CONTRACT DOCUMENTS.

7.1 This Agreement

7.2 Exhibits to this Agreement

7.3 Performance and other Bonds

7.4 Notice of Award

7.5 General Conditions

7.6 Supplementary Conditions

7.11 CONTRACTOR's Bid

7.12 Documentation submitted by or to CONTRACTOR prior to Notice of Award.

7.13 The following which may be delivered or issued after the Effective Date of the Agreement and are not attached hereto: All Written Amendments and other documents amending, modifying, or supplementing the Contract Documents pursuant to paragraphs 3.4 and 3.5 of the General Conditions.

7.14 The documents listed in paragraphs 7.2 et seq. above are attached to this Agreement

(Except as expressly noted otherwise above).

There are no Contract Documents other than those listed above in this Article 7. The Contract Documents may only be amended, modified or supplemented as provided in paragraphs 3.4 and 3.5 of the General Conditions.

Article 8. MISCELLANEOUS

8.1 Terms used in this Agreement which are defined in Article 1 of the General Conditions will have the meanings indicated in the General Conditions.

8.2 No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically but without limitation moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

8.3 OWNER and CONTRACTOR each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect of all covenants, agreements and obligations contained in the Contract Documents.

8.4 Any provision or part of the Contract documents held void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall

continue to be valid and binding upon OWNER and CONTRACTOR, who agree that the Contract documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

Article 9. OTHER PROVISIONS.

IN WITNESS WHEREOF. OWNER and CONTRACTOR have signed this Agreement in four (4) counterparts. One counterpart each has been delivered to OWNER, CONTRACTOR and ENGINEER. All portions of the Contract Documents have been signed or identified by OWNER and CONTRACTOR or by ENGINEER on their behalf.

This Agreement will be effective on _____, 20___.

OWNER	CONTRACTOR
By _____	BY _____
[CORPORATE SEAL]	[CORPORATE SEAL]
Attest _____	Attest _____
Address for giving notices	Address for giving notices
City of Flowery Branch	Legacy Water Group, LLC
5410 Pine Street	10130 Bob Williams Pkwy
Flowery Branch, GA 30542	Covington, GA 30014
(If OWNER is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of Agreement)	(If CONTRACTOR is a corporation, attach evidence of authority to sign) License No._____

END OF SECTION

SECTION 00610
PERFORMANCE BOND

STATE OF GEORGIA

COUNTY OF HALL

KNOW ALL MEN BY THESE PRESENTS, that we, Legacy Water Group, LLC
10130 Bob Williams Parkway Covington, GA 30014
(Name and Address of Contractor)

as Principal (hereinafter known as "CONTRACTOR"), and we,_____,
(Name and Address of Surety)

as Surety, do hereby acknowledge ourselves indebted and firmly bound and held unto the City of Flowery Branch.
(Name of Owner)

for the use and benefit of those entitled thereto, in the sum of Two Million, Sixty-Six Thousand, Eight Hundred Fifty-One and 50/100 Dollars ($2,066,851.50)
for the payment of which well and truly to be made, in lawful money of the United States, we do hereby bind ourselves, successors, assigns, heirs, and personal representatives.

BUT THE CONDITION OF THE FOREGOING OBLIGATION OR BOND IS THIS:

WHEREAS, the OWNER has engaged the said CONTRACTOR for the sum of Two Million, Sixty-Six Thousand, Eight Hundred Fifty-One and 50/100 Dollars ($2,066,851.50)
(Contract Sum)

for the construction of: Sewer System Connection from Flowery Branch to Gainesville
(Name of Contract/Project)

as more fully appears in a written Agreement bearing the date of _____, 20_____, a copy of which Agreement is by reference hereby made a part hereof.

NOW, THEREFORE, if said Contractor shall fully and faithfully perform all the undertakings and obligations under the said agreement or contract hereinbefore referred to and shall fully indemnify and save harmless the said OWNER from all costs and damage whatsoever which it may

suffer by reason of any failure on the part of said CONTRACTOR to do so, and shall fully reimburse and repay the said default, and shall guarantee all products and workmanship against defects for a period of one year, then this obligation or bond shall be null and void, otherwise, it shall remain in full force and effect.

And for value received it is hereby stipulated and agreed that no change, extension of time, alteration or addition to the terms of the said Agreement or Contract or in the work to be performed there under, or the Specifications accompanying the same shall in any way affect the obligations under the obligation or bond, and notice is hereby waived of any such damage, extension of time, alteration or addition to the terms of the Agreement or Contract or to the work or to the Specifications.

This bond is given pursuant to and in accordance with the provisions of O.C.G.A. Section 36-91-40 et seq and 36-91-70 et seq and all the provisions of the law referring to this character of bond as set forth in said sections or as may be hereinafter enacted and these are hereby made a part hereof to the same extent as if set out herein in full.

IN WITNESS WHEREOF, the said CONTRACTOR has hereunder affixed its signature and said Surety has hereunto caused to be affixed its corporate signature and seal, by its duly authorized officers, on this ___ day of _____, 20____. Executed in 3 counterparts.

SECTION IS CONTINUED ON PAGE 3

CONTRACTOR: Legacy Water Group, LLC

Signed and sealed in the presence of:

By: _____

1._____ Title: _____

2._____ (SEAL)

SURETY: _____

Signed and sealed in the presence of:

By: _____

1. _____ Title: _____

2. _____ (SEAL)

NOTE:

1. Date of bond must not be prior to date of contract. If CONTRACTOR is a PARTNERSHIP, all partners should execute bond.

2. Surety companies executing bonds must appear on the Treasure Department's most current list (circular 570 as amended) and be authorized to transact business in the state where the PROJECT is located.

END OF SECTION

SECTION 00615
PAYMENT BOND

STATE OF GEORGIA

COUNTY OF HALL

KNOW ALL MEN BY THESE PRESENTS, that we, Legacy Water Group, LLC
10130 Bob Williams Parkway Covington, GA 30014
(Name and Address of Contractor)

as Principal (hereinafter known as "CONTRACTOR"), and we,_____
_____,
(Name and Address of Surety)

as Surety, do hereby acknowledge ourselves indebted and firmly bound and held unto the City of Flowery Branch.
(Name of Owner)

for the use and benefit of those entitled thereto, in the sum of Two Million, Sixty-Six Thousand, Eight Hundred Fifty-One and 50/100 Dollars ($2,066,851.50)
(Contract Sum)
for the payment of which well and truly to be made, in lawful money of the United States, we do hereby bind ourselves, successors, assigns, heirs, and personal representatives.

BUT THE CONDITION OF THE FOREGOING OBLIGATION OR BOND IS THIS:

WHEREAS, the OWNER has engaged the said CONTRACTOR for the sum of
Two Million, Sixty-Six Thousand, Eight Hundred Fifty-One and 50/100 Dollars ($2,066,851.50)
(Contract Sum)

for the construction of: Sewer System Connection from Flowery Branch to Gainesville
(Name of Contract/Project)

as more fully appears in a written Agreement bearing the date of _____,
20_____, a copy of which Agreement is by reference hereby made a part hereof.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if said CONTRACTOR and all subcontractors to whom any portion of the work provided for in said Contract is sublet and all assignees of said Contractor and of such subcontractors shall promptly make payments to all persons supplying him or them with labor, products, services, or supplies for or in the prosecution of the work provided for in such Contract, or in any amendment or extension of or addition to said Contract, and for the payment of reasonable attorney's fees, incurred by the claimants in suits on this bond, then the above obligation shall be void; otherwise, it shall remain if full force and effect.

HOWEVER, this bond is subject to the following conditions and limitations:

(a) Any person, firm or corporation that has furnished labor, products, or supplies for or in the prosecution of the work provided for in said Contract shall have a direct right of action against the CONTRACTOR and Surety on this bond, which right of action shall be asserted in a proceeding, instituted in the County in which the work provided for in said Contract is to be performed or in any county in which Contractor or Surety does business. Such right of action shall be asserted in proceedings instituted in the name of the claimant or claimants for his or their use and benefit against said CONTRACTOR or Surety or either of them (but not later than one year after the final settlement or said Contract) in which action such claim or claims shall be adjudicated and judgment rendered thereon.

(b) The Principal and Surety hereby designate and appoint the _____, as the agent of each them to receive and accept service of process or other pleading issued or filed in any proceeding instituted on this bond and hereby consent that such service shall be the same as personal service on the CONTRACTOR and/or Surety.

(c) In no event shall the Surety be liable for a greater sum than the penalty of this bond, or subject to any suit, action or preceding thereon that is instituted later than one year after the final settlement of said Contract.

(d) This bond is given pursuant to and in accordance with provisions of O.C.G.A. Section 36-91-40 et seq and 36-91-90 et seq and all the provisions of law referring to this character of bond as set forth in said sections or as may be hereinafter enacted, and these are hereby made a part hereof to the same extent as if set out herein in full.

IN WITNESS WHEREOF, the said CONTRACTOR has hereunder affixed its signature and said Surety has hereunto caused to be affixed its corporate signature and seal, by its duly authorized officers, on this __ day of _____, 20_____. Executed in 3 counterparts.

CONTRACTOR: _Legacy Water Group, LLC__

Signed and sealed in the presence of:

By: _____

1._____

Title: _____

2._____

(SEAL)

SURETY: _____

Signed and sealed in the presence of:

By: _____

1. _____

Title: _____

2. _____

(SEAL)

NOTE:

1. Date of bond must not be prior to date of contract. If CONTRACTOR is a PARTNERSHIP, all partners should execute bond.

2. Surety companies executing bonds must appear on the Treasure Department's most current list (circular 570 as amended) and be authorized to transact business in the state where the PROJECT is located.

END OF SECTION

SECTION 00621
NOTICE OF AWARD

PROJECT DESCRIPTION:

Sewer System Connection from Flowery Branch to Gainesville

The OWNER has considered the BID submitted by you for the above described WORK

You are hereby notified that your BID has been accepted for items in the amount of Two Million, Sixty-Six Thousand Eight Hundred Fifty-One and 50/100 Dollars ($2,066,851.50).

You are required by the Instructions to Bidders to execute the Agreement and furnish the required CONTRACTOR's Performance BOND, Payment BOND and Certificates of Insurance with fifteen (15) calendar days from the date of the Notice to you.

If you fail to execute said Agreement and to furnish said BONDS within fifteen (15) days from the date of this notice, said OWNER will be entitled to consider all your rights arising out of the OWNER'S acceptance of your BID as abandoned and as a forfeiture of your BID BOND. The OWNER will be entitled to such other rights as may be granted by law.

You are required to return an acknowledged copy of this NOTICE of AWARD to the OWNER.

Dated this _____ day of _____, 20___.

City of Flowery Branch
OWNER

By: _____

Title: _____

ACCEPTANCE OF NOTICE

Receipt of the above NOTICE OF AWARD is hereby acknowledged by Legacy Water Group, LLC this ____ day of _____, 20____.
(Contractor)

By: _____
Title: _____

SECTION 00622
NOTICE TO PROCEED

To: Legacy Water Group Date: _____

Project: Sewer System Connection from Flowery Branch to Gainesville

You are hereby notified to commence WORK in accordance with the Agreement dated _____ , on or before _____, and you are to complete the WORK within 180 consecutive calendar days thereafter. The date of completion of all WORK is therefore _____.

City of Flowery Branch

OWNER

By _____

Title:_____

ACCEPTANCE OF NOTICE

Receipt of the above NOTICE
TO PROCEED is hereby
acknowledged by

Legacy Water Group, LLC ,

this the _____ day of _____, 20___

By _____

Title _____

SECTION 00700
GENERAL CONDITIONS

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SECTION 00700
GENERAL CONDITIONS

ARTICLE 1 - DEFINITIONS

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

Addenda - Written or graphic instruments issued prior to the opening of Bids which clarify, correct or change the bidding documents or the Contract Documents.

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

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

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

Bonds - Bid, performance and payment bonds and other instruments of security.

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

Contract Documents - The Agreement, Addenda (which pertain to the Contract Documents), CONTRACTOR'S Bid (including documentation accompanying the Bid and any post-Bid documentation submitted prior to the Notice of Award) when attached as an exhibit to the Agreement, the Bonds, these General Conditions, the Supplementary Conditions, the Specifications and the Drawings as the same are more specifically identified in the Agreement, together with all amendments, modifications and supplements issued pursuant to paragraphs 3.4 and 3.5 on or after the Effective Date of the Agreement.

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

Contract Time - The number of days (computed as provided in paragraph 17.2) or the date stated in the Agreement for the completion of the Work.

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

Defective - An adjective which when modifying the word Work refers to Work that is unsatisfactory, faulty or deficient, or does not conform to the Contract Documents, or does not meet the requirements of any inspection, reference standard, test or approval referred to in the Contract Documents, or has been damaged prior to ENGINEER's recommendation of final payment (unless responsibility for the protection thereof has been assumed by OWNER at Substantial Completion in accordance with paragraph 14.8 or 14.10).

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

Effective Date of the Agreement - The date indicated in the Agreement on which it becomes effective, but if no such date is indicated it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.

ENGINEER - The person, firm or corporation named as such in the Agreement.

Field Order - A written order issued by ENGINEER which orders minor changes in the Work in accordance with paragraph 9.5 but which does not involve a change in the Contract Price or the Contract Time.

General Requirements - Sections of Division 1 of the Specifications.

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

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

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

OWNER - The public body or authority, corporation, association, firm or person with whom CONTRACTOR has entered into the Agreement and for whom the Work is to be provided.

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

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

Resident Project Representative - The authorized representative of ENGINEER who is assigned to the site or any part thereof.

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

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

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

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

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

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

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

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

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

Work Directive Change - A written directive to CONTRACTOR, issued on or after the Effective Date of the Agreement and signed by OWNER and recommended by ENGINEER, ordering and addition, deletion or revision in the Work, or responding to differing or unforeseen physical conditions under which the Work is to be performed as provided in paragraph 4.2 or 4.3 or to emergencies under paragraph 6.22. A Work Directive Change may not change the Contract Price or the Contract Time, but is evidence that the parties expect that the change directed or documented by a Work Directive Change will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Time as provided in paragraph 10.2.

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

ARTICLE 2 - PRELIMINARY MATTERS

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Delivery of Bonds:

2.1 When CONTRACTOR delivers the executed Agreements to OWNER, CONTRACTOR shall also deliver to OWNER such Bonds as CONTRACTOR may be required to furnish in accordance with paragraph 5.1.

Copies of Documents:

2.2 OWNER shall furnish to CONTRACTOR up to ten copies (unless otherwise specified in the Supplementary Conditions) of the Contract Documents as are reasonably necessary for the execution of the Work. Additional Copies will be furnished, upon request, at the cost of reproduction.

Commencement of Contract Time; Notice to Proceed:

2.3 The Contract Time will commence to run on the thirtieth day after the Effective Date of the Agreement, or, if a Notice to Proceed is given, on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within thirty days after the Effective Date of the Agreement. In no event will the Contract Time commence to run later than the seventy-fifth day after the day of Bid opening or the thirtieth day after the Effective Date of the Agreement, whichever date is earlier.

Starting the Project:

2.4 CONTRACTOR shall start to perform the Work on the date when the Contract Time commences to run, but no Work shall be done at the site prior to the date on which the Contract Time commences to run.

Before Starting Construction:

2.5 Before undertaking each part of the Work, CONTRACTOR shall carefully study and compare the Contract Documents and check and verify pertinent figures shown thereon and all applicable field measurements. CONTRACTOR shall promptly report in writing to ENGINEER any conflict, error or discrepancy which CONTRACTOR may discover and shall obtain a written interpretation or clarification from ENGINEER before proceeding with any Work affected thereby; however, CONTRACTOR shall not be liable to OWNER or ENGINEER for failure to report any conflict, error or discrepancy in the Contract Documents, unless CONTRACTOR had actual knowledge thereof or should reasonably have known thereof.

2.6 Within ten days after the Effective Date of the Agreement (unless otherwise specified in the General Requirements), CONTRACTOR shall submit to ENGINEER for review:

2.6.1 a preliminary Progress Schedule;

2.6.2 a preliminary Schedule of Submittals; and

2.6.3 a preliminary Schedule of Values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

2.7 Before any Work at the site is started, CONTRACTOR shall deliver to OWNER, with a copy to ENGINEER, certificates (and other evidence of insurance requested by OWNER) which CONTRACTOR is required to purchase and maintain in accordance with paragraphs 5.3 and 5.4.,

and OWNER shall deliver to CONTRACTOR certificates (and other evidence of insurance requested by CONTRACTOR) which OWNER is required to purchase and maintain in accordance with paragraphs 5.6 and 5.7.

Preconstruction Conference:

Initial Acceptance of Schedules:

2.8 At least 10 days before submission of the first Application for Payment a conference attended by Contractor, Engineer, and others as appropriate will be held to review for acceptability to Engineer as provided below the schedules submitted in accordance with Paragraph 2.6. Contractor shall have an additional 10 days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to Contractor until acceptable schedules are submitted to Engineer.

2.8.1 The Progress Schedule will be acceptable to Engineer if it provides an orderly progression of the Work to completion within the Contract Times. Such acceptance will not impose on Engineer responsibility for the Progress Schedule, for sequencing, scheduling, or progress of the Work nor interfere with or relieve Contractor from Contractor's full responsibility therefor.

2.8.2 Contractor's Schedule of Submittals will be acceptable to Engineer if it provides a workable arrangement for reviewing and processing the required submittals.

2.8.3 Contractor's Schedule of Values will be acceptable to Engineer as to form and substance if it provides a reasonable allocation of the Contract Price to component parts of the Work.

ARTICLE 3 - CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

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Intent:

3.1 The Contract Documents comprise the entire agreement between OWNER and CONTRACTOR concerning the Work. The Contract Documents are complementary; what is called for by one is as binding as if called for by all. The Contract Documents will be construed in accordance with the law of the place of the Project.

3.2 It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents. Any Work, materials or equipment that may reasonably be inferred from the Contract Documents as being required to produce the intended result will be supplied whether or not specifically called for. When words which have a well-known technical or trade meaning are used to describe Work, materials or equipment such words shall be interpreted in accordance with that meaning. Reference to standard specifications, manuals or codes of any technical society, organization or association, or to the Laws or Regulations of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard specification, manual, code or Laws or Regulations in effect at the time of opening of Bids (or, on the Effective Date of the Agreement if there were no Bids), except as may be otherwise specifically stated. However, no provision of

any referenced standard specification, manual or code (whether or not specifically incorporated by reference in the Contract Documents) shall be effective to change the duties and responsibilities of OWNER, CONTRACTOR or ENGINEER, or any of their consultants, agents or employees from those set forth in the Contract Documents, nor shall it be effective to assign to ENGINEER, or any of ENGINEER's consultants, agents or employees, any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of paragraph 9.15 or 9.16. Clarifications and interpretations of the Contract Documents shall be issued by ENGINEER as provided in paragraph 9.4.

3.3 If, during the performance of the Work, CONTRACTOR finds a conflict, error or discrepancy in the Contract Documents, CONTRACTOR shall so report to ENGINEER in writing at once and before proceeding with the Work affected thereby shall obtain a written interpretation or clarification from ENGINEER; however, CONTRACTOR shall not be liable to OWNER or ENGINEER for failure to report any conflict, error or discrepancy in the Contract Documents unless CONTRACTOR had actual knowledge thereof or should reasonable have known thereof.

Amending and Supplementing Contract Documents:

3.4 The Contract Documents may be amended to provide for additions, deletions and revisions in the Work or to modify the terms and conditions thereof in one or more of the following ways:

3.4.1 a formal Written Amendment,

3.4.2 a Change Order (pursuant to paragraph 10.4), or

3.4.3 a Work Directive Change (pursuant to paragraph 10.1).

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

3.5 In addition, the requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized, in one or more of the followings ways:

3.5.1 a Field Order (pursuant to paragraph 9.5),

3.5.2 ENGINEER's approval of a Shop Drawing or sample (pursuant to paragraphs 6.26 and 6.27), or

3.5.3 ENGINEER's written interpretation or clarification (pursuant to paragraph 9.4).

Reuse of Documents:

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

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

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Availability of Lands:

4.1 OWNER shall furnish, as indicated in the Contract Documents, the lands upon which the Work is to be performed, rights-of-way and easements for access thereto, and such other lands which are designated for the use of CONTRACTOR. Easements for permanent structures or permanent changes in existing facilities will be obtained and paid for by OWNER, unless otherwise provided in the Contract Documents. If CONTRACTOR believes that any delay in OWNER's furnishing these lands, rights-of-way or easements entitles CONTRACTOR to an extension of the Contract Time, CONTRACTOR may make a claim therefore as provided in Article 12. CONTRACTOR shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

Physical Conditions:

4.2.1 *Explorations and Reports:* Reference is made to the Supplementary Conditions for identification of those reports of explorations and tests of subsurface conditions at the site that have been utilized by ENGINEER in preparation of the Contract Documents. CONTRACTOR may rely upon the accuracy of the technical data contained in such reports, but not upon nontechnical data, interpretations or opinions contained therein or for the completeness thereof for CONTRACTOR's purposes. Except as indicated in the immediately preceding sentence and in paragraph 4.2.6, CONTRACTOR shall have full responsibility with respect to subsurface conditions at the site.

4.2.2 *Existing Structures:* Reference is made to the Supplementary Conditions for identification of those drawings of physical conditions in or relating to existing surface and subsurface structures (except Underground Facilities referred to in paragraph 4.3) which are at our contiguous to the site that have been utilized by ENGINEER in preparation of the Contract Documents. CONTRACTOR may rely upon the accuracy of the technical data contained in such drawings, but not for the completeness thereof for CONTRACTOR's purposes. Except as indicated in the immediately preceding sentence and in paragraph 4.2.6, CONTRACTOR shall have full responsibility with respect to physical conditions in or relating to such structures.

4.2.3 *Report of Differing Conditions:* If CONTRACTOR believes that:

4.2.3.1 any technical data on which CONTRACTOR is entitled to rely as provided in paragraphs 4.2.1 and 4.2.2 is inaccurate, or

4.2.3.2 any physical condition uncovered or revealed at the site differs materially from that indicated, reflected or referred to in the Contract Documents,

CONTRACTOR shall, promptly after becoming aware thereof and before performing any Work in connection therewith (except in an emergency as permitted by paragraph 6.22), notify OWNER and ENGINEER in writing about the inaccuracy or difference.

4.2.4 *ENGINEER's Review:* ENGINEER will promptly review the pertinent conditions, determine the necessity of obtaining additional explorations or tests with respect thereto and advise OWNER in Writing (with a copy to CONTRACTOR) of ENGINEER's findings and conclusions.

4.2.5 *Possible Document Change:* IF ENGINEER concludes that there is a material error in the Contract Documents or that because of newly discovered conditions a change in the Contract Documents is required, a Work Directive Change or a change Order will be issued as provided in Article 10 to reflect and document the consequences of the inaccuracy or difference.

4.2.6 *Possible Price and Time Adjustments:* In each such case, an increase or decrease in the Contract Price or an extension or shortening of the Contract Time, or any combination thereof, will be allowable to the extent that they are attributable to any such inaccuracy of difference. If OWNER and CONTRACTOR are unable to agree as to the amount or length thereof, a claim may be made therefore as provided in Articles 11 and 12.

Physical Conditions - Underground Facilities:

4.3.1 *Shown or Indicated:* The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the site is based on information and data furnished to OWNER or ENGINEER by the owners of such Underground Facilities or by others. Unless it is otherwise expressly provided in the Supplementary Conditions:

4.3.1.1 OWNER and ENGINEER shall not be responsible for the accuracy or completeness or any such information or data; and,

4.3.1.2 CONTRACTOR shall have full responsibility for reviewing and checking all such information and data, for locating all Underground Facilities shown or indicated in the Contract Documents, for coordination of the Work with the owners of such Underground Facilities during construction, for the safety and protection thereof as provided in paragraph 6.20 and repairing any damage thereto resulting from the Work, the cost of all of which will be considered as having been included in the Contract Price.

4.3.2 *Not Shown or Indicated.* If an Underground Facility is uncovered or revealed at or contiguous to the site which was not shown or indicated in the Contract Documents and which CONTRACTOR could not reasonably have been expected to be aware of, CONTRACTOR shall, promptly after becoming aware thereof and before performing any Work affected thereby (except in an emergency as permitted by paragraph 6.22), identify the owner of such Underground Facility and give written notice thereof to that owner and to OWNER and ENGINEER. ENGINEER will promptly review the Underground Facility to determine the extent to which the Contract Documents should be modified to reflect and document the consequences of the existence of the Underground Facility, and the Contract Documents will be amended or supplemented to the extent necessary. During such time, CONTRACTOR shall be responsible for the safety and protection of such Underground Facility as provided in paragraph 6.20. CONTRACTOR shall be

allowed an increase in the Contract Price or an extension of the Contract Time, or both, to the extent that they are attributable to the extent to the existence of any Underground Facility that was not shown or indicated in the Contract Documents and which CONTRACTOR could not reasonably have been expected to be aware of. If the parties are unable to agree as to the amount or length thereof, CONTRACTOR may make a claim therefore as provided in Articles 11 and 12.

Reference Points:

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

ARTICLE 5 - BONDS AND INSURANCE

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Performance and Other Bonds:

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

5.2 If the surety on any Bond furnished by CONTRACTOR is declared a bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of paragraph 5.1, CONTRACTOR shall within five days thereafter substitute another Bond and Surety, both of which must be acceptable to OWNER.

Contractor's Liability Insurance:

5.3 CONTRACTOR shall purchase and maintain such comprehensive general liability and other insurance as is appropriate for the Work being performed and furnished and as will provide protection from claims set forth below which may arise out of or result from CONTRACTOR's performance and furnishing of the Work and CONTRACTOR's other obligations under the Contract Documents, whether it is to be performed or

furnished by CONTRACTOR, by any Subcontractor, by anyone directly or indirectly employed by any of them to perform or furnish any of the Work, or by anyone for whose acts any of them may be liable.

5.3.1 Claims under workers' or workmen's compensation, disability benefits and other similar employee benefit acts;

5.3.2 Claims for damages because of bodily injury occupational sickness or disease, or death on CONTRACTOR's employees;

5.3.3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than CONTRACTOR's employees;

5.3.4 Claims for damages insured by personal injury liability coverage which are sustained (a) by any person as a result of an offense directly or indirectly related to the employment of such person by CONTRACTOR, or (b) by any other person for any other reason;

5.3.5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting there from;

5.3.6 Claims arising our of operation of Laws or Regulations for damages because of bodily injury or death of any person or for damage to property; and

5.3.7 Claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.

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

Contractual Liability Insurance:

5.4 The comprehensive general liability insurance required by paragraph 5.3 will include contractual liability insurance applicable to CONTRACTOR's obligations under paragraphs 6.30 and 6.31.

Owner's Liability Insurance:

5.5 OWNER shall be responsible for purchasing and maintaining OWNER's own

liability insurance and, at OWNER's option, may purchase and maintain such insurance as will protect OWNER against claims which may arise from operations under the Contract Documents.

Property Insurance:

5.6 Unless otherwise provided in the Supplementary Conditions, 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 the Supplementary Conditions or required by Laws and Regulations). This insurance shall include the interests of OWNER, CONTRACTOR, Subcontractors, ENGINEER and ENGINEER's consultants in the Work, all of whom shall be listed as insured or additional insured parties, shall insure against the perils of fire and extended coverage and shall include "all risk" insurance for physical loss and damage including theft, vandalism and malicious mischief, collapse and water damage, and such other perils as may be provided in the Supplementary Conditions, and shall include damages, losses and expenses arising out of or resulting from any insured loss or incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers, architects, attorneys and other professionals). If not covered under the "all risk" insurance or otherwise provided in the Supplementary Conditions, CONTRACTOR shall purchase and maintain similar property insurance on portions of the Work stored on and off the site or in transit when such portions of the Work are to be included in an Application for Payment.

5.7 OWNER shall purchase and maintain such boiler and machinery insurance or additional property insurance as may be required by the Supplementary Conditions or Laws and Regulations which will include the interests of OWNER, CONTRACTOR, Subcontractors, ENGINEER and ENGINEER's consultants in the Work, all of whom shall be listed as insured or additional insured parties.

5.8 All the policies of insurance (or the certificates or other evidence thereof) required to be purchased and maintained by CONTRACTOR in accordance with paragraphs 5.6 and 5.7 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least thirty days' prior written notice has been given to OWNER by certified mail and will contain waiver provisions in accordance with paragraph 5.11.2.

5.9 OWNER shall not be responsible for purchasing and maintaining any property insurance to protect the interests of CONTRACTOR, Subcontractors or others in the Work to the extent of any deductible amounts that are provided in the Supplementary Conditions. The risk of loss within the deductible amount, will be borne by CONTRACTOR, Subcontractor or others suffering any such loss and if any of them wishes property insurance coverage within the limits of such amounts, each may purchase and maintain it at the purchaser's own expense.

5.10 If OWNER requests in writing that other special insurance be included in the property insurance policy, CONTRACTOR shall, if possible, include such insurance, and the cost thereof will be charged to CONTRACTOR by appropriate Change Order or Written Amendment. Prior to commencement of the Work at the site, CONTRACTOR shall in writing advise OWNER

whether or not such other insurance has been procured by CONTRACTOR.

Waiver of Rights:

5.11.1 OWNER and CONTRACTOR waive all rights against each other for all losses and damages caused by any of the perils covered by the policies of insurance provided in response to paragraphs 5.6 and 5.7 and any other property insurance applicable to the Work, and also waive all such rights against the Subcontractors, ENGINEER, ENGINEER's consultants and all other parties names as insured in such policies for losses and damages so caused. As required by paragraph 6.11, each subcontract between CONTRACTOR and a Subcontractor will contain similar waiver provisions by the Subcontractor in favor of OWNER, CONTRACTOR, ENGINEER, ENGINEER's consultants and all other parties named as insured. None of the above waivers shall extend to the rights that any of the insured parties may have to the proceeds of insurance held by OWNER as trustee or otherwise payable under any policy so issued.

5.11.2 OWNER and CONTRACTOR intend that any policies provided in response to paragraphs 5.6 and 5.7 shall protect all of the parties insured and provide primary coverage for all losses and damages caused by the perils covered thereby. Accordingly, all such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurer will have no rights of recovery against any of the parties named as insureds or additional insureds, and if the insurers require separate waiver forms to be signed by ENGINEER or ENGINEER's consultant OWNER will obtain the same, and if such waiver forms are required of any Subcontractor, CONTRACTOR will obtain the same.

Receipt and Application of Proceeds:

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

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

Acceptance of Insurance:

5.14 If OWNER has any objection to the coverage afforded by or other provisions of the insurance required to be purchased and maintained by CONTRACTOR in accordance with paragraphs 5.3 and 5.4 on the basis of

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

Partial Utilization - Property Insurance:

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

ARTICLE 6 - CONTRACTOR'S RESPONSIBILITIES

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Supervision and Superintendence:

6.1 CONTRACTOR shall supervise and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. CONTRACTOR shall be solely responsible for the means, methods, techniques, sequences and procedures of construction, but CONTRACTOR shall not be responsible for the negligence of others in the design or selection of a specific means, method, technique, sequence or procedure of construction which is indicated in and required by the Contract Documents. CONTRACTOR shall be responsible to see that the finished Work complies accurately with the Contract Documents.

6.2 CONTRACTOR shall keep on the Work at all times during its progress a competent resident superintendent, who shall not be replaced without written notice to OWNER and ENGINEER except under extraordinary circumstances. The superintendent will be CONTRACTOR's representative at the site and shall have authority to act on behalf of CONTRACTOR. All communications given to the superintendent shall be as binding as if given to CONTRACTOR.

Labor, Materials and Equipment:

6.3 CONTRACTOR shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract

Documents. CONTRACTOR shall at all times maintain good discipline and order at the site. Except in connection with the safety or protection of persons or the Work or property at the site or adjacent thereto, and except as otherwise indicated in the Contract Documents, all Work at the site shall be performed during regular working hours, and CONTRACTOR will not permit overtime work or the performance of Work on Saturday, Sunday or any legal holiday without OWNER's written consent give after prior written notice to ENGINEER.

6.4 Unless otherwise specified in the General Requirements, CONTRACTOR shall furnish and assume full responsibility for all materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water sanitary facilities, temporary facilities and all other facilities and incidentals necessary for the furnishing, performance, testing, start-up and completion of the Work.

6.5 All materials and equipment shall be of good quality and new, except as otherwise provided in the Contract Documents. If required by ENGINEER, CONTRACTOR shall furnish satisfactory evidence (including reports of required tests) as to the kind and quality of materials and equipment. All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instruction of the applicable Supplier except as otherwise provided in the Contract Documents; but no provision of any such instructions will be effective to assign to ENGINEER, or any of ENGINEER's consultants, agents or employees, any duty or authority to supervise or direct the furnishing or perfor-mance of the Work or any duty or authority to undertake responsibility contrary to the provisions of paragraph 9.15 or 9.16.

Adjusting Progress Schedule:

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

Substitutes or "Or-Equal" Items:

6.7.1 Whenever materials or equipment are specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier the naming of the item is intended to establish the type, function and quality required. In the case where the name is followed by words indicating that substitutions/ “or equals” are permitted, materials or equipment of other Suppliers may be accepted by ENGINEER if sufficient information is submitted by BIDDER to allow ENGINEER to determine that the material or equipment proposed is equivalent or equal to that named. The procedure for review by ENGINEER will include the following as supplemented in the General Requirements. Requests for review of substitute/ “or-equal” items of material and equipment will not be accepted by ENGINEER from anyone other than BIDDER. If BIDDER wishes to furnish or use a substitute/ “or-equal” item of material or equipment, BIDDER shall make written application to ENGINEER for acceptance thereof, certifying that the proposed substitute/ “or-equal” or will perform adequately the functions and achieve the results called for by the general design, be similar and of equal substance to

that specified and be suited to the same use as that specified. The application will state that the evaluation and acceptance of the proposed substitute/ "or-equal" item will not prejudice BIDDER'S achievement of Substantial Completion on time, whether or not acceptance of the substitute/ "or-equal" item for use in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with OWNER for work on the Project) to adapt the design to the proposed item and whether or not incorporation or use of the item in connection with the Work is subject to payment of any license fee or royalty. All variations of the proposed substitute/ "or-equal" item from that specified will be identified in the application and available maintenance repair and replacement service will be indicated. The application will also contain an itemized estimate of all costs that will result directly or indirectly from acceptance of such item, including costs for redesign and claims of other contractors affected by the resulting change, all of which shall be considered by ENGINEER in evaluating the proposed substitute/ "or-equal" item. ENGINEER may require BIDDER to furnish at BIDDER'S expense additional data about the proposed substitute/ "or-equal" item.

6.7.2 If a specific means, method, technique, sequence or procedure of construction is indicated in or required by the Contract Documents, BIDDER may furnish or utilize a substitute/ "or-equal" means, method, sequence, technique or procedure of construction acceptable to ENGINEER, if BIDDER submits sufficient information to allow ENGINEER to determine that the substitute/ "or-equal" item proposed is equivalent to that indicated or required by the Contract Documents. The procedure for review by ENGINEER will be similar to that provided in paragraph 6.7.1 as applied by ENGINEER and as may be supplemented in the General Requirements.

6.7.3 ENGINEER will be allowed a reasonable time within which to evaluate each proposed substitute/ "or equal" item. ENGINEER will be the sole judge of accept-ability, and no item will be ordered, installed or utilized without ENGINEER's prior written acceptance which will be evidenced by either a Change Order or an approved Shop Drawing. OWNER may require BIDDER to furnish at BIDDER's expense a special performance guarantee or other surety with respect to any substitute/ "or-equal" item. ENGINEER will record time required by ENGINEER and ENGINEER's consultants in evaluating items proposed by BIDDER and in making changes in the Contract Documents occasioned thereby. Whether or not ENGINEER accepts a proposed substitute/ "or-equal" item, BIDDER shall reimburse OWNER for the charges of ENGINEER and ENGINEER's consultants for evaluating each proposed item.

Concerning Subcontractors, Suppliers and Others:

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

6.8.2 If the Supplementary Conditions require the identity of certain Subcontractors, Suppliers or other persons

or organizations (including those who are to furnish the principal items of materials and equipment) to be submitted to OWNER in advance of the specified date prior to the Effective Date of the Agreement for acceptance by OWNER and ENGINEER and if CONTRACTOR has submitted a list thereof in accordance with the Supplementary Conditions, OWNER's or ENGINEER's acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the bidding documents or the Contract Documents) of any such Subcontractor, Supplier or other person or organization so identified may be revoked on the basis of reasonable objection after due investigation, in which case CONTRACTOR shall submit an acceptable substitute/ "or-equal" item, the Contract Price will be increased by the difference in the cost occasioned by such substitution and an appropriate Change Order will be issued or Written Amendment signed. No acceptance by OWNER or ENGINEER of any such Subcontractor, Supplier or other person or organization shall constitute a waiver of any right of OWNER or ENGINEER to reject *defective* Work.

6.9 CONTRACTOR shall be fully responsible to OWNER and ENGINEER for all acts and omissions of the Subcontractors, Suppliers and other persons and organization performing or furnishing any of the Work under a direct or indirect contract with CONTRACTOR just as CONTRACTOR is responsible for CONTRACTOR's own acts and omissions. Nothing in the Contract Documents shall create any contractual relationship between OWNER or ENGINEER and any such Subcontractor, Supplier or other person or organization, nor shall it create any obligation on the part of OWNER or ENGINEER to pay or to see to the payment of any moneys due any such Subcontractor, Supplier or other person or organization except as may other wise be required by Laws and Regulations.

6.10 The divisions and sections of the Specifications and the identifications of any Drawings shall not control CONTRACTOR in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.

6.11 All Work performed for CONTRACTOR by a Subcontractor will be pursuant to an appropriate agreement between CONTRACTOR and the Subcontractor which specifically binds the Subcontractor to the applicable terms and conditions of the Contract Documents for the benefit of OWNER and ENGINEER and contains waiver provisions as required by paragraph 5.11. CONTRACTOR shall pay each Subcontractor a just share of any insurance moneys received by CONTRACTOR on account of losses under policies issued pursuant to paragraphs 5.6 and 5.7.

Patent Fees and Royalties:

6.12 CONTRACTOR shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product or device which is the subject of patent rights or copyrights held by others. If a particular invention, design process, product or device is specified in the Contract Documents for use in the performance of the Work and if to the actual knowledge of OWNER or ENGINEER its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by OWNER in the Contract Documents. CONTRACTOR shall indemnify and hold harmless OWNER

and ENGINEER and anyone directly or indirectly employed by either of them from and against all claims, damages, losses and expenses (including attorneys' fees and court and arbitration costs) arising our of any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product or device not specified in the Contract Documents, and shall defend all such claims in connection with any alleged infringement of such rights.

Permits:

6.13 Unless otherwise provided in the Supplementary Conditions, CONTRACTOR shall obtain and pay for all construction permits and licenses. OWNER shall assist CONTRACTOR, when necessary, in obtaining such permits and licenses. CONTRACTOR shall pay all governmental charges and inspection fees necessary for the prosecution of the Work, which are applicable at the time of opening the Bids, or if there are no Bids on the Effective Date of the Agreement. CONTRACTOR shall pay all charges of utility owners for connections to the Work, and OWNER shall pay all charges of such utility owners for capital costs related thereto such as plant investment fees.

Laws and Regulations:

6.14.1 CONTRACTOR shall give all notices and comply with all Laws and Regulations applicable to furnishing and performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither OWNER nor ENGINEER shall be responsible for monitoring CONTRACTOR's compliance with any Laws or Regulations.

6.14.2 If CONTRACTOR observes that the Specifications or Drawings are at variance with any Laws or Regulations, CONTRACTOR shall give ENGINEER prompt written notice thereof, and any necessary changes will be authorized by one of the methods indicated in paragraph 3.4. If CONTRACTOR performs any Work knowing or having reason to know that it is contrary to such Laws or Regulations, and without such notice to ENGINEER, CONTRACTOR shall bear all costs arising there from; however, it shall not be CONTRACTOR's primary responsibility to make certain that the Specifications and Drawings are in accordance with such Laws and Regulations.

Taxes:

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

Use of Premises:

6.16 CONTRACTOR shall confine construction equipment, the storage of materials and equipment and the operations of workers to the Project site and land and areas identified in and permitted by the Contract Documents and other land and areas permitted by Laws and Regulations, rights-of-way, permits and easements, and shall not unreasonably encumber the premises which construction equipment or other materials or equipment. CONTRACTOR shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof or of any land or areas contiguous thereto, resulting from the

performance of the Work. Should any claim be made against OWNER or ENGINEER by any such owner or occupant because of the performance of the Work, CONTRACTOR shall promptly attempt to settle with such other party by agreement or otherwise resolve the claim by arbitration or at law. CONTRACTOR shall, to the fullest extent permitted by Laws and Regulations, indemnify and hold OWNER and ENGINEER harmless from and against all claims damages, losses and expenses (including, but not limited to fees or engineers, architects, attorneys and other professionals and court and arbitration costs) arising directly, indirectly or consequentially out of any action, legal or equitable, brought by any such other party against OWNER or ENGINEER to the extent based on a claim arising out of CONTRACTOR's performance of the Work.

6.17 During the progress of the Work, CONTRACTOR shall keep the premises free from accumulations of waste materials, rubbish and other debris resulting from the Work. At the completion of the Work CONTRACTOR shall remove all waste materials, rubbish and debris from and about the premises as well as all tools, appliances, construction equipment and machinery, and surplus materials, and shall leave the site clean and ready for occupancy by OWNER. CONTRACTOR shall restore to original condition all property not designated for alteration by the Contract Documents.

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

Record Documents:

6.19 CONTRACTOR shall maintain in a safe place at the site one record copy of all Drawings, Specifications, Addenda, Written Amendments, Change Orders, Work Directive Changes, Field Orders and written interpretations and clarifications (issued pursuant to paragraph 9.4) in good order and annotated to show all changes made during construction. These record documents together with all approved samples and a counterpart of all approved Shop Drawings will be available to ENGINEER for reference. Upon completion of the Work, these record documents, samples and Shop Drawings will be delivered to ENGINEER for OWNER.

Safety and Protection:

6.20 CONTRACTOR shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. CONTRACTOR shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:

6.20.1 all employees on the Work and other persons and organizations who may be affected thereby:

6.20.2 all the Work and materials and equipment to be incorporated therein, whether in storage on or off the site; and

6.20.3 other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities and Underground Facilities not designated for removal, relocation or replacement in the course of

construction.

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

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

Emergencies:

6.22 In emergencies affecting the safety or protection of persons or the Work or property at the site or adjacent thereto, CONTRACTOR, without special instruction or authorization from ENGINEER or OWNER, is obligated to act to prevent threatened damage, injury or loss. CONTRACTOR shall give ENGINEER prompt written notice if CONTRACTOR believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby. If ENGINEER determines that a change in the Contract Documents is required because of the action taken in response to an emergency, a Work Directive Change or Change Order will be issued to document the consequences of the changes or variations.

Shop Drawings and Samples:

6.23 After checking and verifying all field measurements and after complying with applicable procedures specified in the General Requirements, CONTRACTOR shall submit to ENGINEER for review and approval in accordance with the accepted schedule of Shop Drawing submissions (see paragraph 2.9), or for other appropriate action if so indicated in the Supplementary Conditions, five copies (unless otherwise specified in the General Requirements) of all Shop Drawings, which will bear a stamp or specific written indication that CONTRACTOR has satisfied CONTRACTOR's responsibilities under the Contract Documents with respect to the review submission. All submissions will be

identified as ENGINEER may require. The data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials and similar data to enable ENGINEER to review the information as required.

6.24 CONTRACTOR shall also submit to ENGINEER for review and approval with such promptness as to cause no delay in Work, all samples required by the Contract Documents. All samples will have been checked by and accompanied by a specific written indication that CONTRACTOR has satisfied CONTRACTOR's responsibilities under the Contract Documents with respect to the review of the submission and will be identified clearly as to material, Supplier, pertinent data such as catalog numbers and the use for which intended.

6.25.1 Before submission of each Shop Drawing or sample CONTRACTOR shall have determined and verified all quantities, dimensions, specified performance criteria, installation requirements, materials, catalog numbers and similar data with respect thereto and reviewed or coordinated each Shop Drawing or sample with other Shop Drawings and samples and with the requirements of the Work and the Contract Documents.

6.25.2 At the time of each submission, CONTRACTOR shall give ENGINEER specific written notice of each variation that the Shop Drawings or samples may have from the requirements of the Contract Documents, and, in addition, shall cause a specific notation to be made on each Shop Drawing submitted to ENGINEER for review and approval of each such variation.

6.26 ENGINEER will review and approve with reasonable promptness Shop Drawings and samples, but ENGINEER's review and approval will be only for conformance with the design concept of the Project and for compliance with the information given in the Contract Documents and shall not extend to means, methods, techniques, sequences or procedures of construction (except where a specific means, method, technique, sequence or procedure of construction is indicated in or required by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions. CONTRACTOR shall make corrections required by ENGINEER, and shall return the required number of corrected copies of Shop Drawings and submit as required new samples for review and approval. CONTRACTOR shall direct specific attention in writing to revisions other than the corrections called for by ENGINEER on previous submittals.

6.27 ENGINEER's review and approval of Shop Drawings or samples shall not relieve CONTRACTOR from responsibility for any variation from the requirements of the Contract Documents unless CONTRACTOR has in writing called ENGINEER's attention to each such variation at the time of submission as required by paragraph 6.25.2 and ENGINEER has given written approval of each such variation by a specific written notation thereof incorporated in or accompanying the Shop Drawing or sample approval; nor will any approval by ENGINEER relieve CONTRACTOR from responsibility for errors or omissions in the Shop Drawings or from responsibility for having complied with the provisions of paragraph 6.25.1.

6.28 Where a Shop Drawing or sample is required by the Specifications, any related Work performed prior to ENGINEER's review and approval of the pertinent submission

will be the sole expense and responsibility of CONTRACTOR.

Continuing the Work:

6.29 CONTRACTOR shall carry on the Work and adhere to the progress schedule during all disputes or disagreements with OWNER. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as permitted by paragraph 15.5 or as CONTRACTOR and OWNER may otherwise agree in writing.

Indemnification:

6.30 To the fullest extent permitted by Laws and Regulations CONTRACTOR shall indemnify and hold harmless OWNER and ENGINEER and their consultants, agents and employees from and against all claims, damages, losses and expenses, direct, indirect or consequential (including but not limited to fees and charges of engineers, architects, attorneys and other professionals and court and arbitration costs) arising out of or resulting from the performance of the Work, provided that any such claim, damage, loss or expense (a) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including the loss of use resulting there from and (b) is caused in whole or in part by an negligent act or omission of CONTRACTOR, any Subcontractor, any person or organization directly or indirectly employed by any of them to perform or furnish any of the Work or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder or arises by or is imposed by Law and Regulations regardless of the negligence of any such party.

6.31 In any and all claims against OWNER or ENGINEER or any of their consultants, agents or employees by any employee of CONTRACTOR, any Subcontractor, any person or organization directly or indirectly employed by any of them to perform or furnish any of the Work or anyone for whose acts any of them may be liable, the indemnification obligation under paragraph 6.30 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for CONTRACTOR or any such Subcontractor or other person or organization under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

6.32 The obligations of CONTRACTOR under paragraph 6.30 shall not extend to the liability of ENGINEER, ENGINEER's consultants, agents or employees arising out of the preparation or approval of maps, drawings, opinions, reports, surveys, Change Orders, designs or specifications.

ARTICLE 7 - OTHER WORK

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Related Work at Site:

7.1 OWNER may perform other work related to the Project at the site by OWNER's own forces, have other work performed by utility owners or let other direct contracts therefore which shall contain General Conditions similar to these. If the fact that such other work is to be performed was not noted in the Contract Documents, written notice thereof will be given to CONTRACTOR prior to starting any such other work; and, if

CONTRACTOR believes that such performance will involve additional expense to CONTRACTOR or requires additional time and the parties are unable to agree as to the extent thereof, CONTRACTOR may make a claim therefore as provided in Articles 11 and 12.

7.2 CONTRACTOR shall afford each utility owner and other contractor who is a party to such a direct contract (or OWNER, if OWNER is performing the additional work with OWNER's employees) proper and safe access to the site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such work, and shall properly connect and coordinate the Work with theirs. CONTRACTOR shall do all cutting, fitting and patching of the Work that may be required to make its several parts come together properly and integrate with such other work. CONTRACTOR shall not endanger any work of others by cutting, excavating or otherwise altering their work and will only cut or alter their work with the written consent of ENGINEER and the others whose work will be affected. The duties and responsibilities of CONTRACTOR under this paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of CONTRACTOR in said direct contracts between OWNER and such utility owners and other contractors.

7.3 If any part of CONTRACTOR's Work depends for proper execution or results upon the work of any such other contractor or utility owner (or OWNER), CONTRACTOR shall inspect and promptly report to ENGINEER in writing any delays, defects or deficiencies in such work that render it unavailable or unsuitable for such proper execution and results. CONTRACTOR's failure so to report will constitute an acceptance of the other work as fit and proper for integration with CONTRACTOR's Work except for latent or nonapparent defects and deficiencies in the other work.

Coordination:

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

ARTICLE 8 - OWNER'S RESPONSIBILITIES

8.1 OWNER shall issue all communications to CONTRACTOR through ENGINEER.

8.2 In case of termination of the employment of ENGINEER, OWNER shall appoint an engineer against whom CONTRACTOR makes no reasonable objection, whose status under the Contract Documents shall be that of the former ENGINEER. Any dispute in connection with such appointment shall be subject to arbitration.

8.3 OWNER shall furnish the data required of OWNER under the Contract

Documents promptly and shall make payments to CONTRACTOR promptly after they are due as provided in paragraphs 14.4 and 14.13.

8.4 OWNER's duties in respect of providing lands and easements and providing engineering surveys to establish reference points are set forth in paragraphs 4.1 and 4.4. Paragraph 4.2 refers to OWNER's identifying and making available to CONTRACTOR copies of reports of explorations and tests of subsurface conditions at the site and in existing structures which have been utilized by ENGINEER in preparing the Drawings and Specifications.

8.5 OWNER's responsibilities in respect of purchasing and maintaining liability and property insurance are set forth in paragraphs 5.5 through 5.8.

8.6 OWNER is obligated to execute Change Orders as indicated in paragraph 10.4.

8.7 OWNER's responsibility in respect of certain inspections, tests and approvals is set forth in paragraph 13.4.

8.8 In connection with OWNER's right to stop Work or suspend Work, see paragraphs 13.10 and 15.1 Paragraph 15.2 deals with OWNER's right to terminate services of CONTRACTOR under certain circumstances.

ARTICLE 9 - ENGINEER'S STATUS DURING CONSTRUCTION

Owner's Representative:

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

Visits to Site:

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

Project Representation:

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

ENGINEER's agent or employee, the duties, responsibilities and limitations of authority of such other person will be as provided in the Supplementary Conditions.

Clarifications and Interpretation:

9.4 ENGINEER will issue with reasonable promptness such written clarifications or interpretations of the requirements of the Contract Documents (in the form of Drawings or otherwise) as ENGINEER may determine necessary, which shall be consistent with or reasonably inferable from the overall intent of the Contract Documents. If CONTRACTOR believes that a written clarification or interpretation justifies an increase in the Contract Price or an extension of the Contract Time and the parties are unable to agree to the amount or extent thereof, CONTRACTOR may make a claim therefore as provided in Article 11 or Article 12.

Authorized Variations in Work:

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

Rejecting Defective Work:

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

Shop Drawings, Change Orders and Payments:

9.7 In connection with ENGINEER's responsibility for Shop Drawings and samples, see paragraphs 6.23 through 6.29 inclusive.

9.8 In connection with ENGINEER's responsibilities as to Change Orders, see Articles 10, 11, and 12.

9.9 In connection with ENGINEER's responsibilities in respect of Applications for Payment, etc., see Article 14.

Determinations for Unit Prices:

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

the Agreement and to ENGINEER written notice of intention to appeal from such a decision.

Decisions on Disputes:

9.11 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 performance and furnishing of the Work and claims under Articles 11 and 12 in respect of changes in the Contract Price or Contract Time will be referred initially to ENGINEER in writing with a request for a formal decision in accordance with this paragraph, which ENGINEER will render in writing within a reasonable time. Written notice of each such claim, dispute and other matter will be delivered by the claimant to ENGINEER and the other party to the Agreement promptly (but in no event later than thirty days) after the occurrence of the event giving rise thereto, and written supporting data will be submitted to ENGINEER and the other party within sixty days after such occurrence unless ENGINEER allows an additional period of time to ascertain more accurate data in support of the claim.

9.12 When functioning as interpreter and judge under paragraphs 9.10 and 9.11, ENGINEER will not show partiality to OWNER or CONTRACTOR and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity. The rendering of a decision by ENGINEER pursuant to paragraphs 9.10 and 9.11 with respect to any such claim, dispute or other matter (except any which have been waived by the making or acceptance of final payment as provided in paragraph 14.16) will be a condition precedent to any exercise by OWNER or CONTRACTOR of such rights or remedies as either may otherwise have under the Contract Documents or by Laws or Regulations in respect of any such claim, dispute or other matter.

Limitations on ENGINEER's Responsibilities:

9.13 Neither ENGINEER's authority to act under this Article 9 or elsewhere in the Contract Documents nor any decision made by ENGINEER in good faith either to exercise or not exercise such authority shall give rise to any duty or responsibility of ENGINEER to CONTRACTOR, any Subcontractor, any Supplier, or any other person or organization performing any of the Work, or to any surety for any of them.

9.14 Whenever in the Contract Documents the terms "as ordered", "as directed", "as required", "as allowed", "as approved" 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 a requirement, direction, review or judgment of ENGINEER as to the Work, it is intended that such requirement, direction, review or judgment 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 shall not be effective to assign to ENGINEER any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of paragraph 9.15 or 9.16.

9.15 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 ENGINEER will not be responsible for CONTRACTOR's failure to perform or furnish the Work in accordance with the Contract Documents.

9.16 ENGINEER will not be responsible for the acts or omissions of CONTRACTOR or of any Subcontractor, any Supplier, or of any other person or organization performing or furnishing any of the Work.

ARTICLE 10 - CHANGES IN THE WORK

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10.1 Without invalidating the Agreement and without notice to any surety, OWNER may, at any time or from time to time, order additions, deletions or revisions in the Work; these will be authorized by a Written Amendment, a Change Order, or a Work Directive Change. Upon receipt of any such document, CONTRACTOR shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).

10.2 If OWNER and CONTRACTOR are unable to agree as to the extent, if any, of an increase or decrease in the Contract Price or an extension or shortening of the Contract Time that should be allowed as a result of a Work Directive Change, a claim may be made therefore as provided in Article 11 or Article 12.

10.3 CONTRACTOR shall not be entitled to an increase in the Contract Price or an extension of the Contract Time with respect to any Work performed that is not required by the Contract Documents as amended, modified and supplemented as provided in paragraphs 3.4 and 3.5, except in the case of an emergency as provided in paragraph 6.22 and except in the case of uncovering Work as provided in paragraph 13.9.

10.4 OWNER and CONTRACTOR shall execute appropriate Change Orders (or Written Amendments)

10.4.1 changes in the Work which are ordered by OWNER pursuant to paragraph 10.1, are required because of acceptance of *defective* Work under paragraph 13.13 or correcting *defective* Work under paragraph 13.14, or are agreed to by the parties;

10.4.2 changes in the Contract Price or Contract Time which are agreed to by the parties; and

10.4.3 changes in the Contract Price or Contract Time which embody the substance of any written decision rendered by ENGINEER pursuant to paragraph 9.11;

provided that, in lieu of executing any such Change Order, an appeal may be taken from any such decision in accordance with the provisions of the Contract Documents and applicable Laws and Regulations, but during any such appeal, CONTRACTOR shall carry on the Work and adhere to the progress schedule as provided in paragraph 6.29.

10.5 If notice of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Time) is required by the provisions of any Bond to be given to a surety, the giving of

any such notice will be CONTRACTOR's responsibility, and the amount of each applicable Bond will be adjusted accordingly.

ARTICLE 11 - CHANGE OF CONTRACT PRICE

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11.1 The Contract Price constitutes the total compensation (subject to authorized adjustments) payable to CONTRACTOR for performing the Work. All duties, responsibilities and obligations assigned to or undertaken by CONTRACTOR shall be at his expense without change in the Contract Price.

11.2 The Contract Price may only be changed by a Change Order or by a Written Amendment. Any claim for an increase or decrease in the Contract Price shall be based on written notice delivered by the party making the claim to the other party and to ENGINEER promptly (but in no event later than thirty days) after the occurrence of the event giving rise to the claim and stating the general nature of the claim. Notice of the amount of the claim with supporting data shall be delivered within sixty days after such occurrence (unless ENGINEER allows an additional period of time to ascertain more accurate data in support of the claim) and shall be accompanied by claimant's written statement that the amount claimed covers all known amounts (direct, indirect and consequential) to which the claimant is entitled as a result of the occurrence of said event. All claims for adjustment in the Contract Price shall be determined by ENGINEER in accordance with paragraph 9.11 if OWNER and CONTRACTOR cannot otherwise agree on the amount involved. No claim for an adjustment in the Contract Price will be valid if not submitted in accordance with this paragraph 11.2.

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

11.3.1 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 (subject to the provisions of paragraphs 11.9.1. through 11.9.3, inclusive).

11.3.2 By mutual acceptance of a lump sum (which may include an allowance for overhead and profit not necessarily in accordance with paragraph 11.6.2.1.).

11.3.3 On the basis of the Cost of the Work (determined as provided in paragraphs 11.4 and 11.5) plus a CONTRACTOR's Fee for overhead and profit (determined as provided in paragraphs 11.6 and 11.7).

Cost of the Work:

11.4 The term Cost of the Work means the sum of all costs necessarily incurred and paid by CONTRACTOR in the proper performance of the Work. Except as otherwise may be agreed to in writing by OWNER, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall include only the following items and shall not include any of the costs itemized in paragraph 11.5:

11.4.1 Payroll costs for employees in the direct employ of CONTRACTOR in the performance of the Work under schedules of job classifications

agreed upon by OWNER and CONTRACTOR. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits which shall include social security contributions unemployment, excise and payroll taxes, workers' or workmen's compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. Such employees shall include superintendents and foremen at the site. The expenses of performing Work after regular working hours, on Saturday, Sunday or legal holidays, shall be included in the above to the extent authorized by OWNER.

11.4.2 Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to CONTRACTOR unless OWNER deposits funds with CONTRACTOR with which to make payments, in which case the cash discounts shall accrue to OWNER. All trade discounts, rebates and refunds and all returns from sale of surplus materials and equipment shall accrue to OWNER, and CONTRACTOR shall make provisions so that they may be obtained.

11.4.3 Payments made by CONTRACTOR to the Subcontractors for Work performed by Subcontractors. If required by OWNER, CONTRACTOR shall obtain competitive bids from Subcontractors acceptable to CONTRACTOR and shall deliver such bids to OWNER who will then determine, with the advice of ENGINEER, which bids will be accepted. If a subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work Plus a Fee, the Subcontractor's Cost of the Work shall be determined in the same manner as CONTRACTOR's Cost of the Work. All subcontracts shall be subject to the other provisions of the Contract Documents insofar as applicable.

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

11.4.5 Supplemental costs including the following:

11.4.5.1 The proportion of necessary transportation, travel and subsistence expenses of CONTRACTOR's employees incurred in discharge of duties connected with the Work.

11.4.5.2 Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office and temporary facilities at the site and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost less market value of such items used

by not consumed which remain the property of CONTRACTOR.

11.4.5.3 Rentals of all construction equipment and machinery and the parts thereof whether rented from CONTRACTOR or others in accordance with rental agreements approved by OWNER with the advice of 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 not longer necessary for the Work.

11.4.5.4 Sales, consumer, use or similar taxes related to the Work, and for which CONTRACTOR is liable, imposed by Laws and Regulations.

11.4.5.5 Deposits lost for causes other than negligence of CONTRACTOR, any Subcontractor or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.

11.4.5.6 Losses and damages (and related expenses), not compensated by insurance or otherwise, to the Work or otherwise sustained by CONTRACTOR in connection with the performance and furnishing of the Work (except losses and damages within the deductible amounts of property insurance established by OWNER in accordance with paragraph 5.9), provided they have resulted from causes other than the negligence of CONTRACTOR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of OWNER. No such losses, damages and expenses will be included in the Cost of Work for the purpose of determining CONTRACTOR's Fee. If, however, any such loss or damage requires reconstruction and CONTRACTOR is placed in charge thereof, CONTRACTOR shall be paid for services a fee proportionate to that stated in paragraph 11.6.2.

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

11.4.5.8 Minor expenses such as telegrams, long distance telephone calls, telephone service at the site, expressage and similar petty cash items in connection with the Work.

11.4.5.9 Cost of premiums for additional Bonds and insurance required because of changes in the Work and premiums for property insurance coverage within the limits of the deductible amounts established by OWNER in accordance with paragraph 5.9.

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

11.5.1 Payroll costs and other compensation of CONTRACTOR's officers, executives, principals (of partnership and sole proprietorships), general managers, engineers, architects, estimators,

attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks and other personnel employed by CONTRACTOR whether at the site or in CONTRACTOR's principal or a branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in paragraph 11.4.1 or specifically covered by paragraph 11.4.4 - all of which are to be considered administrative costs covered by the CONTRACTOR's Fee.

11.5.2 Expenses of CONTRACTOR's principal and branch offices other than CONTRACTOR's office at the site.

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

11.5.4 Cost of premiums for all Bonds and for all insurance whether or not CONTRACTOR is required by the Contract Documents to purchase and maintain the same (except for the cost of premiums covered by subparagraph 11.4.5.9 above).

11.5.5 Cost due to the negligence of CONTRACTOR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of *defective* Work, disposal of materials or equipment wrongly supplied and making good any damage to property.

11.5.6 Other overhead or general expenses costs of any kind and the costs of any item not specifically and expressly included in paragraph 11.4.

CONTRACTOR's Fee:

11.6 The CONTRACTOR's Fee allowed to CONTRACTOR for overhead and profit shall be determined as follows:

11.6.1 a mutually acceptable fixed fee; or if none can be agreed upon,

11.6.2 a fee based on the following percentages of the various portions of the Cost of the Work:

11.6.2.1 for costs incurred under paragraphs 11.4.1 and 11.4.2, the CONTRACTOR's Fee shall be fifteen percent;

11.6.2.2 for costs incurred under paragraph 11.4.3, the CONTRACTOR's Fee shall be five percent; and if a subcontract is on the basis of Cost of the Work Plus a Fee, the maximum allowable to CONTRACTOR on account of overhead and profit of all Subcontractors shall be fifteen percent;

11.6.2.3 no fee shall be payable on the basis of costs itemized under paragraphs 11.4.4, 11.4.5 and 11.5;

11.6.2.4 the amount of credit to be allowed by CONTRACTOR to OWNER for any such change which results in a net decrease in cost will be the amount of the actual net decreases

plus a deduction in CONTRACTOR's Fee by an amount equal to ten percent of the net decrease; and

11.6.2.5 when both additions and credits are involved in any one change, the adjustment in CONTRACTOR's Fee shall be computed on the basis of the net change in accordance with paragraphs 11.6.2.1 through 11.6.2.4, inclusive.

11.7 Whenever the cost of any Work is to be determined pursuant to paragraph 11.4 or 11.5, CONTRACTOR will submit in form acceptable to ENGINEER an itemized cost breakdown together with supporting data.

Cash Allowances:

11.8 It is understood that CONTRACTOR has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be done by such Subcontractors or Suppliers and for such sums within the limit of the allowances as may be acceptable to ENGINEER. CONTRACTOR agrees that:

11.8.1. The allowances include the cost to CONTRACTOR (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the site, and all applicable taxes; and

11.8.2. CONTRACTOR's costs for un-loading and handling on the site, labor, installation costs, overhead, profit and other expenses contemplated for the allowances have been included in the Contract Price and not in the allowances. No demand for additional payment on account of any thereof will be valid.

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

Unit Price Work:

11.9.1 Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the established unit prices for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by CONTRACTOR will be made by ENGINEER in accordance with Paragraph 9.10.

11.9.2 Each unit price will be deemed to include an amount considered by CONTRACTOR to be adequate to cover CONTRACTOR's overhead and profit for each separately identified item.

11.9.3 There the quantity of any item of Unit Price Work performed by CONTRACTOR differs materially and significantly from the estimated quantity of such item indicated in the Agreement and there is no corresponding adjustment with respect to any other item of Work and if CONTRACTOR

believes that CONTRACTOR has incurred additional expenses as a result thereof, CONTRACTOR may make a claim for an increase in the CONTRACTOR may make a claim for an increase in the Contract Price in accordance with Article 11 if the parties are unable to agree as to the amount of any such increase.

ARTICLE 12 - CHANGE OF CONTRACT TIME

12.1 The Contract Time may only be changed by a Change Order or a Written Amendment. Any claim for an extension or shortening of the Contract Time shall be based on written notice delivered by the party making the claim to the other party and to ENGINEER promptly (but in no event later than thirty days) after the occurrence of the event giving rise to the claim and stating the general nature of the claim. Notice of the extent of the claim with supporting data shall be delivered within sixty days after such occurrence (unless ENGINEER allows an additional period of time to ascertain more accurate data in support of the claim) and shall be accompanied by the claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant has reason to believe it is entitled as a result of the occurrence of said event. All claims for adjustment in the Contract Time shall be determined by ENGINEER in accordance with paragraph 9.11 if OWNER and CONTRACTOR cannot other wise agree. No claim for an adjustment in the Contract Time will be valid if not submitted in accordance with the requirements of this paragraph 12.1.

12.2 The Contract Time will be extended in an amount equal to time lost due to delays beyond the control of CONTRACTOR if a claim is made therefore as provided in paragraph 12.1. Such delays shall include, but not be limited to, acts or neglect by OWNER or others performing additional work as contemplated by Article 7, or to fires, floods, labor disputes, epidemics, abnormal weather conditions or acts of God.

12.3 All time limits stated in the Contract Documents are of the essence of the Agreement. The provisions of this Article 12 shall not exclude recovery for damages (including but not limited to fees and charges of engineers, architects, attorneys and other professionals and court and arbitration costs) for delay by either party.

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

Warranty and Guarantee:

13.1 CONTRACTOR warrants and guarantees to OWNER and ENGINEER that all Work will be in accordance with the Contract Documents and will not be *defective*. Prompt notice of all defects shall be given to CONTRACTOR. All *defective* Work, whether or not in place, may be rejected, corrected or accepted as provided in this Article 13.

Access to Work:

13.2 ENGINEER and ENGINEER's representatives, other representative of OWNER, testing agencies and governmental agencies with jurisdictional interests will have access to the Work at reasonable times

for their observation, inspecting and testing. CONTRACTOR shall provide proper and safe conditions for such access.

Tests and Inspection:

13.3 CONTRACTOR shall give ENGINEER timely notice of readiness of the Work for all required inspection, tests or approvals.

13.4 If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) to specifically be inspected, tested or approved, CONTRACTOR shall assume full responsibility therefore, pay all costs in connection therewith and furnish ENGINEER the required certificates of inspection, testing or approval. CONTRACTOR shall also be responsible for and shall pay all costs in connection with any inspection or testing required in connection with OWNER's or ENGINEER's acceptance of a Supplier of materials or equipment proposed to be incorporated in the Work, or of materials or equipment submitted for approval prior to CONTRACTOR's purchase thereof for incorporation in the Work. The cost of all inspections, tests and approvals in addition to the above which are required by the Contract Documents shall be paid by OWNER (unless otherwise specified).

13.5 All inspections, tests or approvals other than those required by Laws or Regulations of any public body having jurisdiction shall be performed by organizations acceptable to OWNER and CONTRACTOR (or by ENGINEER if so specified).

13.6 If any Work (including the work of others) that is to be inspected, tested or approved is covered without written concurrence of ENGINEER, it must, if requested by ENGINEER, be uncovered for observation. Such uncovering shall be at CONTRACTOR's expense unless CONTRACTOR has given ENGINEER timely notice of CONTRACTOR's intention to cover the same and ENGINEER has not acted with reasonable promptness in response to such notice.

13.7 Neither observations by ENGINEER nor inspections, tests or approvals by others shall relieve CONTRACTOR with CONTRACTOR's obligations to perform the Work in accordance with the Contract Documents.

Uncovering Work:

13.8 If any Work is covered contrary to the written request of ENGINEER, it must, if requested by ENGINEER, be uncovered for ENGINEER's observations and replaced at CONTRACTOR's expense.

13.9 If ENGINEER considers it necessary or advisable that covered Work be observed by ENGINEER or inspected or tested by others, CONTRACTOR, at ENGINEER's request, shall uncover, expose or otherwise make available for observation, inspection or testing as ENGINEER may require, that portion of the Work in question, furnishing all necessary labor, material and equipment. If it is found that such Work is *defective*, CONTRACTOR shall bear all direct, indirect and consequential costs of such uncovering, exposure, observation, inspection and testing and of satisfactory reconstruction, (including but not limited to fees and charges of engineers, architects, attorneys and other professionals), and OWNER shall be entitled to an appropriate decrease in the CONTRACT Price, and, if the parties are unable to agree as to the amount thereof, may make a claim therefore as provided in Article 11. If, however, such Work is not

found to be *defective*, CONTRACTOR shall be allowed an increase in the Contract Price or an extension of the Contract Time, or both, directly attributable to such uncovering, exposure, observation, inspection, testing and reconstruction; and, if the parties are unable to agree as to the amount or extent thereof, CONTRACTOR may make a claim therefore as provided in Articles 11 and 12.

Owner May Stop the Work:

13.10 If the Work is *defective*, or CONTRACTOR fails to supply sufficient skilled workers or suitable materials or equipment, or fails to furnish or perform the Work in such a way that the completed Work will conform to the Contract Documents, OWNER may order CONTRACTOR to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of OWNER to stop the Work shall not give rise to any duty on the part of OWNER to exercise this right for the benefit of CONTRACTOR or any other party.

Correction or Removal of Defective Work:

13.11 If required by ENGINEER, CONTRACTOR shall promptly, as directed, either correct all *defective* Work, whether or not fabricated, installed or completed, or, if the Work has been rejected by ENGINEER, remove it from the site and replace it with *nondefective* Work. CONTRACTOR shall bear all direct, indirect and consequential costs of such correction or removal (including but not limited to fees and charges of engineers, architects, attorneys and other professionals) made necessary thereby.

One Year Correction Period:

13.12 If within one year after the date of Substantial Completion or such longer period of time as may be prescribed by Laws or Regulations or by the terms of any applicable special guarantee required by the Contract Documents or by any specific provision of the Contract Documents, any Work is found to be *defective*, CONTRACTOR shall promptly, without cost to OWNER and in accordance with OWNER's written instruction, either correct such *defective* Work, or, if it has been rejected by OWNER, remove it from the site and replace it with *nondefective* Work. If CONTRACTOR does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, OWNER may have the *defective* Work corrected or the rejected Work removed and replaced, and all direct, indirect and consequential costs of such removal and replacement (including but not limited to fees and charges or engineers, architects, attorneys and other professionals) will be paid by CONTRACTOR. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications or by Written Amendment.

Acceptance of Defective Work:

13.13 If, instead of requiring correction or removal and replacement of *defective* Work, OWNER (and, prior to ENGINEER's recommendation of final payment, also ENGINEER) prefers to accept it, OWNER may do so. CONTRACTOR shall bear all direct, indirect and consequential costs attributable to OWNER's evaluation of and determination to accept such *defective* Work (such costs to be approved by ENGINEER as to

reasonableness and to include but not be limited to fees and charges of engineers, architects, attorneys and other professionals). If any such acceptance occurs prior to ENGINEER's recommendation of final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and OWNER shall be entitled to an appropriate decrease in the Contract Price, and, if the parties are unable to agree as to the amount thereof, OWNER may make a claim therefore as provided in Article 11. If the acceptance occurs after such recommendation, an appropriate amount will be paid by CONTRACTOR to OWNER.

OWNER May Correct Defective Work:

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

ARTICLE 14 - PAYMENTS TO CONTRACTOR AND COMPLETION

Schedule of Values:

14.1 The schedule of values established as provided in paragraph 2.8 will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to ENGINEER. Progress payments on account of Unit Price Work will

be based on the number of units completed.

Application for Progress Payment:

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

CONTRACTOR's Warranty of Title:

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

Review of Applications for Progress Payment:

14.4 ENGINEER will, within ten days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application to OWNER, or return the Application to CONTRACTOR indicating in writing ENGINEER's reasons for refusing to recommend payment. In the latter case, CONTRACTOR may make the necessary corrections and resubmit the Application. Thirty days after presentation of the Application for Payment with ENGINEER's recommendation, the amount recommended will (subject to the provisions of the last sentence of paragraph 14.7) become due and when due will be paid by OWNER to CONTRACTOR.

14.5 ENGINEER's recommendation of any payment requested in an Application for Payment will constitute a representation by ENGINEER to OWNER, based on ENGINEER's on-site observations of the Work in progress as an experienced and qualified design professional and on ENGINEER's review of the Application for Payment and the accompanying data and schedules that the Work has progressed to the point indicated; that, to the best of ENGINEER's knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents, to a final determination of quantities and classifications for Unit Price Work under paragraph 9.10, and to any other qualifications stated in the recommendation); and that CONTRACTOR is

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

14.6 ENGINEER's recommendation of final payment will constitute an additional representation by ENGINEER to OWNER that the conditions precedent to CONTRACTOR's being entitled to final payment as set forth in paragraph 14.13 have been fulfilled.

14.7 ENGINEER may refuse to recommend the whole or any part of any payment if, in ENGINEER's opinion, it would be incorrect to make such representations to OWNER. ENGINEER may also refuse to recommend any such payment, or, because of subsequently discovered evidence or the results of subsequent inspections or tests, nullify any such payment previously recommended, to such extents as may be necessary in ENGINEER's opinion to protect OWNER from loss because:

14.7.1 the Work is *defective*, or completed Work has been damaged requiring correction or replacement.

14.7.2 the Contract Price has been reduced by Written Amendment or Change Order,

14.7.3 OWNER has been required to correct *defective* Work or complete Work in accordance with paragraph 13.14, or

14.7.4 of ENGINEER's actual knowledge of the occurrence of any of the events enumerated in paragraphs 15.2.1 through 15.2.9 inclusive.

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

Substantial Completion:

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

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

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

Partial Utilization:

14.10 Use by OWNER of any finished part of the Work, which has specifically been identified in the Contract Documents, or which OWNER, ENGINEER and CONTRACTOR agree constitutes a separately functioning and useable part of the Work that can be used by OWNER without significant interference with CONTRACTOR's performance of the remainder of the Work, may be accomplished prior to Substantial Completion of all the Work subject to the following:

14.10.1 OWNER at any time may request CONTRACTOR in writing to permit OWNER to use any such part of the Work which OWNER believes to be ready for its intended use and substantial complete. If CONTRACTOR agrees, CONTRACTOR will certify to OWNER and ENGINEER that said part of the Work is substantially complete and request ENGINEER to issue a certificate of Substantial Completion for that part of the Work. CONTRACTOR at any time may notify OWNER and ENGINEER in writing that CONTRACTOR considers any such part of the Work ready for its intended use and substantially complete and request ENGINEER to issue a certificate of Substantial Completion for that part of the Work. Within a reasonable time after either such request, OWNER, CONTRACTOR and ENGINEER shall make an inspection of that part of the Work to determine its status of completion. If ENGINEER does not consider that part of the Work to be substantially complete, ENGINEER will notify OWNER and CONTRACTOR in writing giving the reasons therefore. If ENGINEER

considers that part of the Work to be substantially complete, the provisions of paragraphs 14.8 and 14.9 will apply with respect to certification of Substantial Completion of that part of the Work and the division or responsibility in respect thereof and access thereto.

14.10.2 OWNER may at any time request CONTRACTOR in writing to permit OWNER to take over operation of any such part of the Work although it is not substantially complete. A copy of such request will be sent to ENGINEER and within a reasonable time thereafter OWNER, CONTRACTOR and ENGINEER shall make an inspection of that part of the Work to determine its status of completion and will prepare a list of the items remaining to be completed or corrected thereon before final payment. If CONTRACTOR does not object in writing to OWNER and ENGINEER that such part of the Work is not ready for separate operation by OWNER, ENGINEER will finalize the list of items to be completed or corrected and will deliver such list to OWNER and CONTRACTOR together with a written recommendation as to the division of responsibilities pending final payment between OWNER and CONTRACTOR with respect to security, operation, safety, maintenance, utilities, insurance warranties and guarantees for that part of the Work which will become binding upon OWNER and CONTRACTOR at the time when OWNER takes over such operation (unless they shall have otherwise agreed in writing and so informed ENGINEER). During such operation and prior to Substantial Completion of such part of the Work, OWNER shall allow CONTRACTOR reasonable access to complete or correct items on said list and to complete other related Work.

14.10.3 No occupancy or separate operation of part of the Work will be accomplished prior to compliance with the requirements of paragraph 5.15 in respect of property insurance.

Final Inspection:

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

Final Application for Payment:

14.12 After CONTRACTOR has completed all such corrections to the satisfaction of ENGINEER and delivered all maintenance and operating instruction, schedules, guarantees, Bonds, certificates of inspection, marked-up record documents (as provided in paragraph 6.19) and other documents - all as required by the Contract Documents, and after ENGINEER has indicated that the Work is acceptable (subject to the provisions of paragraph 14.16), CONTRACTOR may make application for final payment following the procedure for progress payments. The final Application for Payment shall be accompanied by all documentation called for

in the Contract Documents, together which complete and legally effective releases of waivers (satisfactory to OWNER) of all Liens arising out of or filed in connection with the Work. In lieu thereof and as approved by OWNER, CONTRACTOR may furnish receipts or leases in full; an affidavit of CONTRACTOR 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 OWNER or OWNER's 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 of Supplier fails to furnish a release or receipt in full, CONTRACTOR may furnish a Bond or other collateral satisfactory to OWNER to indemnify OWNER against any Lien.

Final Payment and Acceptance:

14.13 If, on the basis of ENGINEER's observation of the Work during construction and final inspection, and ENGINEER's review of the final Application for Payment and accompanying documentation - all as required by the Contract Documents, ENGINEER is satisfied that the Work has been completed and CONTRACTOR's other obligations under the Contract Documents have been fulfilled, ENGINEER will, within ten days after receipt of the final Application for Payment, indicate in writing ENGINEER's recommendation of payment and present the Application to OWNER for payment. Thereupon ENGINEER will give written notice to OWNER and CONTRACTOR that the Work is acceptable subject to the provisions of paragraph 14.16. Otherwise, ENGINEER will return the Application to CONTRACTOR, indicating in writing the reasons for refusing to recommend final payment, in which case CONTRACTOR shall make the necessary corrections and resubmit the Application. Thirty days after presentation to OWNER of the Application and accompanying documentation, in appropriate form and substance, and with ENGINEER's recommendation and notice of acceptability, the amount recommended by ENGINEER will become due and will be paid by OWNER to CONTRACTOR.

14.14 If, through no fault of CONTRACTOR, final completion of the Work is significantly delayed and if ENGINEER so confirms, OWNER shall, upon receipt of CONTRACTOR's final Application for Payment and recommendation of ENGINEER, and without terminating the Agreement, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by OWNER for Work not fully completed or corrected is less than the retainage stipulated in the Agreement, and if Bonds have been furnished as required in paragraph 5.1, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by CONTRACTOR to ENGINEER with the Application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

Contractor's Continuing Obligation:

14.15 CONTRACTOR's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. Neither recommendation of any progress or final payment by ENGINEER, nor the issuance of a certificate of Substantial Completion, nor any payment by OWNER to CONTRACTOR under the Contract Docu-

ments, nor any use or occupancy of the Work or any part thereof by OWNER, nor any act of acceptance by OWNER nor any failure to do so, nor any review and approval of a Shop Drawing or sample submission, nor the issuance of a notice of acceptability by ENGINEER pursuant to paragraph 14.13, nor any correction of *defective* Work by OWNER will constitute an acceptance of Work not in accordance with the Contract Documents or a release of CONTRACTOR's obligation to perform the Work in accordance with the Contract Documents (except as provided in paragraph 14.16).

Waiver of Claims:

14.16 The making and acceptance of final payment will constitute:

14.16.1 a waiver of all claims by OWNER against CONTRACTOR, except claims arising from unsettled Liens, from *defective* Work appearing after final inspection pursuant to paragraph 14.11 or from failure to comply with the Contract Documents or the terms of any special guarantees specified therein; however, it will not constitute a waiver by OWNER of any rights in respect of CONTRACTOR's continuing obligations under the Contract Documents; and

14.16.2 a waiver of all claims by CONTRACTOR against OWNER other than those previously made in writing and still unsettled.

ARTICLE 15 - SUSPENSION OF WORK AND TERMINATION

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Owner May Suspend Work:

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

Owner May Terminate:

15.2 Upon the occurrence of any one or more of the following events:

15.2.1 if CONTRACTOR commences a voluntary case under any chapter of the Bankruptcy Code (Title 11, United States Code), as now or hereafter in effect, or if CONTRACTOR takes any equivalent or similar action by filing a petition or otherwise under any other federal or state law in effect at such time relating to the bankruptcy or insolvency;

15.2.2 if a petition if filed against CONTRACTOR under any chapter of the Bankruptcy Code as now or hereafter in effect at the time of filing, or if a petition is filed seeking any such equivalent or similar relief against CONTRACTOR under any other federal or state law in effect at the time relating to bankruptcy or insolvency;

15.2.3 if CONTRACTOR makes a general assignment for the benefit or creditors;

15.2.4 if a trustee, receiver, custodian or agent of CONTRACTOR is appointed under applicable law or under contract, whose appointment or authority to take charge or property of CONTRACTOR is for the purpose of enforcing a Lien against such property or for the purpose of general administration of such property for the benefit of CONTRACTOR's creditors:

15.2.5 if CONTRACTOR admits in writing an inability to pay its debts generally as they become due;

15.2.6 if CONTRACTOR persistently fails to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the progress schedule established under paragraph 2.9 as revised from time to time);

15.2.7 if CONTRACTOR disregards Laws or Regulations of any public body having jurisdiction;

15.2.8 if CONTRACTOR disregards the authority of ENGINEER; or

15.2.9 if CONTRACTOR otherwise violates in any substantial way any provisions of the Contract Documents;

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

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

15.4 Upon seven days' written notice to CONTRACTOR and ENGINEER, OWNER may, without cause and without prejudice to any other right or remedy, elect to abandon the Work and terminate the Agreement. In such case, CONTRACTOR shall be paid for all Work executed and any expense sustained plus reasonable termination expenses, which will include, but not be limited to, direct, indirect and consequential costs (including, but not limited to, fees and charges of engineers, architects, attorneys and other professionals and court and arbitration costs).

Contractor May Stop Work or Terminate:

15.5 If, through no act or fault of CONTRACTOR, the Work is suspended for a period of more than ninety days by OWNER or under an order of court or other public authority, or ENGINEER fails to act on any Application for Payment within thirty days after it is submitted, or OWNER fails for thirty days to pay CONTRACTOR any sum finally determined to be due, then CONTRACTOR may, upon seven days' written notice to OWNER and ENGINEER, terminate the Agreement and recover from OWNER payment for all Work executed and any expense sustained plus reasonable termination expenses. In addition and in lieu of terminating the Agreement, if ENGINEER has failed to act on an Application for Payment or OWNER has failed to make any payment as aforesaid, CONTRACTOR may upon seven days' written notice to OWNER and ENGINEER stop the Work until payment of all amounts then due. The provisions of this under paragraph 6.29 to carry on the Work in accordance with the progress schedule and without delay during disputes and disagreements with OWNER.

ARTICLE 16 - DISPUTE RESOLUTION

_____

16.1 METHODS AND PROCEDURES

In an effort to resolve any conflicts that arise during the construction of the project or following the completion of the project, the OWNER and the CONTRACTOR agree that all disputes between them arising out of or relating to this Agreement shall be submitted to nonbinding mediation, unless the parties mutually agree otherwise.

The OWNER and the CONTRACTOR further agree to include a similar mediation provision in all agreements with independent contractors and consultants retained for the project and to require all independent contractors and consultants also to include a similar mediation provision in all agreements with subcontractors, subconsultants, suppliers or fabricators so retained, thereby providing for mediation as the primary method for dispute resolution between the parties to those agreements.

ARTICLE 17 - MISCELLANEOUS

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Giving Notice:

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

to the last business address known to the giver of the notice.

Computation of Time:

17.2.1 When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

17.2.2 A calendar day of twenty-four hours measured from midnight to the next midnight shall constitute a day.

General:

17.3 Should OWNER or CONTRACTOR suffer injury or damage to person or property because of any error, omission or act of the other party or of any of the other party's employees or agents or others for whose acts the other party is legally liable, claim will be made in writing to the other party within a reasonable time of the firs observance of such injury or damage. The provisions of this paragraph 17.3 shall not be construed as a substitute for or a waiver of the provisions of any applicable statute of limitations or repose.

17.4 The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto, and, in particular but without limitation, the warranties, guarantees and obligations imposed upon CONTRACTOR by paragraphs 6.30, 13.1, 13.12, 13.14, 14.3 and 15.2 and all of the rights and remedies available to OWNER and ENGINEER thereunder, are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee or by other provisions of the Contract Documents, and the provisions of this paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right and remedy to which they apply. All representations, warranties and guarantees made in the Contract Documents will survive final payment and termination or completion of the Agreement.

SECTION 00800
SUPPLEMENTARY CONDITIONS

These Supplementary Conditions amend or supplement the Standard General Conditions of the Construction Contract and other provisions of the Contract Documents as indicated below. All provisions that are not so amended or supplemented remain in full force and effect.

The terms used in these Supplementary Conditions will have the meanings indicated in the General Conditions. Additional terms used in these Supplementary Conditions have the meanings stated below, which are applicable to both the singular and plural thereof.

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SC-2.3. Delete Paragraph 2.3 in its entirety and insert the following in its place:

The Contract Time will commence to run on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within 30 days after the Effective Date of the Agreement.

SC-2.4. Delete Paragraph 2.4 in its entirety and insert the following in its place:

The Contractor shall start to perform the Work within 10 calendar days of the date when the Contract Time commences to run, but no Work shall be done at the site prior to the date on which the Contract Time commences to run.

SC-2.5. Add the following to the end of Paragraph 2.5:

Any known discrepancy that Contractor adjusts without requesting interpretation or clarification from the Engineer shall be made at the risk of the Contractor, and Contractor shall bear all expenses arising from complications from such adjustment.

SC-2.7. Add the following to the end of Paragraph 2.7:

Failure of the Owner to demand such certificates or other evidence of full compliance with these insurance requirements or failure of the Owner to identify a deficiency from evidence provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.

SC-4.2.1 Add the following to the end of Paragraph 4.2.1

In the preparation of Drawings and Specifications, Engineer has relied upon the following reports of explorations and test of sub-surface conditions at the site of the Work:

4.2.1.1 NONE

SC-4.3.3 Add a new Paragraph immediately after Paragraph 4.3.2:

4.3.3 In the preparation of Drawings and Specifications, Engineer has relied upon the following drawings of physical conditions in or relating to existing surface and sub-surface structures (except Underground Utilities) which are contiguous to the site of the Work:

4.3.1.1 NONE

SC-5.4. Delete Paragraph 5.4 and the heading entitled "Contractual Liability Insurance:" in its entirety and insert the following in its place:

5.4 The limits of liability for insurance required by Paragraph 5.3 of the General Conditions shall provide coverage for not less than the following amounts or greater where required by Laws and Regulations:

5.4.1. Workers' Compensation, and related coverages under Paragraphs 5.3.1 and 5.3.2 of the General Conditions:

5.4.1.1. State: Statutory

5.4.1.2. Applicable Federal
(e.g., Longshoremen's) Statutory

5.4.1.3. Employer's Liability $ 200,000

5.4.1.4. Contractor shall show Owner as additional insured.

5.4.2. Contractor's Comprehensive General Liability under Paragraphs 5.3.3 through 5.3.6 of the General Conditions:

5.4.2.1 Combined Single Limit for Bodily Injury and Property Damage

$1,000,000	Each Occurrence
Or combined single limit	$2,000,000
General Aggregate	$2,000,000
Operations Aggregate	$2,000,000

5.4.2.2. Property Damage liability insurance will provide Explosion, Collapse and Underground coverages where applicable.

5.4.2.3. Personal Injury, with employment exclusion deleted

$1,000,000	Annual Aggregate
$1,000,000	Each Occurrence

5.4.3. Comprehensive Automobile Liability under Paragraph 5.3.7 of the General Conditions:

5.4.3.1. Bodily Injury:

$1,000,000	Each Person
$2,000,000	Each Occurrence

5.4.3.2 Property Damage:

$1,000,000	Each Occurrence
Or combined single limit	$2,000,000

5.4.4 Builders Risk Insurance (Fire and Extended Coverage):

5.4.4.1 100% completed value based on the insurable portion of the project

5.4.4.2 Policy must protect the interests of the Owner, Contractor, and Sub-Contractors against loss by fire, vandalism, malicious mischief, and all hazards included in a standard "All Risk" Coverage endorsement. Policies shall be in the name of the Owner and Contractor.

5.4.5 The comprehensive general liability insurance will include contractual liability insurance applicable to CONTRACTOR's obligations under paragraphs 6.30 and 6.31 of the General Conditions. Contractual Liability coverage shall provide coverage for not less than the following amounts:

5.4.5.1. Bodily Injury:

$500,000	Each Occurrence

5.4.5.2 Property Damage:

$100,000	Each Occurrence
$ N/A	Annual Aggregate

SC-6.4 Add the following language at the end of paragraph 6.4:

Contractor shall arrange for all necessary services through the local agencies at his own expense.

SC-6.7.3. Delete Paragraph 6.7.3 in its entirety and insert the following in its place:

6.7.3 ENGINEER will be allowed a reasonable time within which to evaluate each proposed substitute/ "or-equal" item. Complete written applications as detailed in Section 6.7 of the General Conditions must be submitted by a Bidder listed on the official Bidders List and must be received by ENGINEER at least fifteen (15) calendar days prior to the date (by end-of-business) for receipt of Bids. The burden of proof of the merit of the substitute/ "or-equal" item is upon the Bidder. ENGINEER will be the sole judge of acceptability, and ENGINEER'S decision of approval or disapproval of an item will be final. If ENGINEER approves any substitute/ "or-equal" item, such approval will be set forth in an Addendum issued to prospective Bidders. Bidders shall not rely upon approvals made in any other manner.

SC-6.7.4-6 Add new paragraphs immediately after Paragraph 6.7.3:

6.7.4 Submittals for substitute/ "or-equal" items shall include illustrative drawings, specifications, descriptive brochures, installation lists, weights, metal thickness of principal components, drive arrangements, torques, power requirements,

performance curves, installation requirements, availability of spare parts, local service capability, and other items necessary for the ENGINEER to determine that the intent of the Specifications is to be met. Submittal must also include an enumeration of any and all changes required in the contract documents for incorporation of the proposed item. Incomplete submittals will not be reviewed or commented upon.

6.7.5 Submitted items that are determined to be "equal" or acceptable substitute to the named equipment or item in the specifications will be approved and commented upon by addendum to notify all Bidders of approval and any stipulations for the products use in preparation of his/her bid.

SC-6.8.3 Add a new paragraph immediately after Paragraph 6.8.2:

6.8.3. The Contractor shall not award work valued at more than fifty (50%) percent of the Contract Price to Subcontractor(s), without prior written approval of the Owner.

SC-6.21 Add the following language at the end of paragraph 6.21:

The Contractor shall provide, at the site, such equipment and medical facilities as are necessary to supply first-aid service to anyone who may be injured in connection with the work. The Contractor must report in writing to the Engineer all accidents whatsoever arising out of, or in connection with, the performance of the work, whether on or adjacent to the site, which causes death, personal injury or property damages, giving full details and statement of witnesses. In addition, if death or serious injuries or serious damages are caused, the accident shall be reported immediately by telephone or messenger to the Contractor and any subcontractor so that Contractor may promptly report the facts to the Engineer, giving full details of the accident. The Contractor shall advise his superintendent and foreman, who are on the site of the work, the name of the hospital and phone number and the name and phone number of the doctor he proposes to use in case of an accident.

SC-6.33 Add a new paragraph immediately after Paragraph 6.32:

6.33 Contractor shall require any and all subcontractors to conform to the obligations under paragraph 6.30 prior to commencing any work.

SC-9.3 Add the following language at the end of paragraph 9.3:

The Owner reserves the right to provide Resident Project Representative services for this project through the services of the Engineer. The Duties, Responsibilities, and Limitations of Authority of the Resident Project Representative will be as stated in the Agreement Between Owner and Engineer, executed for this specific Project.

SC-11.9.2 Add the following language at the end of paragraph 11.9.2:

Direct payment will only be made items specifically listed in the Bid Form, and the cost of any other work will be included in the unit price for the item to which it relates.

SC-12.3.1 Add the following sub-Paragraph to Paragraph 12.3:

12.3.1 If the Contractor fails to prosecute the work with such diligence as will insure the completion of each portion of the work within the Contract Time, plus any extensions made in accordance with Article 12 of the General Conditions, and if the Owner does not exercise his reservations as set forth in Article 13 of the General Conditions, the Contractor shall continue the work, in which event, actual damages for the delay will be impossible to determine. In lieu thereof, liquidated damages in the amount of $500 per calendar day for each day that the work is delayed beyond the contract completion will be assessed to the Contractor until the work is completed.

SC-13.2 Delete Paragraph 13.2 in its entirety and insert the following in its place:

Engineer and Engineer's representatives, other representative of Owner, testing agencies, the Georgia Department of Natural Resources, the Environmental Protection Division, the Department of Labor, and any other governmental agencies with jurisdictional interests will have access to the Work at reasonable times for their observation, inspection, and testing. Contractor shall provide proper and safe conditions for such access.

SC-17.5 Add the following new Paragraphs immediately after Paragraph 17.4:

17.5 The Contractor acknowledges the requirement of the High Voltage Act of the General Assembly of Georgia by execution of the Agreement.

17.6 The Contractor shall comply with the Department of Labor Safety and Health Regulation for Construction promulgated under the Occupational Safety and Health Act of 1970 (PL 91-596) and under Section 107 of the Contract Work and Safety Standards Act (PL 91-54). These regulations are administered by the Department of Labor and the Contractor shall allow access to the project to personnel from that Department.

17.7 The Contractor shall occupy the status of an Independent Contractor and the Contractor's employees are not employees of the Owner.

FLOWERY BRANCH CITY COUNCIL

EXECUTIVE SUMMARY

SUBJECT: Award Contract to Legacy Water Group, LLC for the Connection to Gainesville's Sanitary Sewer System and Declaration of an Emergency

DATE: January 26, 2023

(X)RECOMMENDATION
( ) POLICY DISCUSSION
( ) STATUS REPORT
( ) OTHER

BUDGET INFORMATION:
ANNUAL- $2,066,851.50
CAPITAL-

COUNCIL ACTION REQUESTED ON: February 2, 2023

PURPOSE: To award contract to Legacy Water Group, LLC for the construction of the lines and connections to connect to Gainesville's sanitary sewer system immediately, and to declare and emergency for this work to be completed.

HISTORY: The City of Flowery Branch has been near capacity at its wastewater treatment plant and staff sought out several alternatives for more capacity while a new plant was being designed and constructed.

FACTS AND ISSUES: Trey Gavin with ESG Engineering, has been working with staff to identify the lines to connect to Gainesville's sanitary sewer system and a potential route for the new pipeline. The cost of the lines and connections are anticipated to be $2,066,851.50 with funding to be provided from system development charges. An emergency exists because the current wastewater treatment plant, which is permitted to handle 910,000 gallons per day (GPD), is currently operating near capacity and the city has recently received violation notices and fines from EPD associated with these issues. Mr. Gavin believes this to be a "max not-to-exceed" price and will work to bring the project in below this total. The only unknown currently of concern is the potential for rock blasting during installation, but we believe this will not be an issue based on knowledge of the area.

OPTIONS:

1) Award contract to Legacy Water Group, LLC and declare an emergency so the work can begin immediately.
2) Do not award contract.

RECOMMENDED SAMPLE MOTION:

I make a motion to award a contract to Legacy Water Group, LLC in amount not to exceed $2,066,851.50 for immediate construction of lines to connect to Gainesville's sanitary sewer system and to declare an emergency for the work to begin – subject to the City Attorney's approval.

DEPARTMENT: Administration

Prepared by: Tonya Parrish

FLOWERY BRANCH CITY COUNCIL

EXECUTIVE SUMMARY

SUBJECT: Consider Executing a Performance Agreement for Swingin' Medallions on Saturday, September 23, 2023 at the September Fall Event

COUNCIL MEETING DATE: February 2, 2023

HISTORY:
Last year we hosted the Swinging Medallions for the first time and we would like to make this an annual event. Events include food trucks, free entertainment for families, live music.

FACTS AND ISSUES:
This year I am planning a new event in September, it will center on all the fun things of fall; sports, food, crafts and fun. This event will take place on Saturday, September 23, 2023 from 2pm – 10pm. We will have craft & art vendors, food trucks, sports themed games & a focus on the Falcons. I have been able to book the Swinging Medallions for our closing act for the event. They will be performing at the Market Pavilion from 7:30pm – 9:30pm. The cost is $6,000 which includes all lights and sound needs.

OPTIONS:
Approve or Deny

IF FUNDING IS INVOLVED, ARE FUNDS APPROVED IN THE CURRENT BUDGET:
Yes

AMOUNT AND SOURCE OF FUNDS:
$6000 Funded by Concert annual budget.

RECOMMENDATION:

SAMPLE MOTION:
I make a motion to approve for the City Manager to execute the performance agreement with the Swinging Medallions for the event on Saturday, Sept. 23, 2023, upon final review and approval of the agreement from the City Attorney.

COLLABORATING DEPARTMENT:
Administration

DEPARTMENT: Administration

Prepared by: Shelia Cooper

ATTACHMENTS

- Executive Summary Swingin' Medallions Agreement 2023.pdf
- Swingin Medallions Performance Agreement.pdf

FLOWERY BRANCH CITY COUNCIL

EXECUTIVE SUMMARY

SUBJECT: Consideration of Executing a Performance Agreement for Swinging Medallions on Saturday, September 23, 2023 at the September Fall Event

DATE:

(X) RECOMMENDATION
( ) POLICY DISCUSSION
( ) STATUS REPORT
( ) OTHER

BUDGET INFORMATION:
ANNUAL- $6,000
CAPITAL-

COUNCIL ACTION REQUESTED ON: February 2, 2023

PURPOSE: Sign performance agreement with The Swinging Medallions to perform at the September Fall Event on Saturday, Sept. 23, 2023.

HISTORY:

- Last year we hosted the Swinging Medallions for the first time and we would like to make this an annual event.
- Events include food trucks, free entertainment for families, live music

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FACTS AND ISSUES: This year I am planning a new event in September, it will center on all the fun things of fall; sports, food, crafts and fun. This event will take place on Saturday, September 23, 2023 from 2pm – 10pm. We will have craft & art vendors, food trucks, sports themed games & a focus on the Falcons. I have been able to book the Swinging Medallions for our closing act for the event. They will be performing at the Market Pavilion from 7:30pm – 9:30pm. The cost is $6,000 which includes all lights and sound needs.

OPTIONS: Approve or Deny

RECOMMENDED SAMPLE MOTION:
I make a motion to approve for the City Manager to execute the performance agreement with the Swinging Medallions for the event on Saturday, Sept. 23, 2023, upon final review and approval of the agreement from the City Attorney.

DEPARTMENT: Tourism
Prepared by: Renee Carden

Performance Agreement

This Contract and Agreement is made on this date, February 2, 2023, between (Artist) THE SWINGIN' MEDALLIONS and (Purchaser) Renee Carden, Downtown Events/Public Information Officer, City of Flowery Branch. **Contract and deposit should be returned within ten days of date of issue. If contracts and deposits are not returned within this period of time, the date will be considered open and available and will not be held.** Artist and Purchaser agree to the following Terms and Conditions:

- **PURCHASER NAME, ADDRESS, AND CONTACT INFORMATION:**
  Renee Carden, Downtown Events/Public Information Officer, City of Flowery Branch
  Renee@flowerybranchga.org, Direct: 770-967-6371 #8
  5410 Pine Street, P.O. Box 757, Flowery Branch, GA 30542
- **VENUE NAME, ADDRESS, AND CONTACT INFORMATION:**
  Downtown Flowery Branch, GA
- **DATE (S) AND TIME (S) OF PERFORMANCE:**
  Saturday, September 23, 2023. Artist to perform 7:30-9:30pm, with 15-minute intermission.
- **LOAD-IN AND SET-UP TIME (MINIMUM OF FOUR HOURS PRIOR TO PERFORMANCE):**
  TBD
- **PRICE AND TERMS OF PERFORMANCE: $6000.00 (plus attached Rider)**
  Purchaser to provide staging. Artist to provide audio/lighting.
  Purchaser provides, at no cost to Artist, 6 double hotel rooms and rider
- **PAYMENT TERMS:** $1500 **non-refundable deposit** due with signed contract.
  Balance of $4,500 due the day of event.

PLEASE MAKE CHECKS PAYABLE TO Medallion Productions, LLC (Tax ID# 32-0149929)
ANY ATTACHED RIDERS AND SPECIAL CONDITIONS SHALL BE DEEMED INTEGRAL PARTS OF THESE TERMS AND CONDITIONS. APPLICABLE RIDERS MUST BE SIGNED AND RETURNED WITH CONTRACT/DEPOSIT.

Artist's obligations are subject to normal and customary "force majure" conditions, including, but not limited to, Acts of God, riots, strikes, labor difficulties, illness, accidents, means of transportation, any act of Public Authority intervention, or any other condition or circumstance beyond Artist's control. Under such circumstance, there shall be no claims for damages by either party to this Contract and Agreement. Any and all costs and expenses (including Attorney fees) incurred by Artist in connection with the enforcement of this Contract and Agreement or collection of wages and fees, due to a default or breach by the Purchaser will be paid by the Purchaser. **Cancellation by Purchaser of event, after Agreement is fully executed, will require full payment of balance, unless otherwise agreed to by The Swingin' Medallions.** Purchaser shall be liable for any and all damages to Artist's equipment caused by Purchaser, his employees, guests, or any other person not associated with or connected to Artist. Purchaser agrees to hold harmless The Swingin' Medallions or any of its agents, members, guests, employees or independent contractors for any damages or claims arising from this performance, preparation, set-up and breakdown.

In the event of inclement weather that renders any performance hazardous or unsafe, Purchaser shall remain liable for payment of the full agreed upon compensation, even if the performance is prevented by such weather conditions. Artist to be paid in full, rain or shine.

_____.
Robby Cox
Authorized Representative of
The Swingin' Medallions

_____Date

_____.
Renee Carden
Authorized Representative of
City of Flowery Branch

_____Date

PLEASE REMIT CONTRACT/DEPOSIT TO:
Robby Cox, 1025 Sunset Road, Brentwood TN 37027

FLOWERY BRANCH CITY COUNCIL

EXECUTIVE SUMMARY

SUBJECT: Consider January 17, 2023 Special Called City Council Meeting Minutes

COUNCIL MEETING DATE: February 2, 2023

HISTORY:

FACTS AND ISSUES:

OPTIONS:

IF FUNDING IS INVOLVED, ARE FUNDS APPROVED IN THE CURRENT BUDGET:
No

AMOUNT AND SOURCE OF FUNDS:

RECOMMENDATION:

SAMPLE MOTION:

COLLABORATING DEPARTMENT:

DEPARTMENT: Administration

Prepared by: Shelia Cooper

ATTACHMENTS

- Unofficial January 17, 2023 Special Called City Council Meeting Minutes.pdf

City of Flowery Branch
Special Called City Council Meeting
Tuesday, January 17, 2023, 6:00 PM
City of Flowery Branch City Hall
5410 W. Pine Street, Flowery Branch, GA 30542

CALL SPECIAL CITY COUNCIL MEETING TO ORDER:

Mayor Asbridge called the Special Called City Council Meeting to order at 6:00 p.m.

Present: Mayor Asbridge and Council Members Joe Anglin, Oliver McClellan, William McDaniel, Joseph Mezzanotte and Chris Mundy.

Also present were City Manager Tonya Parrish, City Clerk Shelia Cooper, Finance Director Matthew Hamby, and Budge Manager Krystle Hightower.

PLEDGE OF ALLEGIANCE:

Mayor Asbridge led the Pledge of Allegiance.

NEW BUSINESS - WORK SESSION:

Consider First Reading of Ordinance 688 - Publishing of 2023 General Election Qualifying Fees

City Clerk Cooper presented the First Reading of Ordinance 688 which will provide for the 2023 municipal election for the City of Flowery Branch for Post 1 and Post 2, to set qualifying dates and to set the fee for said qualifying. The qualifying fee has increased from $144.00 to $216.00 per council member seat. The qualifying fee is 3 percent of the total gross salary for the office paid in the preceding year. The qualifying dates are proposed for Monday, August 21, 2023, beginning at 8:30 a.m. through Wednesday, August 23, 2023, at 4:30 p.m.

Council held a discussion on the fees and the dates for the General Election to be held on November 7, 2023, for Post 1 currently held by Council Member Chris Mundy and Post 2 currently held by Council Member Joseph Mezzanotte.

ADJOURNMENT WORK SESSION:

Mayor Asbridge adjourned the work session at 6:03 p.m.

VOTING SESSION AGENDA

CALL VOTING SESSION TO ORDER:

Mayor Asbridge called the voting session to order at 6:03 p.m.

NEW BUSINESS - VOTING SESSION:

Consider First Reading of Ordinance 688 - Publishing of 2023 General Election Qualifying Fees

Attorney Bennett read the caption to Ordinance 688.

There was a motion made to approve the First Reading of Ordinance 688.

MOTION: Chris Mundy
SECOND: Joe Anglin
AYES: Joe Anglin, Oliver McClellan, William McDaniel, Joseph Mezzanotte, Chris Mundy
NAYS: None
Motion carried

EXECUTIVE SESSION: There was no executive session.

ADJOURNMENT:

There was a motion made to adjourn at 6:04 p.m.

MOTION: Joe Anglin
SECOND: Oliver McClellan
AYES: Joe Anglin, Oliver McClellan, William McDaniel, Joseph Mezzanotte, Chris Mundy
NAYS: None
Motion carried

_____ _____ _____

Edward Asbridge, Mayor Date Shelia Cooper, City Clerk

FLOWERY BRANCH CITY COUNCIL

EXECUTIVE SUMMARY

SUBJECT: Consider January 19, 2023 City Council Meeting Minutes

COUNCIL MEETING DATE: February 2, 2023

HISTORY:

FACTS AND ISSUES:

OPTIONS:

IF FUNDING IS INVOLVED, ARE FUNDS APPROVED IN THE CURRENT BUDGET:
No

AMOUNT AND SOURCE OF FUNDS:

RECOMMENDATION:

SAMPLE MOTION:

COLLABORATING DEPARTMENT:

DEPARTMENT: Administration

Prepared by: Shelia Cooper

ATTACHMENTS

- Unofficial January 19, 2023 Minutes.pdf

City of Flowery Branch
City Council Meeting
Thursday, January 19, 2023, 6:00 PM
City of Flowery Branch City Hall
5410 W. Pine Street, Flowery Branch, GA 30542

CALL WORK SESSION TO ORDER:

Mayor Asbridge called the council meeting to order at 6:01 p.m.

Present: Mayor Asbridge and Council Members Joe Anglin, Oliver McClellan, William McDaniel, and Joseph Mezzanotte.

Also present were City Manager Tonya Parrish, City Clerk Shelia Cooper, Planning Director Rich Atkinson, Public Works and Utilities Director Bill Whidden, Finance Director Matthew Hamby, Budget Manager Krystle Hightower and City Attorney Ron Bennett.

Absent: Council Member Chris Mundy

PLEDGE OF ALLEGIANCE:

Mayor Asbridge led the Pledge of Allegiance.

ADOPTION OF AGENDA:

There was a motion made to approve the agenda.

MOTION: Joe Anglin
SECOND: William McDaniel
AYES: Joe Anglin, Oliver McClellan, William McDaniel, Joseph Mezzanotte
NAYS: None
Motion carried

There was a motion to amend the agenda to add Change Order #12 for the Farmers Market/Main Street Project to New Business Work Session and New Business Voting Session.

MOTION: Joseph Mezzanotte
SECOND: Oliver McClellan
AYES: Joe Anglin, Oliver McClellan, William McDaniel, Joseph Mezzanotte
NAYS: None
Motion carried

NEW BUSINESS -WORK SESSION:

Change Order #12 for Farmers Market/Main Street Project

City Manager Parrish presented Change Order #12 for the Farmers Market/Main Street Project authorizing changes on Main Street to address drainage changes, ADA compliance, and seating; and to declare an emergency for this Change Order. The TRG building had not been constructed when redesigning of the Main Street Streetscape began, the flatwork in front of the TRG building was designed by CPL using proposed building plans. The building contractor deviated from those plans during the building construction and the finished floor elevations were different from the proposed and there are doors in different locations than originally proposed.

There is now not adequate fall away from the building to drain the flatwork to the street. There has been a redesign of the flatwork so that there is adequate drainage away from the building and the doors and ADA compliance has been achieved. Seating areas have also been added to achieve the walkability and atmosphere that has been desired for the downtown area. Preliminary numbers indicate the work will cost approximately $76,545.53, but the new architectural renderings by HGOR are being priced out currently. In order to continue moving on the project, staff is requesting that:

- An emergency is declared due to the amount of time the project has been incomplete, and the tenant's expectations of the City concerning the frontage of their businesses.
- This Change Order is approved with an amount not to exceed $76,545.53 adding an additional 30 days to the contract with TriScapes.

Drug Enforcement Administration (DEA) Task Force Agreement

Police Chief Hulsey presented a Drug Enforcement Administration Task Force Agreement. An agreement must be signed before the DEA will accept an officer from the Flowery Branch Police Department to participate in the DEA Task Force. This employee will remain an employee of the City of Flowery Branch and will receive all the training any officer of Flowery Branch Police Department would as well as any specialized training required by the DEA Task Force team (at the DEA's expense).

Council held a discussion regarding the Drug Enforcement Administration Task Force Agreement on the cost and benefits of this agreement.

Consider a Request to Build a New Single-Family Detached Residential Home at 5710 Gainesville Street. Zoned Central Business District (CBD), City Council approval is required for any new construction.

City Planner Atkinson presented a request to build a new single-family detached residential home at 5710 Gainesville Street. This is zoned Central Business District (CBD). This was originally a remodel but turned into a demolition. The applicant has already submitted a building permit and house elevations.

Consideration of Resolution 23-002 Second Quarter Budget Amendment FY2023

Budget Manager Krystle Hightower presented Resolution 23-002, Second Quarter Budget Amendment FY2023. A budget is balanced when the sum of estimated revenues and appropriated fund balance is equal to expenditure/expense appropriations of each applicable fund. Revenue estimates and governmental needs change throughout the year which require approval from Council for said budget amendments. Some of the changes to the General Fund include:

- Increase City Manager car allowance as the original FY2023 budget did not have the correct amount. Total adjustment is $4,000.
- Increase Traffic Signal/AT&T as the monthly rates have increased due to outdated AT&T lines. Total adjustment is $2,700. New lines are being installed and we will see a decrease in our monthly fees.
- Increase Culture and Recreation/Electricity as this was not accounted for in the FY2023 budget. This is the electricity for our Farmers Market Pavilion, Amphitheater, and other new outdoor lighting. Total adjustment is $80,000.
- Increase Planning/Contract Services and Plan Review Expenses due to open positions within the department and using an outside agency for assistance. Total adjustment for each is $40,000.
- Increase Tourism/Public Relations in the amount of $500 to account for the ornaments purchased for resale.
- Increase Tourism/Concert Expenses to cover additional planned concerts and associated costs for FY2023. Total adjustment is $15,350.

Council held a discussion regarding the budget specifically the $80,000 electricity cost.

Consider a Professional Services Agreement with Bureau Veritas North America.

Planning Director Atkinson presented a Professional Services Agreement with Bureau Veritas North America. This agreement will provide independent professional services.
The scope of services to include:

- Architectural Plan Review
- Building Code Inspections
- Land Development Plan Review/Erosion Control Inspections/LIA Management for Land Disturbance Activities
- Code Enforcement/Property Maintenance Inspection

Council held a discussion on the cost associated with this agreement.

Consider a Contract Proposal from Thomas and Hutton to Provide Development and Building Plan Review for the City, as needed.

Planning Director Atkinson presented a contract proposal from Thomas and Hutton to provide development and building plan review as a backup for Bureau Veritas North America.

DEPARTMENT REPORTS:

Finance Director Report**:**

Finance Director Hamby reported that Nancy Rodriguez, Chere Rucker, and Krystle Hightower have completed Level 1 Governmental Accounting Certification through the Carl Vinson Institute. Elias Gobble will be starting Level 1 Governmental Accounting training. Director Hamby stated he wanted to brag on all his employees and that his department is continuously training. Krystle Hightower has received a scholarship for Level 2 training which will save the City money for that training.

Elias Gobble reported that the City received a $5,000 grant from Keep Georgia Beautiful Foundation.

Council Report:

Council Member Mezzanotte gave kudos to Krystle Hightower on a job well done.

ADJOURNMENT WORK SESSION:

Mayor Asbridge adjourned the work session at 6:30 p.m.

VOTING SESSION AGENDA

CALL VOTING SESSION TO ORDER:

Mayor Asbridge called the voting session to order at 6:30 p.m.

PUBLIC COMMENTS: There were no public comments.

CONSENT AGENDA:

- Consider January 5, 2023 City Council Meeting Minutes

There was a motion made to approve the consent agenda as presented.

MOTION: Oliver McClellan
SECOND: William McDaniel
AYES: Joe Anglin, Oliver McClellan, William McDaniel, Joseph Mezzanotte
NAYS: None
Motion carried

UNFINISHED BUSINESS - VOTING SESSION:

Consider the Second Reading of Ordinance 675, a Request from VM&R, LLC to Rezone Two Parcels of Land from Agricultural (A) to Highway Business (HB)

Attorney Bennett read the caption for Ordinance 675.

There was a motion made to approve Ordinance 675.

MOTION: Joseph Mezzanotte
SECOND: Oliver McClellan
AYES: Joe Anglin, Oliver McClellan, William McDaniel, Joseph Mezzanotte
NAYS: None
Motion carried

Council held a discussion regarding the corner lot and the maintenance upkeep of the lot.

There was a motion to amend the motion to Ordinance 675 to require a professional landscape plan be provided for the lot that adjoins HF Reed and Falcon Parkway. The landscape plan must be approved by City staff and must be submitted in conjunction with the land disturbance permit.

MOTION: Joe Anglin
SECOND: William McDaniel
AYES: Joe Anglin, Oliver McClellan, William McDaniel, Joseph Mezzanotte
NAYS: None
Motion carried

Consider the Second Reading of Ordinance 676, a Request from VM&R, LLC to Rezone two parcels of land from Agricultural (A) to Highway Business (HB).

Attorney Bennett read the caption for Ordinance 676.

There was a motion made to approve Ordinance 676.

MOTION: Oliver McClellan
SECOND: William McDaniel
AYES: Joe Anglin, Oliver McClellan, William McDaniel, Joseph Mezzanotte
NAYS: None
Motion carried

There was a motion to amend the motion to Ordinance 676 to require a professional landscape plan be provided for the lot that adjoins HF Reed and Falcon Parkway. The landscape plan must be approved by City staff and must be submitted in conjunction with the land disturbance permit.

MOTION: Joe Anglin
SECOND: Joseph Mezzanotte
AYES: Joe Anglin, Oliver McClellan, William McDaniel, Joseph Mezzanotte
NAYS: None
Motion carried

Consider the Second Reading of Ordinance 684, a Variance Request submitted by VM&R, LLC. allowing gasoline pumps to be located in front of the primary structure.

Attorney Bennett read the caption for Ordinance 684.

There was a motion made to approve Ordinance 684.

MOTION: Oliver McClellan
SECOND: Joe Anglin
AYES: Joe Anglin, Oliver McClellan, William McDaniel, Joseph Mezzanotte
NAYS: None
Motion carried

Consider the Second Reading of Ordinance 685, a Variance Request submitted by VM&R, LLC. allowing gasoline pumps to be located in front of the primary structure.

Attorney Bennett read the caption for Ordinance 685.

There was a motion made to approve Ordinance 685.

MOTION: Joe Anglin
SECOND: William McDaniel
AYES: Joe Anglin, Oliver McClellan, William McDaniel, Joseph Mezzanotte
NAYS: None
Motion carried

Council held a discussion regarding the parcels.

Consider the Second Reading of Ordinance 688 - Publishing of 2023 General Election Qualifying Fees

Attorney Bennett read the caption for Ordinance 688.

There was a motion made to approve Ordinance 688 as presented.

MOTION: William McDaniel
SECOND: Oliver McClellan
AYES: Joe Anglin, Oliver McClellan, William McDaniel, Joseph Mezzanotte
NAYS: None
Motion carried

NEW BUSINESS - VOTING SESSION:

Task Order #12, Farmers Market/Main Street Project

There was a motion made to declare an emergency based on staff's report and approve Change Order #12 for the Farmers Market/Main Steet Project in an amount not to exceed $76,545.53 and allowing the contractor an additional thirty days for the work to be completed.

MOTION: Joe Anglin
SECOND: Oliver McClellan
AYES: Joe Anglin, Oliver McClellan, William McDaniel, Joseph Mezzanotte
NAYS: None
Motion carried

Drug Enforcement Administration (DEA) Task Force Agreement

There was a motion made to accept the agreement provided by the Drug Enforcement Administration (DEA) Task Force.

MOTION: William McDaniel
SECOND: Joe Anglin
AYES: Joe Anglin, Oliver McClellan, William McDaniel, Joseph Mezzanotte
NAYS: None
Motion carried

Consider Variance Requests submitted by Jason Jackson: Ordinance 678 for 6005 Lights Ferry Road, Ordinance 679 for 6006 Lights Ferry Road, Ordinance 680 for 6010 Lights Ferry Road, Ordinance 681 for 6014 Lights Ferry Road, Ordinance 682 for 6016 Lights Ferry Road, and Ordinance 683 for 6018 Lights Ferry Road, Flowery Branch, GA.

Attorney Bennett read the caption for Ordinance 678, 6005 Lights Ferry Road.
Attorney Bennett read the caption for Ordinance 679, 6006 Lights Ferry Road.
Attorney Bennett read the caption for Ordinance 680, 6010 Lights Ferry Road.
Attorney Bennett read the caption for Ordinance 681, 6014 Lights Ferry Road.
Attorney Bennett read the caption for Ordinance 682, 6016 Lights Ferry Road.
Attorney Bennett read the caption for Ordinance 683, 6018 Lights Ferry Road.

There was a composite motion to approve Ordinance 678, Ordinance 679, Ordinance 680, Ordinance 681, Ordinance 682, and Ordinance 683.

MOTION: Joe Anglin
SECOND: Oliver McClellan
AYES: Joe Anglin, Oliver McClellan, William McDaniel, Joseph Mezzanotte
NAYS: None
Motion carried

Consider Variance Requests submitted by Mr. Jason Jackson for relief from the zoning ordinance requirements set forth in Table 6.2 for 6027 and 6031 Morrow Drive.

Attorney Bennett read the captions for Ordinance 686.
Attorney Bennett read the captions for Ordinance 687.

There was a motion to approve the variance requests for Ordinance 686 and Ordinance 687.

MOTION: Oliver McClellan
SECOND: William McDaniel
AYES: Joe Anglin, Oliver McClellan, William McDaniel, Joseph Mezzanotte
NAYS: None
Motion carried

Consideration of Resolution 23-002 Second Quarter Budget Amendment FY2023

There was a motion made to approve Resolution 23-002, 2nd Quarter Amendment to the budget for FY2023 as previously adopted on June 23, 2022, as presented in attachments A and B.

MOTION: William McDaniel
SECOND: Oliver McClellan
AYES: Joe Anglin, Oliver McClellan, William McDaniel, Joseph Mezzanotte
NAYS: None
Motion carried

Consider a Professional Services Agreement with Bureau Veritas North America.

There was a motion made to approve a Professional Services Agreement with Bureau Veritas North America.

MOTION: Joseph Mezzanotte
SECOND: Oliver McClellan
AYES: Joe Anglin, Oliver McClellan, William McDaniel, Joseph Mezzanotte
NAYS: None
Motion carried

Consider a Contract Proposal from Thomas and Hutton to Provide Development and Building Plan Review for the City, as needed.

There was a motion made to approve a contract proposal from Thomas and Hutton to provide Development and Plan Review for the City, as needed.

MOTION: Joseph Mezzanotte
SECOND: Joe Anglin
AYES: Joe Anglin, Oliver McClellan, William McDaniel, Joseph Mezzanotte
NAYS: None
Motion carried

Consider a Request to Build a New Single-Family Detached Residential Home at 5710 Gainesville Street. Zoned Central Business District (CBD), City Council approval is required for any new construction.

There was a motion made to approve a request to build a new single-family detached residential home at 5710 Gainesville Street.

MOTION: Joe Anglin
SECOND: William McDaniel
AYES: Joe Anglin, Oliver McClellan, William McDaniel, Joseph Mezzanotte
NAYS: None
Motion carried

EXECUTIVE SESSION:

There was a motion made to enter executive session for matters related to pending or potential litigation and for matters related to the acquisition/disposition of real estate at 7:10 p.m.

MOTION: Joe Anglin
SECOND: William McDaniel
AYES: Joe Anglin, Oliver McClellan, William McDaniel, Joseph Mezzanotte
NAYS: None
Motion carried

There was a motion made to exit executive session at 8:08 p.m.

MOTION: Joe Anglin
SECOND: Oliver McClellan
AYES: Joe Anglin, Oliver McClellan, William McDaniel, Joseph Mezzanotte
NAYS: None
Motion carried

ADJOURNMENT:

There was a motion made to adjourn at 8:08 p.m.

MOTION: Oliver McClellan
SECOND: William McDaniel
AYES: Joe Anglin, Oliver McClellan, William McDaniel, Joseph Mezzanotte
NAYS: None
Motion carried

_____	_____	_____
Edward Asbridge, Mayor	Date	Shelia Cooper, City Clerk

FLOWERY BRANCH CITY COUNCIL

EXECUTIVE SUMMARY

SUBJECT: Consider Second Reading of Ordinance 686 and Ordinance 687 for Variance Requests submitted by Mr. Jason Jackson for relief from the Zoning Ordinance Requirements set forth in Table 6.2 for 6027 and 6031 Morrow Drive.

COUNCIL MEETING DATE: February 2, 2023

HISTORY:

This request is similar to the current variances requested by Mr. Jackson on Lights Ferry Road. Specifically, 6005, 6006, 60010, 6014, 6016, and 6010 Lights Ferry Road as presented at the December 15th, 2022 City Council meeting. The request is for 6027 and 6031 Morrow Drive. The variances are for lot reduction, setback reduction, and minimum lot width reduction as shown in Table 6.2 of the Flowery Branch zoning ordinance.

FACTS AND ISSUES:

There is an original plat that appears to still be valid that designates the lots as legal non-conforming. This means they are legal but do not meet the current zoning designation (R-2 in this case) thus rendering them unbuildable under current zoning. In other words, the lots are legally platted, but they cannot be altered - making new home construction impossible.

The applicant wishes to have the variances approved, combine the two lots in question, and build one single family home.

OPTIONS:

IF FUNDING IS INVOLVED, ARE FUNDS APPROVED IN THE CURRENT BUDGET:

No

AMOUNT AND SOURCE OF FUNDS:

RECOMMENDATION:

Approve the second read

SAMPLE MOTION:

I make a motion to approve the second reading of Ordinance 686.

I make a motion to approve the second reading of Ordinance 687.

COLLABORATING DEPARTMENT:

DEPARTMENT: Planning

Prepared by: Shelia Cooper

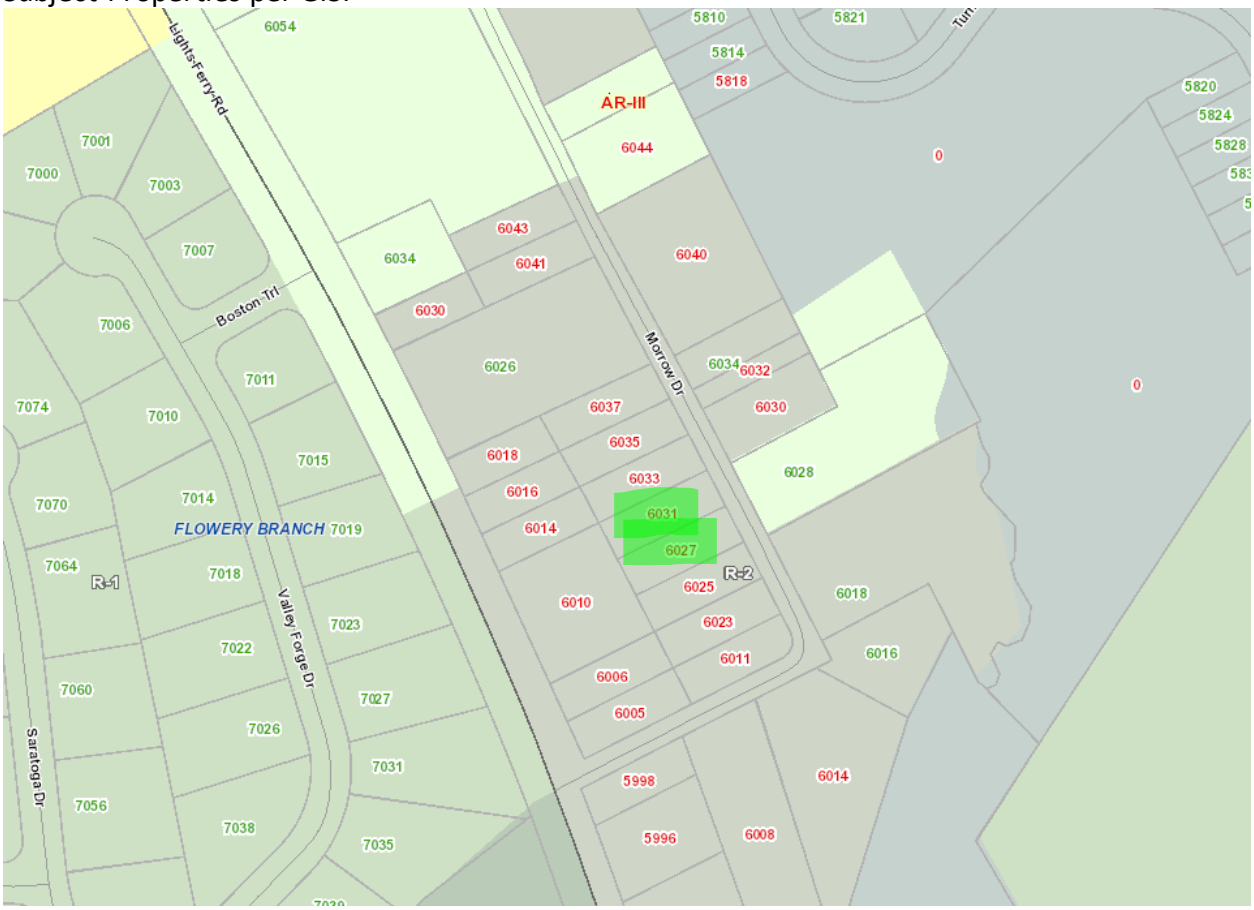
ATTACHMENTS

- Variance Staff Report lots 32 & 33.pdf
- Ordinance 686.pdf
- Ordinance 687.pdf

Variance Request(s)
Staff Report
January 5, 2023

Variance Ordinance #'s
Applicant: Jason Jackson, Global Flooring and Building Material
Request: Variances from the Flowery Branch Zoning Ordinance Article 6. Table 6.2
Subject Properties: 6027 and 6031 Morrow Drive

Subject Properties per GIS:



The two (2) subject properties are zoned R-2 (Residential Detached Single Family):

Sec. 6.3. - R-2, Residential, Detached Single Family, Moderate-Density District.

(a)*Purpose and Description.* This zoning district is intended to implement the "Single-family residential" designation of the future land use plan contained within the comprehensive plan of the City of Flowery Branch. It is also intended to implement the "suburban residential" character area established in the comprehensive plan.

(b)*Character.* The designs of subdivisions in this district include cul-de-sacs and curvilinear streets. Houses are set back a significant distance from the street. Streets are built to relatively wide standard when compared with traditional neighborhoods. Access to this district is predominantly by automobile but pedestrian mobility is accommodated.

(c)*Permitted and Conditional Uses.* Permitted and conditional uses shall be as provided in Table 6.1, "Permitted and Conditional Uses in Agricultural and Conventional Residential Zoning Districts." Land use in this district consists predominantly of detached, single-family dwellings on their own lots at a moderate density (no more than approximately three dwelling units per acre). Site-built dwellings only are permitted (no manufactured homes). Other uses that are compatible with a low-density, residential environment such as recreational, educational, and religious facilities, are permitted or conditional uses.

(d)*Dimensional Requirements.* Dimensional requirements shall be as provided in Table 6.2, "Dimensional Requirements in Agricultural and Conventional Residential Zoning Districts." Dimensional requirements such as minimum building setbacks and maximum building coverage are intended to provide for yards surrounding each dwelling.

Applicant reviewed options on how to best develop these parcels while meeting the intent of the Flowery Branch Zoning Ordinance. There is an original plat that appears to still be valid (shown below) that designates the lots as legal non-conforming. This means they are legal but do not meet the current zoning designation (R-2 in this case) thus rendering them unbuildable under current zoning. In other words, the lots are legally platted, but they cannot be altered - making new home construction impossible.

Rezoning is problematic as the options are limited. The Central Business District is intended for the downtown area. The subject properties are close to downtown, but staff feels they are too far away to be considered for CBD. Traditional Neighborhood District is too restrictive for the properties as it requires parking in the rear or side yards. The other option is to create larger lots to meet the standard R-2 zoning requirements.

Ultimately, the applicant decided to pursue building on the legal lots as recorded. In order to meet the R-2 designation, and the original plat, applicant must request three variances. The variances are from the requirements set forth in Article 6, Table 6.2, of the City's zoning ordinance.

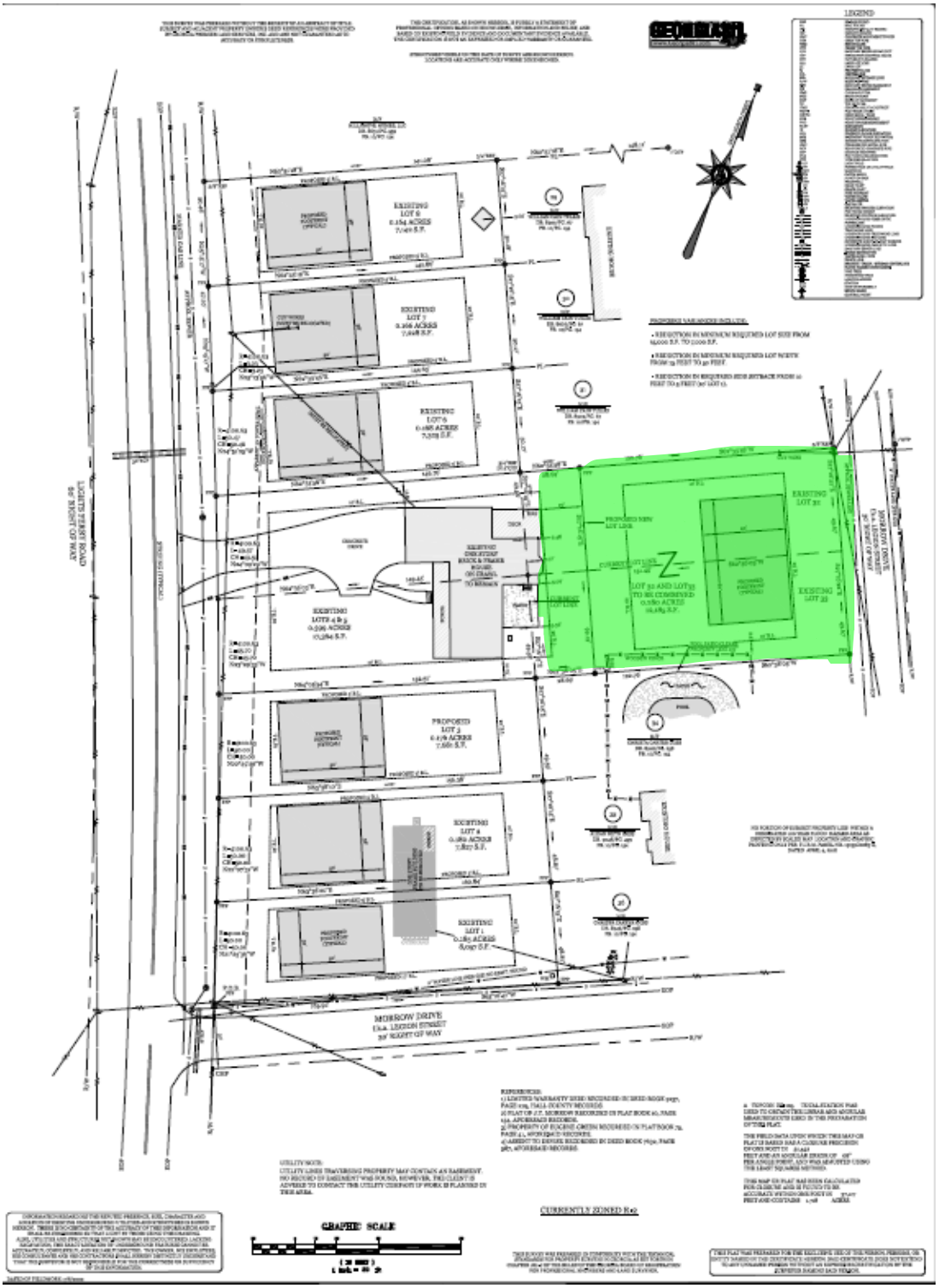
Table 6.2

Requirement (measurement unit)	A	R-1	R-2
Maximum height (feet)	75	35	35
Maximum height (number of stories)	3	3	3
Maximum density (units per acre)	0.333	2.18	3
Minimum lot size for detached single-family dwelling (square feet) (1)	130,680	20,000	15,000
Minimum lot size for two-family dwelling (square feet) (1)	N/A	N/A	N/A
Minimum lot size for other uses (square feet) (1)	130,680	43,560	15,000
Minimum lot width (feet)	200	90	75
Minimum heated floor area per dwelling unit (square feet)	1,500	2,200	1,800
Minimum heated floor area per dwelling unit, ground floor of a dwelling (square feet)	750	1,100	900
Minimum front yard setback from lot line, all principal buildings feet)	80	35	25
Minimum side setback, interior lot line, all principal buildings (feet)	25	20	10
Minimum side setback, corner lot, all principal buildings (feet)	60	35	25
Minimum rear setback, all principal buildings (feet)	35	25	20
Minimum setback, all principal or accessory buildings and structures abutting an R-1, R-2, or R-3 district (feet)	Side and rear setbacks shall apply	50	50
Minimum width of natural buffer abutting R-1, R-2, or R-3 district (feet)	None	None	None
Minimum landscape strip required along rights-of-way for any nonresidential use if permitted (width in feet)	15	15	10
Minimum landscape strip required along rights-of-way for any apartment or condominium (multi-family residential) use (width in feet)	N/A	N/A	N/A
Minimum landscape strip required along side property lines for any nonresidential use if permitted (width in feet)	5	5	5
Maximum coverage of principal and accessory buildings (percent of lot)	25	25	35
Minimum landscaped open space, all principal uses except detached, single-family residential lots (percent)	20	20	15

Variance requests are for each parcel. The requests are as follows:

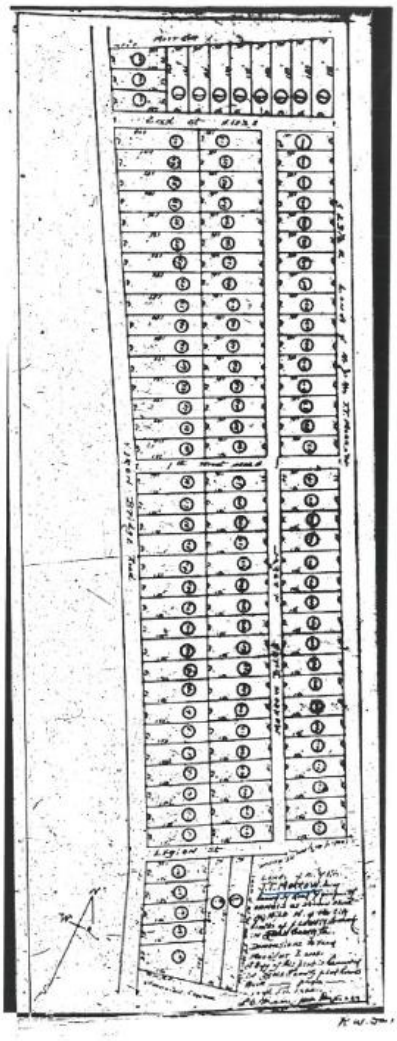
1. Reduction in minimum required lot size from 15,000 square feet to 7,000 square feet.
2. Reduction in minimum required lot width from 75 feet to 50 feet.
3. Reduction in required side setback from 10 feet to 5 feet.

Applicant requests to combine the two lots and build one single family home.


LEGEND
EXISTING LOT 6 0.194 ACRES 7,126 S.F.
EXISTING LOT 7 0.166 ACRES 7,668 S.F.
EXISTING LOT 8 0.166 ACRES 7,519 S.F.
EXISTING LOTS 9 & 31 0.326 ACRES 17,264 S.F.
PROPOSED LOT 32 0.180 ACRES 7,861 S.F.
EXISTING LOT 33
PROPOSED LOT 3 0.179 ACRES 7,821 S.F.
EXISTING LOT 4 0.182 ACRES 7,877 S.F.
EXISTING LOT 5 0.185 ACRES 8,047 S.F.
LOT 32 AND LOT 33 TO BE COMBINED 0.360 ACRES 15,684 S.F.
MORROW DRIVE
AKA LEGION STREET
30' RIGHT OF WAY
CURRENTLY ZONED R-12
GRAPHIC SCALE

This is in line with the original recorded plat:

Morrow Subdivision
Plat Book 10 page 154



plat on Schedule

Sec. 37.5. Criteria for Granting Variances.

Any applicant requesting consideration of a variance to any provision of the zoning ordinance shall provide a written justification that one or more of the following condition(s) exist. The City Council shall not approve a variance application unless it shall have adopted findings that one or more of the following conditions exist:

(a) There are extraordinary and exceptional conditions or practical difficulties pertaining to the particular piece of property in question because of its size, shape or topography that are not applicable to other lands or structures in the same district; Legal non-conforming lots that cannot be built upon as currently required by Flowery Branch Zoning Ordinance.

(b) A literal interpretation of the provisions of this ordinance would effectively deprive the applicant of rights commonly enjoyed by other properties of the district in which the property is located; The lots cannot be built upon and meet the requirements of R-2 zoning.

(c) Granting the variance requested will not confer upon the property of the applicant any special privileges that are denied to other properties of the district in which the applicant's property is located;

(d) The requested variance will be in harmony with the purpose and intent of this ordinance and will not be injurious to the neighborhood or to the general welfare;

(e) The special circumstances are not the result of the actions of the applicant;

(f) The variance requested is the minimum variance that will make possible the proposed use of the land, building, or structure in the use district proposed; and

(g) The variance shall not permit a use of land, buildings or structures, which is not permitted by right in the zoning district or overlay district involved.

Staff recommends approval with the following conditions:

1. Applicant's development shall comply with all stormwater management requirements of Article 12 of the Subdivision and Land Development Code per Section 1203.
2. Applicant shall record a final plat in accordance with Article 8 of the Subdivision and Land Development Code.
3. A landscape plan shall be submitted at the time of any land disturbance application.

Flowery Branch

Public Hearing Published	11/16/22	First Reading	01/19/23
Public Hearing	12/15/22	Adopted	02/02/23

ORDINANCE 686

AN ORDINANCE GRANTING VARIANCES FROM THE R-2 (RESIDENTIAL, DETACHED SINGLE FAMILY, LOW DENSITY DISTRICT) REQUIREMENTS OF ARTICLE 6, TABLE 6.2, OF THE FLOWERY BRANCH ZONING ORDINANCE TO 6027 MORROW DRIVE, OWNED BY GLOBAL FLOORING & BUILDING MATERIAL, SHOWN ON EXHIBIT "A", DESCRIBED ON EXHIBIT "B", AND SUBJECT TO THE CONDITIONS SET FORTH IN EXHIBIT "C", BY REDUCING THE MINIMUM REQUIRED LOT SIZE FROM 15,000 SQUARE FEET TO 7,000 SQUARE FEET, REDUCING THE MINIMUM REQUIRED LOT WIDTH FROM 75 FEET TO 50 FEET, AND BY REDUCING THE REQUIRED SIDE SETBACK FROM 10 FEET TO 5 FEET; PROVIDING FOR SEVERABILITY; REPEALING CONFLICTING ORDINANCES; PROVIDING FOR AN EFFECTIVE DATE; AND FOR ALL OTHER LAWFUL PURPOSES.

WHEREAS, Global Flooring & Building Material has submitted a written and signed application to the City of Flowery Branch, Georgia requesting specific variances for property located at 6014 Lights Ferry Road; and

WHEREAS, a survey and complete description of the property subject to the requested variances is included in the application; and

WHEREAS, the City Council of the City of Flowery Branch, Georgia held a public hearing on Global Flooring & Building Material's application at its meeting of December 15, 2022, which was duly noticed as prescribed by law and published in the Gainesville Times, as shall be set forth in the minutes of said meeting; and

WHEREAS, the City Council of the City of Flowery Branch, Georgia has considered the subject variance application of Global Flooring & Building Material in conjunction with the standards set forth in Article 37, Section 27.5 of the Zoning Ordinance.

NOW THEREFORE, THE COUNCIL OF THE CITY OF FLOWERY BRANCH HEREBY ORDAINS AS FOLLOWS:

SECTION 1. FINDINGS:

The City Council finds that the proposed variances from the City of Flowery Branch Zoning Ordinance Article 6, Table 6.2 is consistent with the adopted standards for governing the exercise of the zoning power consistent with O.C.G.A. § 36-66-5 and requirements of Article 37, Section 37.5 of the City of Flowery Branch Zoning Ordinance as identified below.

Sec. 37.5. Criteria for Granting Variances.

Any applicant requesting consideration of a variance to any provision of the zoning ordinance shall provide a written justification that one or more of the following condition(s) exist. The City Council shall not approve a variance application unless it shall have adopted findings that one or more of the following conditions exist:

(a) There are extraordinary and exceptional conditions or practical difficulties pertaining to the particular piece of property in question because of its size, shape or topography that are not applicable to other lands or structures in the same district;

(b) A literal interpretation of the provisions of this ordinance would effectively deprive the applicant of rights commonly enjoyed by other properties of the district in which the property is located;

(c) Granting the variances requested will not confer upon the property of the applicant any special privileges that are denied to other properties of the district in which the applicant's property is located;

(d) The requested variances will be in harmony with the purpose and intent of this ordinance and will not be injurious to the neighborhood or to the general welfare;

(e) The special circumstances are not the result of the actions of the applicant;

(f) The variances requested are the minimum variances that will make possible the proposed use of the land, building, or structure in the use district proposed; and

(g) The variances shall not permit a use of land, buildings or structures, which is not permitted by right in the zoning district or overlay district involved.

SECTION 2. LEGAL DESCRIPTION, VARIANCES GRANTED AND CONDITIONS IMPOSED:

The properties as shown in attached Exhibit "A" and as legally described in Exhibit "B" shall be granted the following variances from the requirements set forth in the Flowery Branch Zoning Ordinance Article 6, Table 6.2:

1. Reduction in minimum required lot size from 15,000 square feet to 7,000 square feet.
2. Reduction in minimum required lot width from 75 feet to 50 feet.
3. Reduction in required side setback from 10 feet to 5 feet.

Conditions set forth in Exhibit "C" are imposed on said properties. Said Exhibits are incorporated by reference as if fully set forth herein.

SECTION 3. SEVERABILITY.

Should any section or provision of this Ordinance be declared invalid or unconstitutional by any court of competent jurisdiction, such declaration shall not affect the validity of this Ordinance as a whole or any part thereof which is not specifically declared to be invalid or unconstitutional.

Public Hearing Published	11/16/22	First Reading	01/19/23
Public Hearing	12/15/22	Adopted	02/02/23

SECTION 4. EFFECTIVE DATE.

The effective date of this Ordinance shall be upon adoption by the City Council of the City of Flowery Branch, Georgia.

SECTION 5. REPEALER.

All ordinances and parts of ordinances in conflict herewith are hereby repealed to the extent of the conflict.

Adopted this 2nd day of February 2023.

_____
Edward R. Asbridge, Mayor

ATTEST:

_____
Shelia R. Cooper, City Clerk

APPROVED AS TO FORM:

_____
E. Ronald Bennett, Jr., City Attorney

Exhibit "A"

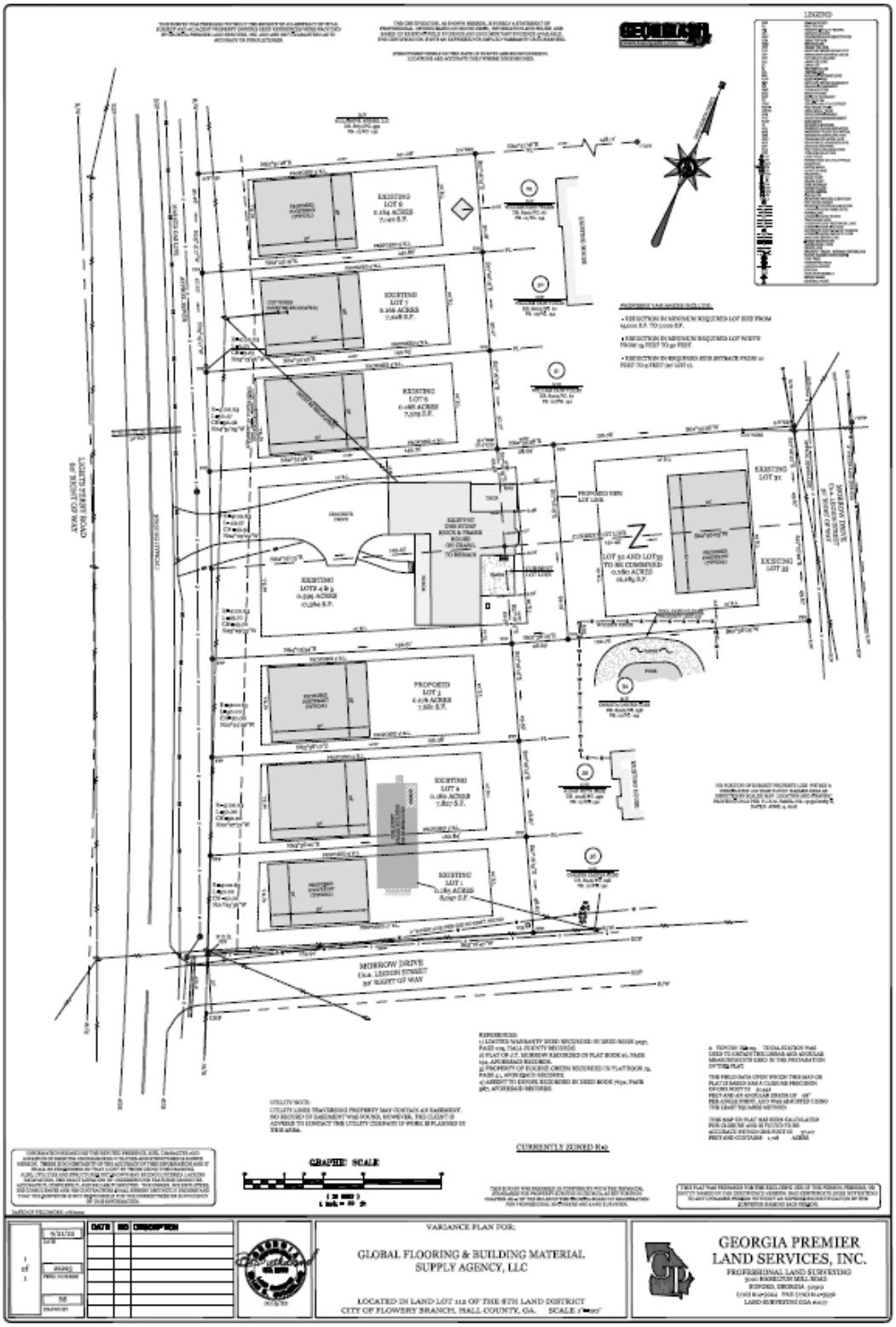

MORROW DRIVE
(A.K.A. LEGION STREET)
20' RIGHT OF WAY
GRAPHIC SCALE
VARIANCE PLAN FOR:
GLOBAL FLOORING & BUILDING MATERIAL SUPPLY AGENCY, LLC
LOCATED IN LAND LOT 112 OF THE 8TH LAND DISTRICT
CITY OF FLOWERY BRANCH, HALL COUNTY, GA.
GEORGIA PREMIER LAND SERVICES, INC.
PROFESSIONAL LAND SURVEYING

Exhibit "B"

Lot 32 and 33
0.280 Acres

All that tract or parcel of land lying and being in the Land Lot 112 of the 8th Land District, City of Flowery Branch, Hall County, Georgia and being more particularly described as follows;

To find the True Point of Beginning, commence at the northwest right of way of Morrow Drive (f.k.a. Legion Street – 30' right of way) and the northeast right of way of Lights Ferry Road (60' right of way), said point marked by a ½ inch rebar pin set; THENCE traveling on said northwest right of way of Morrow Drive North 63 Degrees 16 Minutes 47 Seconds East for a distance of 165.92 feet to a point, said point marked by a ½ inch rebar pin set; THENCE leaving said right of way and traveling North 27 Degrees 16 Minutes 15 Seconds West for a distance of 147.33 feet to a point, said point marked by a ½ inch rebar pin set; THENCE North 62 Degrees 38 Minutes 05 Seconds East for a distance of 28.69 feet to a point, said point being THE TRUE POINT OF BEGINNING.

THENCE from said point as thus established, North 27 Degrees 16 Minutes 15 Seconds West for a distance of 99.19 feet to a poin, said point marked by a ½ inch rebar pin set; THENCE North 62 Degrees 33 Minutes 58 Seconds East for a distance of 122.76 feet to a point on the southwest right of way of Morrow Drive (30' right of way), said point marked by a 5/8 inch rebar pin found; THENCE on said right of way South 27 Degrees 16 Minutes 22 Seconds East for a distance of 49.67 feet to a point; THENCE continuing on said right of way South 27 Degrees 16 Minutes 22 Seconds East for a distance of 49.67 feet to a point, said point marked by a ½ inch rebar pin set; THENCE leaving said right of way South 62 Degrees 38 Minutes 05 Seconds West for a distance of 122.76 feet to a point, said point marked by a ½ inch rebar pin set, said point being THE TRUE POINT OF BEGINNING.

Said property contains 0.280 Acres as shown on Variance Plan for Global Flooring & Building Material Supply Agency, LLC prepared by Georgia Premier Land Services, Inc., dated 8/1/2022.

Exhibit "C"

1. Applicant's development shall comply with all stormwater management requirements of Article 12 of the Subdivision and Land Development Code per Section 1203.
2. Applicant shall record a final plat in accordance with Article 8 of the Subdivision and Land Development Code.
3. Applicant shall construct a single-story ranch style home.

Public Hearing Published	11/16/22	First Reading	01/19/23
Public Hearing	12/15/22	Adopted	02/02/23

Public Hearing Published	11/16/22	First Reading	01/19/23
Public Hearing	12/15/22	Adopted	02/02/23

Public Hearing Published	11/16/22	First Reading	01/19/23
Public Hearing	12/15/22	Adopted	02/02/23

ORDINANCE 687

AN ORDINANCE GRANTING VARIANCES FROM THE R-2 (RESIDENTIAL, DETACHED SINGLE FAMILY, LOW DENSITY DISTRICT) REQUIREMENTS OF ARTICLE 6, TABLE 6.2, OF THE FLOWERY BRANCH ZONING ORDINANCE TO 6031 MORROW DRIVE, OWNED BY GLOBAL FLOORING & BUILDING MATERIAL, SHOWN ON EXHIBIT "A", DESCRIBED ON EXHIBIT "B", AND SUBJECT TO THE CONDITIONS SET FORTH IN EXHIBIT "C", BY REDUCING THE MINIMUM REQUIRED LOT SIZE FROM 15,000 SQUARE FEET TO 7,000 SQUARE FEET, REDUCING THE MINIMUM REQUIRED LOT WIDTH FROM 75 FEET TO 50 FEET, AND BY REDUCING THE REQUIRED SIDE SETBACK FROM 10 FEET TO 5 FEET; PROVIDING FOR SEVERABILITY; REPEALING CONFLICTING ORDINANCES; PROVIDING FOR AN EFFECTIVE DATE; AND FOR ALL OTHER LAWFUL PURPOSES.

WHEREAS, Global Flooring & Building Material has submitted a written and signed application to the City of Flowery Branch, Georgia requesting specific variances for property located at 6014 Lights Ferry Road; and

WHEREAS, a survey and complete description of the property subject to the requested variances is included in the application; and

WHEREAS, the City Council of the City of Flowery Branch, Georgia held a public hearing on Global Flooring & Building Material's application at its meeting of December 15, 2022, which was duly noticed as prescribed by law and published in the Gainesville Times, as shall be set forth in the minutes of said meeting; and

WHEREAS, the City Council of the City of Flowery Branch, Georgia has considered the subject variance application of Global Flooring & Building Material in conjunction with the standards set forth in Article 37, Section 27.5 of the Zoning Ordinance.

NOW THEREFORE, THE COUNCIL OF THE CITY OF FLOWERY BRANCH HEREBY ORDAINS AS FOLLOWS:

SECTION 1. FINDINGS:

The City Council finds that the proposed variances from the City of Flowery Branch Zoning Ordinance Article 6, Table 6.2 is consistent with the adopted standards for governing the exercise of the zoning power consistent with O.C.G.A. § 36-66-5 and requirements of Article 37, Section 37.5 of the City of Flowery Branch Zoning Ordinance as identified below.

Sec. 37.5. Criteria for Granting Variances.

Any applicant requesting consideration of a variance to any provision of the zoning ordinance shall provide a written justification that one or more of the following condition(s) exist. The City Council shall not approve a variance application unless it shall have adopted findings that one or more of the following conditions exist:

(a) There are extraordinary and exceptional conditions or practical difficulties pertaining to the particular piece of property in question because of its size, shape or topography that are not applicable to other lands or structures in the same district;

(b) A literal interpretation of the provisions of this ordinance would effectively deprive the applicant of rights commonly enjoyed by other properties of the district in which the property is located;

(c) Granting the variances requested will not confer upon the property of the applicant any special privileges that are denied to other properties of the district in which the applicant's property is located;

(d) The requested variances will be in harmony with the purpose and intent of this ordinance and will not be injurious to the neighborhood or to the general welfare;

(e) The special circumstances are not the result of the actions of the applicant;

(f) The variances requested are the minimum variances that will make possible the proposed use of the land, building, or structure in the use district proposed; and

(g) The variances shall not permit a use of land, buildings or structures, which is not permitted by right in the zoning district or overlay district involved.

SECTION 2. LEGAL DESCRIPTION, VARIANCES GRANTED AND CONDITIONS IMPOSED:

The properties as shown in attached Exhibit "A" and as legally described in Exhibit "B" shall be granted the following variances from the requirements set forth in the Flowery Branch Zoning Ordinance Article 6, Table 6.2:

1. Reduction in minimum required lot size from 15,000 square feet to 7,000 square feet.
2. Reduction in minimum required lot width from 75 feet to 50 feet.
3. Reduction in required side setback from 10 feet to 5 feet.

Conditions set forth in Exhibit "C" are imposed on said properties. Said Exhibits are incorporated by reference as if fully set forth herein.

SECTION 3. SEVERABILITY.

Should any section or provision of this Ordinance be declared invalid or unconstitutional by any court of competent jurisdiction, such declaration shall not affect the validity of this Ordinance as a whole or any part thereof which is not specifically declared to be invalid or unconstitutional.

Public Hearing Published	11/16/22	First Reading	01/19/23
Public Hearing	12/15/22	Adopted	02/02/23

SECTION 4. EFFECTIVE DATE.

The effective date of this Ordinance shall be upon adoption by the City Council of the City of Flowery Branch, Georgia.

SECTION 5. REPEALER.

All ordinances and parts of ordinances in conflict herewith are hereby repealed to the extent of the conflict.

Adopted this 2nd day of February 2023.

_____
Edward R. Asbridge, Mayor

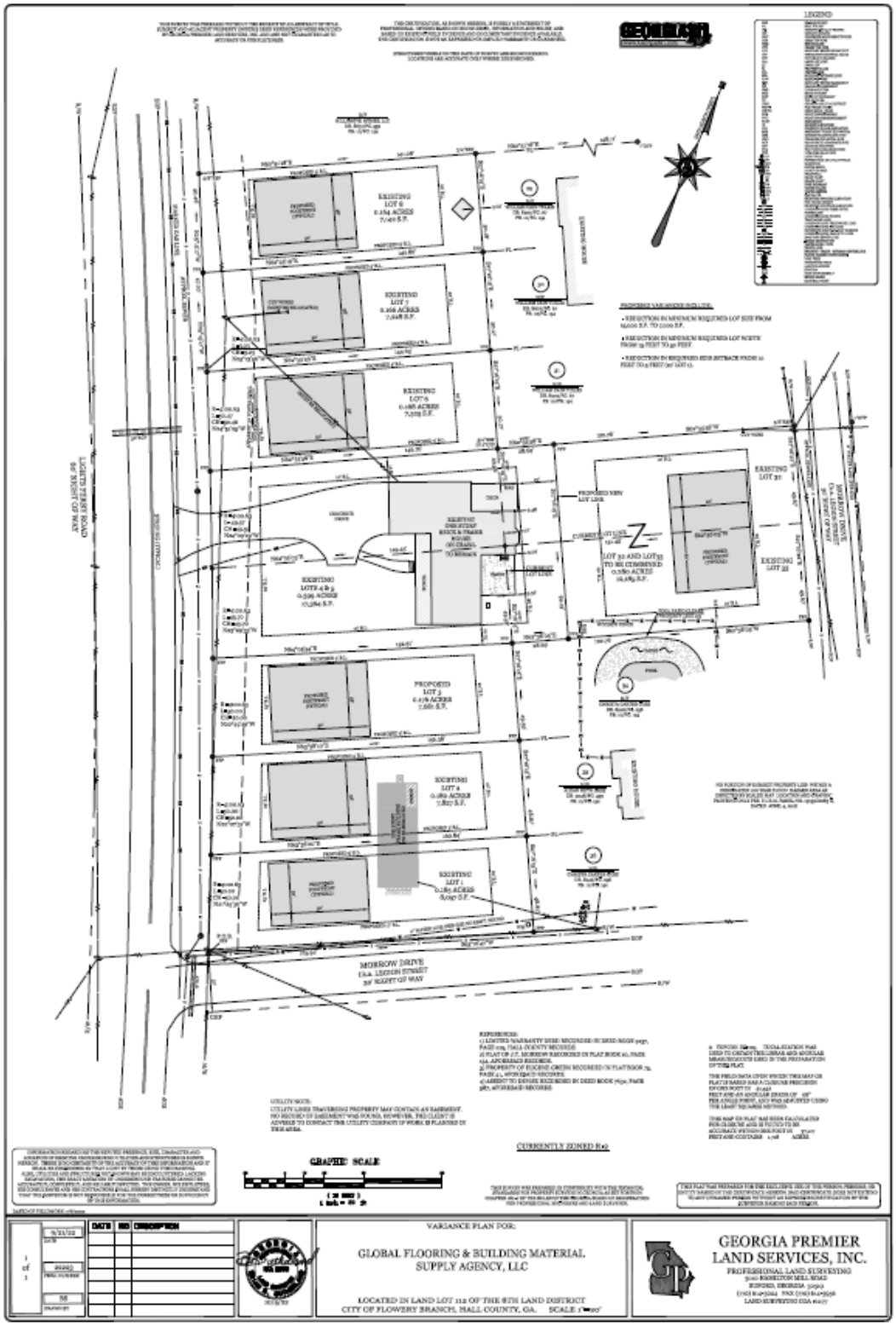
ATTEST:

_____
Shelia R. Cooper, City Clerk

APPROVED AS TO FORM:

_____
E. Ronald Bennett, Jr., City Attorney

Exhibit "A"


MORROW DRIVE
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Said property contains 0.280 Acres as shown on Variance Plan for Global Flooring & Building Material Supply Agency, LLC prepared by Georgia Premier Land Services, Inc., dated 8/1/2022.

Exhibit "C"

1. Applicant's development shall comply with all stormwater management requirements of Article 12 of the Subdivision and Land Development Code per Section 1203.
2. Applicant shall record a final plat in accordance with Article 8 of the Subdivision and Land Development Code.
3. Applicant shall construct a single-story ranch style home.

Public Hearing Published	11/16/22	First Reading	01/19/23
Public Hearing	12/15/22	Adopted	02/02/23

Public Hearing Published	11/16/22	First Reading	01/19/23
Public Hearing	12/15/22	Adopted	02/02/23

FLOWERY BRANCH CITY COUNCIL

EXECUTIVE SUMMARY

SUBJECT: Consider Second Reading of Ordinances 678 - 683 for Variance Requests submitted by Jason Jackson: Ordinance 678 for 6005 Lights Ferry Road, Ordinance 679 for 6006 Lights Ferry Road, Ordinance 680 for 6010 Lights Ferry Road, Ordinance 681 for 6014 Lights Ferry Road, Ordinance 682 for 6016 Lights Ferry Road, and Ordinance 683 for 6018 Lights Ferry Road, Flowery Branch, GA.

COUNCIL MEETING DATE: February 2, 2023

HISTORY:

The six (6) subject properties are all zoned R-2 (Residential Detached Single Family):

Sec. 6.3. - R-2, Residential, Detached Single Family, Moderate-Density District.

(a)Purpose and Description. This zoning district is intended to implement the "Single-family residential" designation of the future land use plan contained within the comprehensive plan of the City of Flowery Branch. It is also intended to implement the "suburban residential" character area established in the comprehensive plan.

(b)Character. The designs of subdivisions in this district include cul-de-sacs and curvilinear streets. Houses are set back a significant distance from the street. Streets are built to relatively wide standard when compared with traditional neighborhoods. Access to this district is predominantly by automobile but pedestrian mobility is accommodated.

(c)Permitted and Conditional Uses. Permitted and conditional uses shall be as provided in Table 6.1, "Permitted and Conditional Uses in Agricultural and Conventional Residential Zoning Districts." Land use in this district consists predominantly of detached, single-family dwellings on their own lots at a moderate density (no more than approximately three dwelling units per acre). Site-built dwellings only are permitted (no manufactured homes). Other uses that are compatible with a low-density, residential environment such as recreational, educational, and religious facilities, are permitted or conditional uses.

(d)Dimensional Requirements. Dimensional requirements shall be as provided in Table 6.2, "Dimensional Requirements in Agricultural and Conventional Residential Zoning Districts." Dimensional requirements such as minimum building setbacks and maximum building coverage are intended to provide for yards surrounding each dwelling.

Applicant reviewed options on how to best develop these parcels while meeting the intent of the Flowery Branch Zoning Ordinance. There is an original plat that appears to still be valid (shown below) that designates the lots as legal non-conforming. This means they are legal but do not meet the current zoning designation (R-2 in this case) thus rendering them unbuildable under current zoning. In other words, the lots are legally platted, but they cannot be altered - making new home construction impossible.

Rezoning is problematic as the options are limited. The Central Business District is intended for the downtown area. The subject properties are close to downtown, but staff feels they are too far away to be considered for CBD. Traditional Neighborhood District is too restrictive for the properties as it requires parking in the rear or side yards. The other option is to create larger lots to meet the standard R-2 zoning requirements.

Ultimately, the applicant decided to pursue building on the legal lots as recorded. In order to meet the R-2 designation, and the original plat, applicant must request three variances. The variances are from the requirements set forth in Article 6, Table 6.2, of the City's zoning ordinance.

FACTS AND ISSUES:

Applicant requests the following variances from Table 6.2 of the FB zoning ordinance:

1. Reduction in minimum required lot size from 15,000 square feet to 7,000 square feet.
2. Reduction in minimum required lot width from 75 feet to 50 feet.
3. Reduction in required side setback from 10 feet to 5 feet.

The request is for the following addresses:
6005, 6006, 6010, 6014, 6016, and 6018 Lights Ferry Road

OPTIONS:

IF FUNDING IS INVOLVED, ARE FUNDS APPROVED IN THE CURRENT BUDGET:
No

AMOUNT AND SOURCE OF FUNDS:

RECOMMENDATION:
Approve second read.

SAMPLE MOTION:
I make a composite motion to approve the second reading of Ordinances 678, 679. 680, 681, 682, and 683.

COLLABORATING DEPARTMENT:

DEPARTMENT: Planning

Prepared by: Shelia Cooper

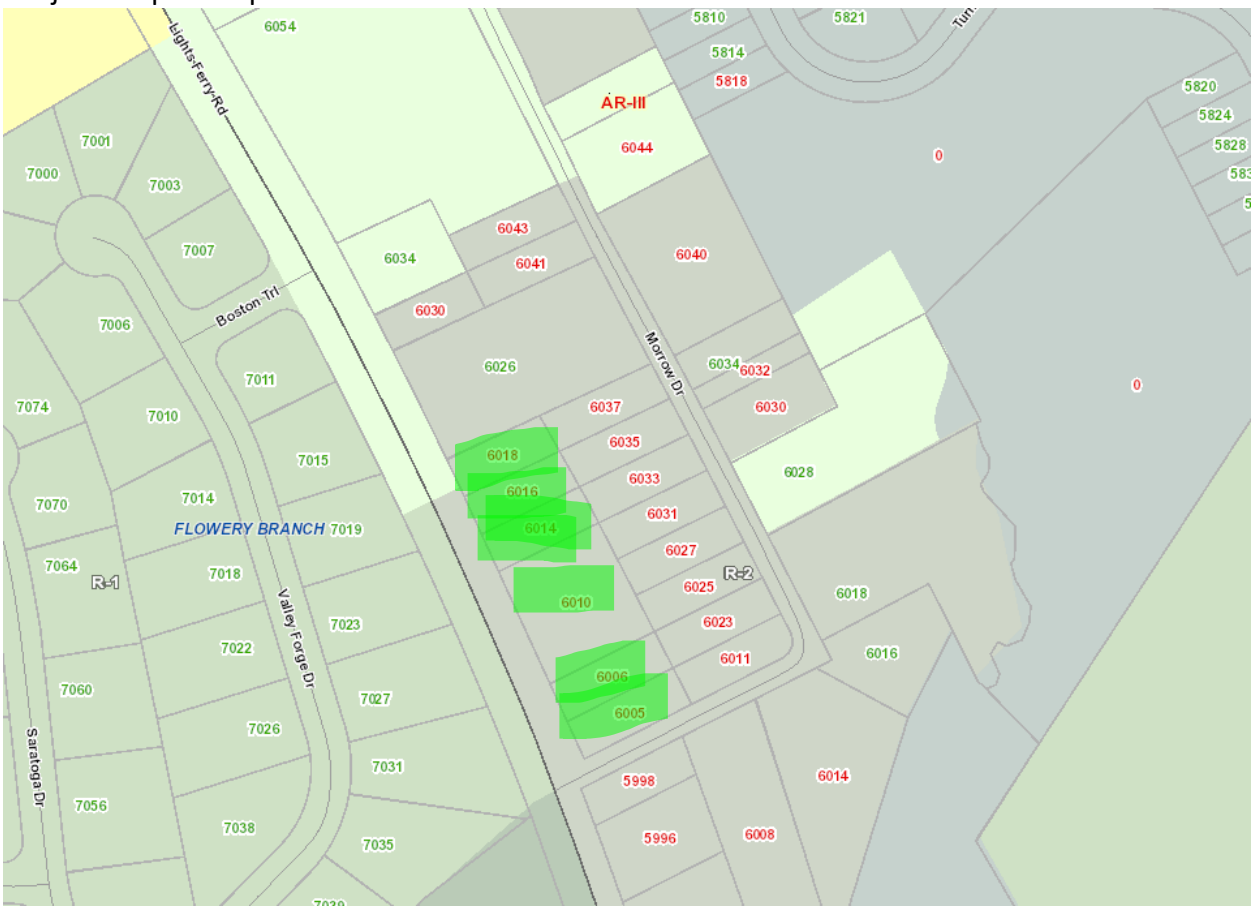
ATTACHMENTS

- Variance Staff Report .pdf
- Combined 678-683.pdf

Variance Request(s)
Staff Report
December 15, 2022

Variance Ordinance #'s 678, 679, 680, 681, 682, & 683
Applicant: Jason Jackson, Global Flooring and Building Material
Request: Variances from the Flowery Branch Zoning Ordinance Article 6. Table 6.2
Subject Properties: 6005, 6006, 6010, 6014, 6016, and 6018 Lights Ferry Road

Subject Properties per GIS:



The six (6) subject properties are all zoned R-2 (Residential Detached Single Family):

Sec. 6.3. - R-2, Residential, Detached Single Family, Moderate-Density District.

(a)*Purpose and Description.* This zoning district is intended to implement the "Single-family residential" designation of the future land use plan contained within the comprehensive plan of the City of Flowery Branch. It is also intended to implement the "suburban residential" character area established in the comprehensive plan.

(b)*Character.* The designs of subdivisions in this district include cul-de-sacs and curvilinear streets. Houses are set back a significant distance from the street. Streets are built to relatively wide standard when compared with traditional neighborhoods. Access to this district is predominantly by automobile but pedestrian mobility is accommodated.

(c)*Permitted and Conditional Uses.* Permitted and conditional uses shall be as provided in Table 6.1, "Permitted and Conditional Uses in Agricultural and Conventional Residential Zoning Districts." Land use in this district consists predominantly of detached, single-family dwellings on their own lots at a moderate density (no more than approximately three dwelling units per acre). Site-built dwellings only are permitted (no manufactured homes). Other uses that are compatible with a low-density, residential environment such as recreational, educational, and religious facilities, are permitted or conditional uses.

(d)*Dimensional Requirements.* Dimensional requirements shall be as provided in Table 6.2, "Dimensional Requirements in Agricultural and Conventional Residential Zoning Districts." Dimensional requirements such as minimum building setbacks and maximum building coverage are intended to provide for yards surrounding each dwelling.

Applicant reviewed options on how to best develop these parcels (and possibly more in the area) while meeting the intent of the Flowery Branch Zoning Ordinance. There is an original plat that appears to still be valid (shown below) that designates the lots as legal non-conforming. This means they are legal but do not meet the current zoning designation (R-2 in this case) thus rendering them unbuildable under current zoning. In other words, the lots are legally platted, but they cannot be altered - making new home construction impossible.

Rezoning is problematic as the options are limited. The Central Business District is intended for the downtown area. The subject properties are close to downtown, but staff feels they are too far away to be considered for CBD. Traditional Neighborhood District is too restrictive for the properties as it requires parking in the rear or side yards. The other option is to create larger lots to meet the standard R-2 zoning requirements.

Ultimately, the applicant decided to pursue building on the legal lots as recorded. In order to meet the R-2 designation, and the original plat, applicant must request three variances. The variances are from the requirements set forth in Article 6, Table 6.2, of the City's zoning ordinance.

Table 6.2

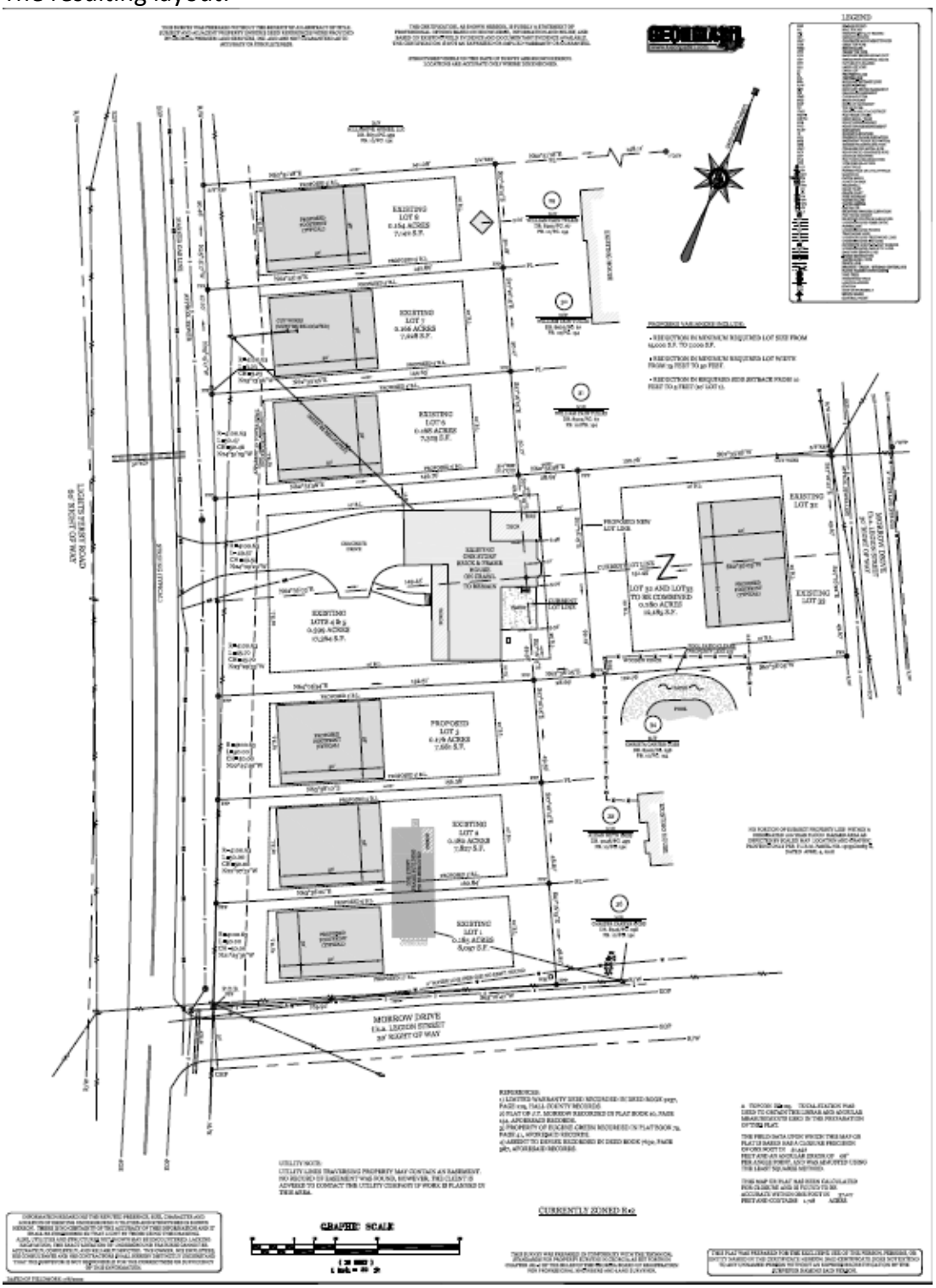
Requirement (measurement unit)	A	R-1	R-2
Maximum height (feet)	75	35	35
Maximum height (number of stories)	3	3	3
Maximum density (units per acre)	0.333	2.18	3
Minimum lot size for detached single-family dwelling (square feet) (1)	130,680	20,000	15,000
Minimum lot size for two-family dwelling (square feet) (1)	N/A	N/A	N/A
Minimum lot size for other uses (square feet) (1)	130,680	43,560	15,000
Minimum lot width (feet)	200	90	75
Minimum heated floor area per dwelling unit (square feet)	1,500	2,200	1,800
Minimum heated floor area per dwelling unit, ground floor of a dwelling (square feet)	750	1,100	900
Minimum front yard setback from lot line, all principal buildings feet)	80	35	25
Minimum side setback, interior lot line, all principal buildings (feet)	25	20	10
Minimum side setback, corner lot, all principal buildings (feet)	60	35	25
Minimum rear setback, all principal buildings (feet)	35	25	20
Minimum setback, all principal or accessory buildings and structures abutting an R-1, R-2, or R-3 district (feet)	Side and rear setbacks shall apply	50	50
Minimum width of natural buffer abutting R-1, R-2, or R-3 district (feet)	None	None	None
Minimum landscape strip required along rights-of-way for any nonresidential use if permitted (width in feet)	15	15	10
Minimum landscape strip required along rights-of-way for any apartment or condominium (multi-family residential) use (width in feet)	N/A	N/A	N/A
Minimum landscape strip required along side property lines for any nonresidential use if permitted (width in feet)	5	5	5
Maximum coverage of principal and accessory buildings (percent of lot)	25	25	35
Minimum landscaped open space, all principal uses except detached, single-family residential lots (percent)	20	20	15

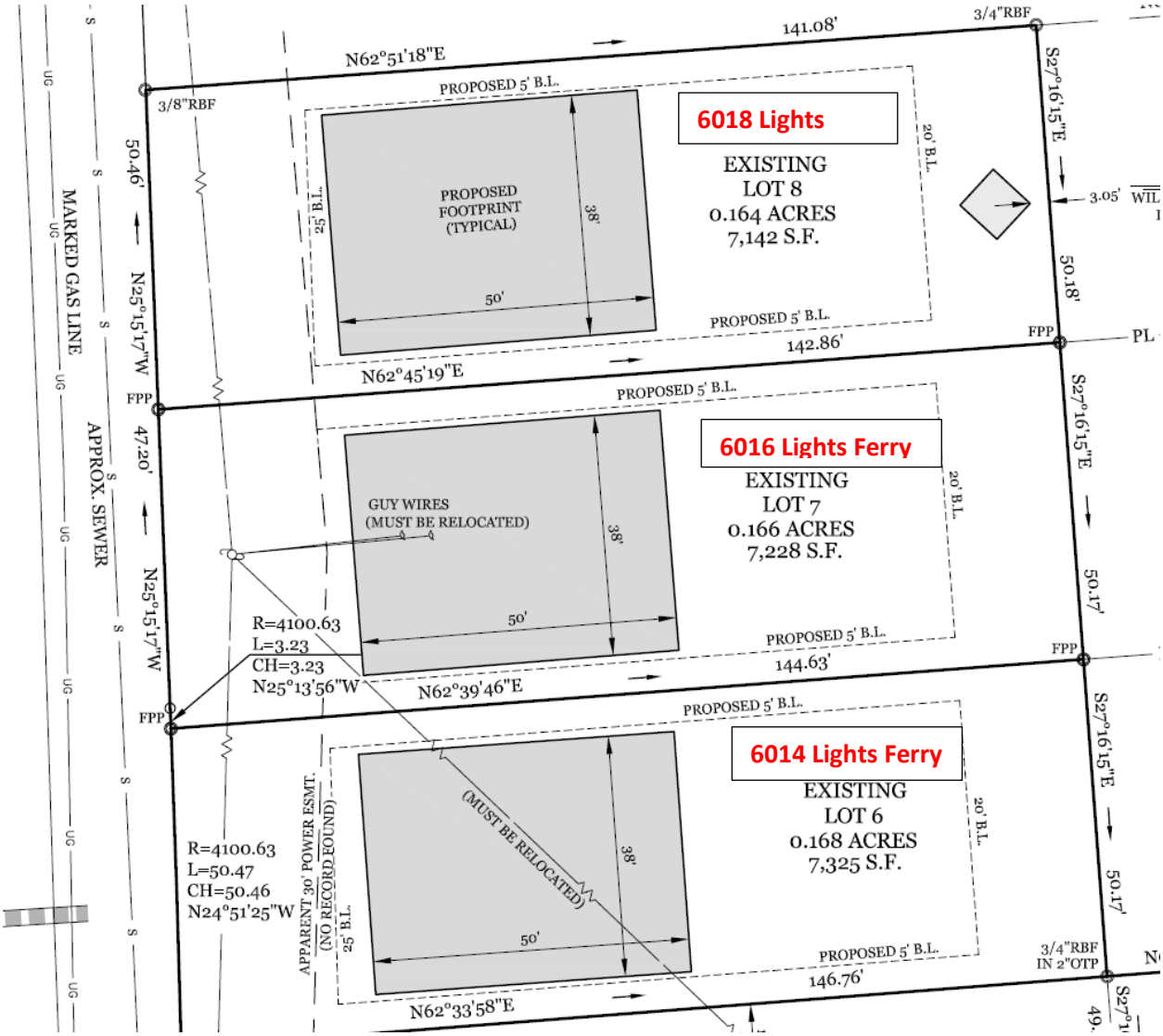
Variance requests are for each parcel. The requests are as follows:

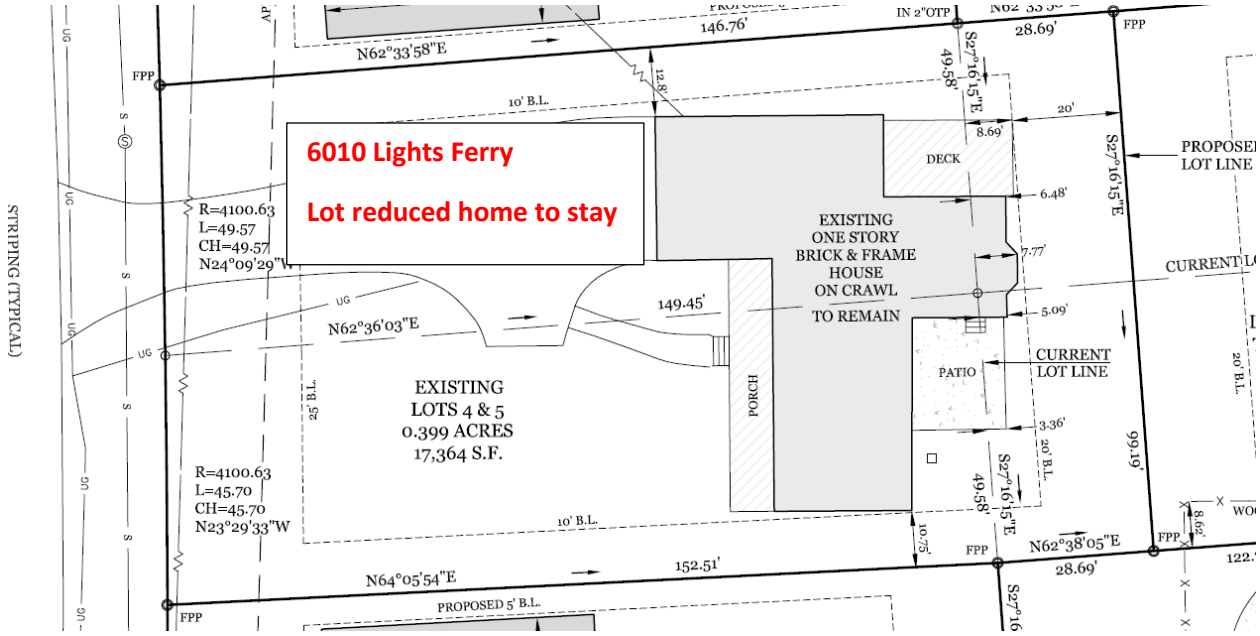
1. Reduction in minimum required lot size from 15,000 square feet to 7,000 square feet.
2. Reduction in minimum required lot width from 75 feet to 50 feet.
3. Reduction in required side setback from 10 feet to 5 feet.

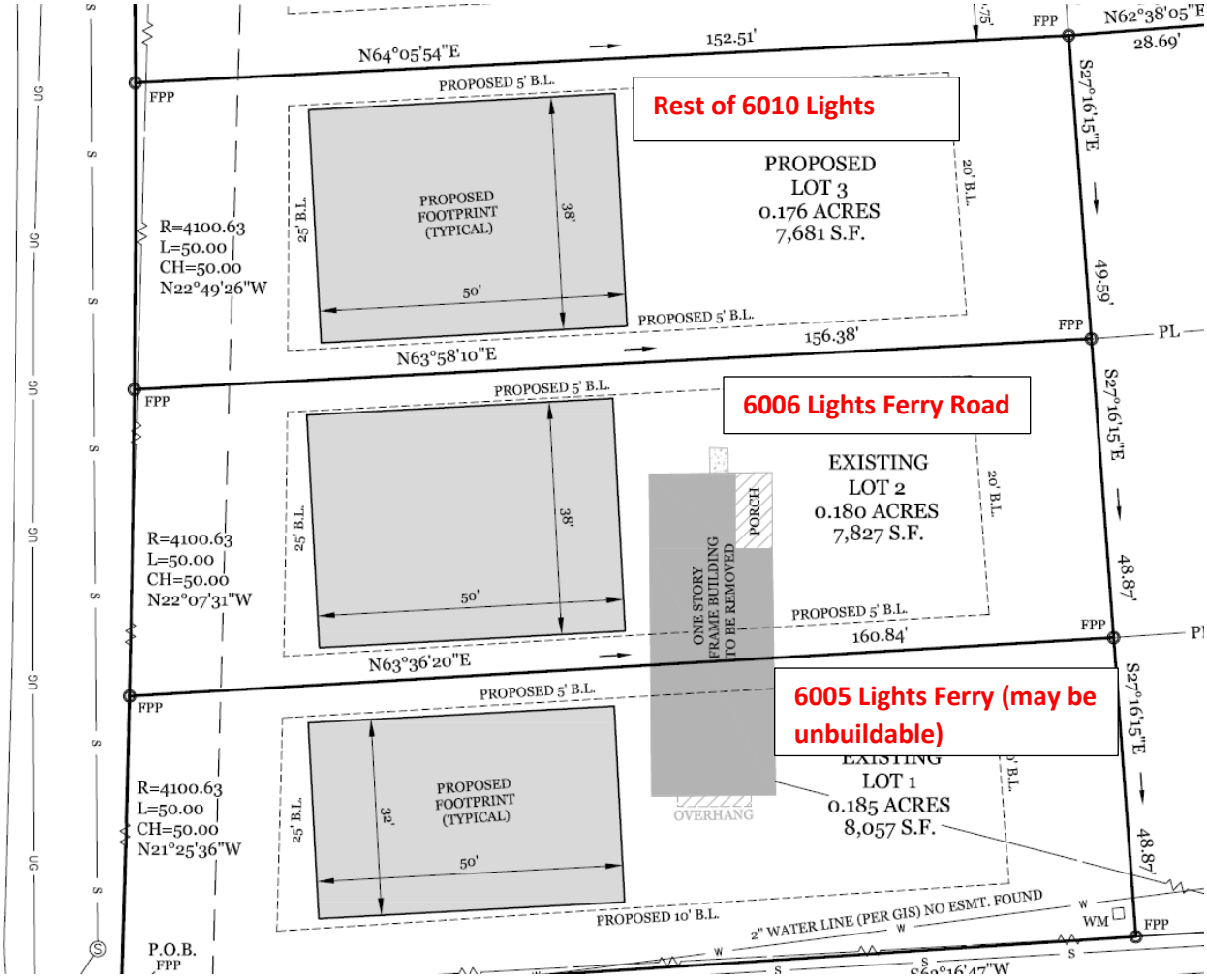
Applicant requests to construct 5 or 6 homes. 6005 Lights Ferry may not be buildable and the home at 6010 Lights Ferry will remain.

The resulting layout:




6018 Lights
EXISTING
LOT 8
0.164 ACRES
7,142 S.F.
6016 Lights Ferry
EXISTING
LOT 7
0.166 ACRES
7,228 S.F.
6014 Lights Ferry
EXISTING
LOT 6
0.168 ACRES
7,325 S.F.
PROPOSED FOOTPRINT (TYPICAL)
GUY WIRES (MUST BE RELOCATED)
(MUST BE RELOCATED)
PROPOSED 5' B.L.
20' B.L.
25' B.L.
APPARENT 30' POWER ESMT. (NO RECORD FOUND)
MARKED GAS LINE
APPROX. SEWER
3/8"RBF
3/4"RBF
3/4"RBF IN 2"OTP
FPP
PL
N62°51'18"E
141.08'
N62°45'19"E
142.86'
N62°39'46"E
144.63'
N62°33'58"E
146.76'
S27°16'15"E
3.05'
50.18'
50.17'
50.46'
47.20'
N25°15'17"W
R=4100.63
L=3.23
CH=3.23
N25°13'56"W
R=4100.63
L=50.47
CH=50.46
N24°51'25"W

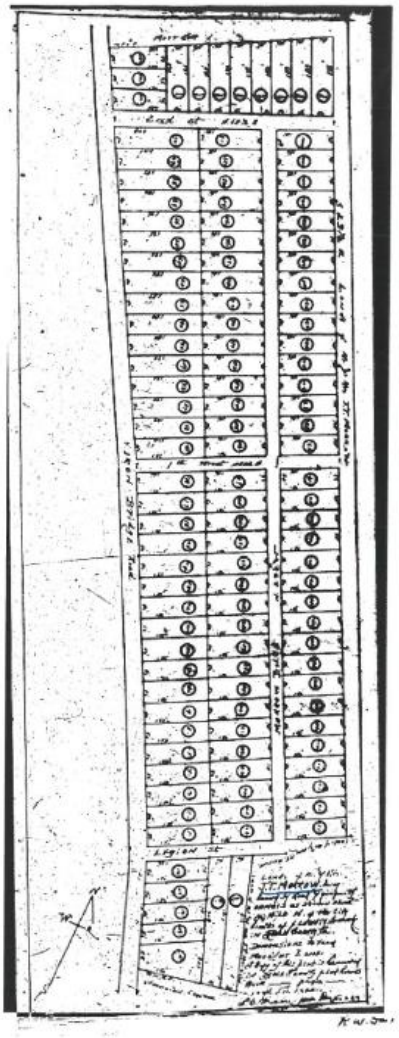

6010 Lights Ferry
Lot reduced home to stay
EXISTING
ONE STORY
BRICK & FRAME
HOUSE
ON CRAWL
TO REMAIN
EXISTING
LOTS 4 & 5
0.399 ACRES
17,364 S.F.
DECK
PATIO
PORCH
CURRENT
LOT LINE
PROPOSED
LOT LINE
N62°33'58"E
146.76'
N62°36'03"E
149.45'
N64°05'54"E
152.51'
N62°38'05"E
28.69'
S27°16'15"E
49.58'
99.19'
10' B.L.
20' B.L.
25' B.L.
PROPOSED 5' B.L.
R=4100.63
L=49.57
CH=49.57
N24°09'29"W
R=4100.63
L=45.70
CH=45.70
N23°29'33"W
FPP
IN 2"OTP
STRIPING (TYPICAL)


Rest of 6010 Lights
6006 Lights Ferry Road
6005 Lights Ferry (may be unbuildable)
PROPOSED LOT 3
0.176 ACRES
7,681 S.F.
EXISTING LOT 2
0.180 ACRES
7,827 S.F.
EXISTING LOT 1
0.185 ACRES
8,057 S.F.
PROPOSED FOOTPRINT (TYPICAL)
ONE STORY FRAME BUILDING TO BE REMOVED
PORCH
OVERHANG
PROPOSED 5' B.L.
PROPOSED 10' B.L.
20' B.L.
25' B.L.
R=4100.63
L=50.00
CH=50.00
N22°49'26"W
N22°07'31"W
N21°25'36"W
N64°05'54"E
N63°58'10"E
N63°36'20"E
N62°38'05"E
S27°16'15"E
152.51'
156.38'
160.84'
28.69'
49.59'
48.87'
2" WATER LINE (PER GIS) NO ESMT. FOUND
P.O.B.
FPP
PL

This is in line with the original recorded plat:

Morrow Subdivision
Plat Book 10 page 154

plat on Schedule



Sec. 37.5. Criteria for Granting Variances.

Any applicant requesting consideration of a variance to any provision of the zoning ordinance shall provide a written justification that one or more of the following condition(s) exist. The City Council shall not approve a variance application unless it shall have adopted findings that one or more of the following conditions exist:

(a) There are extraordinary and exceptional conditions or practical difficulties pertaining to the particular piece of property in question because of its size, shape or topography that are not applicable to other lands or structures in the same district; Legal non-conforming lots that cannot be built upon as currently required by Flowery Branch Zoning Ordinance.

(b) A literal interpretation of the provisions of this ordinance would effectively deprive the applicant of rights commonly enjoyed by other properties of the district in which the property is located; The lots cannot be built upon and meet the requirements of R-2 zoning.

(c) Granting the variance requested will not confer upon the property of the applicant any special privileges that are denied to other properties of the district in which the applicant's property is located;

(d) The requested variance will be in harmony with the purpose and intent of this ordinance and will not be injurious to the neighborhood or to the general welfare;

(e) The special circumstances are not the result of the actions of the applicant;

(f) The variance requested is the minimum variance that will make possible the proposed use of the land, building, or structure in the use district proposed; and

(g) The variance shall not permit a use of land, buildings or structures, which is not permitted by right in the zoning district or overlay district involved.

Staff recommends approval with the following conditions:

1. Applicant's development shall comply with all stormwater management requirements of Article 12 of the Subdivision and Land Development Code per Section 1203.
2. Applicant shall record a final plat in accordance with Article 8 of the Subdivision and Land Development Code.

3. A landscape plan for each individual lot and the development as a whole shall be submitted to staff at the time of any land disturbance application.
4. Applicant shall construct new homes in accordance with the elevations submitted and attached hereto and shall meet all requirements of the zoning ordinance in terms of architectural standards

Flowery Branch

Public Hearing Published	11/16/22	First Reading	01/19/23
Public Hearing	12/15/22	Adopted	02/02/23

ORDINANCE 678

AN ORDINANCE GRANTING VARIANCES FROM THE R-2 (RESIDENTIAL, DETACHED SINGLE FAMILY, LOW DENSITY DISTRICT) REQUIREMENTS OF ARTICLE 6, TABLE 6.2, OF THE FLOWERY BRANCH ZONING ORDINANCE TO 6005 LIGHTS FERRY ROAD, OWNED BY GLOBAL FLOORING & BUILDING MATERIAL, SHOWN ON EXHIBIT "A", DESCRIBED ON EXHIBIT "B", AND SUBJECT TO THE CONDITIONS SET FORTH IN EXHIBIT "C", BY REDUCING THE MINIMUM REQUIRED LOT SIZE FROM 15,000 SQUARE FEET TO 7,000 SQUARE FEET, REDUCING THE MINIMUM REQUIRED LOT WIDTH FROM 75 FEET TO 50 FEET, AND BY REDUCING THE REQUIRED SIDE SETBACK FROM 10 FEET TO 5 FEET; PROVIDING FOR SEVERABILITY; REPEALING CONFLICTING ORDINANCES; PROVIDING FOR AN EFFECTIVE DATE; AND FOR ALL OTHER LAWFUL PURPOSES.

WHEREAS, Global Flooring & Building Material has submitted a written and signed application to the City of Flowery Branch, Georgia requesting specific variances for property located at 6005 Lights Ferry Road; and

WHEREAS, a survey and complete description of the property subject to the requested variances is included in the application; and

WHEREAS, the City Council of the City of Flowery Branch, Georgia held a public hearing on Global Flooring & Building Material's application at its meeting of December 15, 2022, which was duly noticed as prescribed by law and published in the Gainesville Times, as shall be set forth in the minutes of said meeting; and

WHEREAS, the City Council of the City of Flowery Branch, Georgia has considered the subject variance application of Global Flooring & Building Material in conjunction with the standards set forth in Article 37, Section 27.5 of the Zoning Ordinance.

NOW THEREFORE, THE COUNCIL OF THE CITY OF FLOWERY BRANCH HEREBY ORDAINS AS FOLLOWS:

SECTION 1. FINDINGS:

The City Council finds that the proposed variances from the City of Flowery Branch Zoning Ordinance Article 6, Table 6.2 is consistent with the adopted standards for governing the exercise of the zoning power consistent with O.C.G.A. § 36-66-5 and requirements of Article 37, Section 37.5 of the City of Flowery Branch Zoning Ordinance as identified below.

Sec. 37.5. Criteria for Granting Variances.

Any applicant requesting consideration of a variance to any provision of the zoning ordinance shall provide a written justification that one or more of the following condition(s) exist. The City Council shall not approve a variance application unless it shall have adopted findings that one or more of the following conditions exist:

(a) There are extraordinary and exceptional conditions or practical difficulties pertaining to the particular piece of property in question because of its size, shape or topography that are not applicable to other lands or structures in the same district;

(b) A literal interpretation of the provisions of this ordinance would effectively deprive the applicant of rights commonly enjoyed by other properties of the district in which the property is located;

(c) Granting the variances requested will not confer upon the property of the applicant any special privileges that are denied to other properties of the district in which the applicant's property is located;

(d) The requested variances will be in harmony with the purpose and intent of this ordinance and will not be injurious to the neighborhood or to the general welfare;

(e) The special circumstances are not the result of the actions of the applicant;

(f) The variances requested are the minimum variances that will make possible the proposed use of the land, building, or structure in the use district proposed; and

(g) The variances shall not permit a use of land, buildings or structures, which is not permitted by right in the zoning district or overlay district involved.

SECTION 2. LEGAL DESCRIPTION, VARIANCES GRANTED AND CONDITIONS IMPOSED:

The properties as shown in attached Exhibit "A" and as legally described in Exhibit "B" shall be granted the following variances from the requirements set forth in the Flowery Branch Zoning Ordinance Article 6, Table 6.2:

1. Reduction in minimum required lot size from 15,000 square feet to 7,000 square feet.
2. Reduction in minimum required lot width from 75 feet to 50 feet.
3. Reduction in required side setback from 10 feet to 5 feet.

Conditions set forth in Exhibit "C" are imposed on said properties. Said Exhibits are incorporated by reference as if fully set forth herein.

SECTION 3. SEVERABILITY.

Should any section or provision of this Ordinance be declared invalid or unconstitutional by any court of competent jurisdiction, such declaration shall not affect the validity of this Ordinance as a whole or any part thereof which is not specifically declared to be invalid or unconstitutional.

Public Hearing Published	11/16/22	First Reading	01/19/23
Public Hearing	12/15/22	Adopted	02/02/23

SECTION 4. EFFECTIVE DATE.

The effective date of this Ordinance shall be upon adoption by the City Council of the City of Flowery Branch, Georgia.

SECTION 5. REPEALER.

All ordinances and parts of ordinances in conflict herewith are hereby repealed to the extent of the conflict.

Adopted this 2nd day of February 2023.

_____
Edward R. Asbridge, Mayor

ATTEST:

_____
Shelia R. Cooper, City Clerk

APPROVED AS TO FORM:

_____
E. Ronald Bennett, Jr., City Attorney

Exhibit "A"

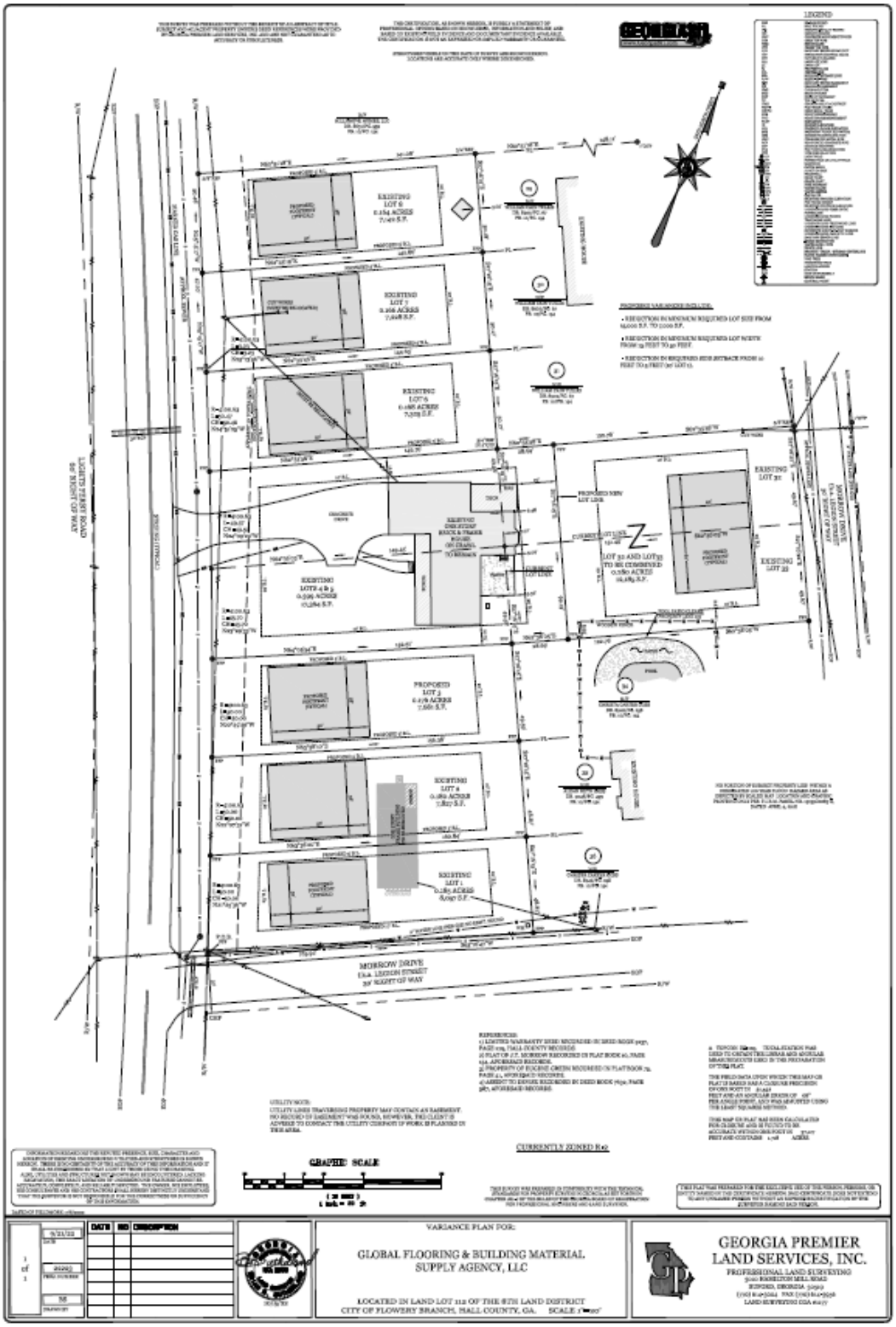

MORROW DRIVE
(A.K.A. LEGION STREET)
20' RIGHT OF WAY
GRAPHIC SCALE
VARIANCE PLAN FOR:
GLOBAL FLOORING & BUILDING MATERIAL SUPPLY AGENCY, LLC
LOCATED IN LAND LOT 112 OF THE 8TH LAND DISTRICT
CITY OF FLOWERY BRANCH, HALL COUNTY, GA.
GEORGIA PREMIER LAND SERVICES, INC.
PROFESSIONAL LAND SURVEYING

Exhibit "B"

Existing Lot 1
0.185 Acres

All that tract or parcel of land lying and being in the Land Lot 112 of the 8th Land District, City of Flowery Branch, Hall County, Georgia and being more particularly described as follows;

To find the True Point of Beginning, commence at the northwest right of way of Morrow Drive (f.k.a. Legion Street – 30' right of way) and the northeast right of way of Lights Ferry Road (60' right of way), said point marked by a ½ inch rebar pin set, said point being THE TRUE POINT OF BEGINNING.

THENCE from said point as thus established, traveling on said northeast right of way of Lights Ferry Road along a curve to the left having a radius of 4100.63 feet and an arc length of 50.00 feet being subtended by a chord bearing of North 21 Degrees 25 Minutes 36 Seconds West and a chord distance of 50.00 feet to a point, said point marked by a ½ inch rebar pin set; THENCE leaving said right of way and traveling North 63 Degrees 36 Minutes 20 Seconds East for a distance of 160.84 feet to a point, said point marked by a ½ inch rebar pin set; THENCE South 27 Degrees 16 Minutes 15 Seconds East for a distance of 48.87 feet to a point on the northwest right of way of Morrow Drive (f.k.a. Legion Street – 30' right of way), said point marked by a ½ inch rebar pin set; THENCE on said right of way South 63 Degrees 16 Minutes 47 Seconds West for a distance of 165.92 feet to a point, said point being THE TRUE POINT OF BEGINNING.

Said property contains 0.185 Acres as shown on Variance Plan for Global Flooring & Building Material Supply Agency, LLC prepared by Georgia Premier Land Services, Inc., dated 8/1/2022.

Exhibit "C"

1. Applicant's development shall comply with all stormwater management requirements of Article 12 of the Subdivision and Land Development Code per Section 1203.
2. Applicant shall record a final plat in accordance with Article 8 of the Subdivision and Land Development Code.
3. A landscape plan for each individual lot and the development as a whole shall be submitted to staff at the time of any land disturbance application.
4. Applicant shall construct new homes in accordance with the elevations submitted and attached hereto.

Public Hearing Published	11/16/22	First Reading	01/19/23
Public Hearing	12/15/22	Adopted	02/02/23

Public Hearing Published	11/16/22	First Reading	01/19/23
Public Hearing	12/15/22	Adopted	02/02/23

ORDINANCE 679

AN ORDINANCE GRANTING VARIANCES FROM THE R-2 (RESIDENTIAL, DETACHED SINGLE FAMILY, LOW DENSITY DISTRICT) REQUIREMENTS OF ARTICLE 6, TABLE 6.2, OF THE FLOWERY BRANCH ZONING ORDINANCE TO 6006 LIGHTS FERRY ROAD, OWNED BY GLOBAL FLOORING & BUILDING MATERIAL, SHOWN ON EXHIBIT "A", DESCRIBED ON EXHIBIT "B", AND SUBJECT TO THE CONDITIONS SET FORTH IN EXHIBIT "C", BY REDUCING THE MINIMUM REQUIRED LOT SIZE FROM 15,000 SQUARE FEET TO 7,000 SQUARE FEET, REDUCING THE MINIMUM REQUIRED LOT WIDTH FROM 75 FEET TO 50 FEET, AND BY REDUCING THE REQUIRED SIDE SETBACK FROM 10 FEET TO 5 FEET; PROVIDING FOR SEVERABILITY; REPEALING CONFLICTING ORDINANCES; PROVIDING FOR AN EFFECTIVE DATE; AND FOR ALL OTHER LAWFUL PURPOSES.

WHEREAS, Global Flooring & Building Material has submitted a written and signed application to the City of Flowery Branch, Georgia requesting specific variances for property located at 6006 Lights Ferry Road; and

WHEREAS, a survey and complete description of the property subject to the requested variances is included in the application; and

WHEREAS, the City Council of the City of Flowery Branch, Georgia held a public hearing on Global Flooring & Building Material's application at its meeting of December 15, 2022, which was duly noticed as prescribed by law and published in the Gainesville Times, as shall be set forth in the minutes of said meeting; and

WHEREAS, the City Council of the City of Flowery Branch, Georgia has considered the subject variance application of Global Flooring & Building Material in conjunction with the standards set forth in Article 37, Section 27.5 of the Zoning Ordinance.

NOW THEREFORE, THE COUNCIL OF THE CITY OF FLOWERY BRANCH HEREBY ORDAINS AS FOLLOWS:

SECTION 1. FINDINGS:

The City Council finds that the proposed variances from the City of Flowery Branch Zoning Ordinance Article 6, Table 6.2 is consistent with the adopted standards for governing the exercise of the zoning power consistent with O.C.G.A. § 36-66-5 and requirements of Article 37, Section 37.5 of the City of Flowery Branch Zoning Ordinance as identified below.

Sec. 37.5. Criteria for Granting Variances.

Any applicant requesting consideration of a variance to any provision of the zoning ordinance shall provide a written justification that one or more of the following condition(s) exist. The City Council shall not approve a variance application unless it shall have adopted findings that one or more of the following conditions exist:

(a) There are extraordinary and exceptional conditions or practical difficulties pertaining to the particular piece of property in question because of its size, shape or topography that are not applicable to other lands or structures in the same district;

(b) A literal interpretation of the provisions of this ordinance would effectively deprive the applicant of rights commonly enjoyed by other properties of the district in which the property is located;

(c) Granting the variances requested will not confer upon the property of the applicant any special privileges that are denied to other properties of the district in which the applicant's property is located;

(d) The requested variances will be in harmony with the purpose and intent of this ordinance and will not be injurious to the neighborhood or to the general welfare;

(e) The special circumstances are not the result of the actions of the applicant;

(f) The variances requested are the minimum variances that will make possible the proposed use of the land, building, or structure in the use district proposed; and

(g) The variances shall not permit a use of land, buildings or structures, which is not permitted by right in the zoning district or overlay district involved.

SECTION 2. LEGAL DESCRIPTION, VARIANCES GRANTED AND CONDITIONS IMPOSED:

The properties as shown in attached Exhibit "A" and as legally described in Exhibit "B" shall be granted the following variances from the requirements set forth in the Flowery Branch Zoning Ordinance Article 6, Table 6.2:

1. Reduction in minimum required lot size from 15,000 square feet to 7,000 square feet.
2. Reduction in minimum required lot width from 75 feet to 50 feet.
3. Reduction in required side setback from 10 feet to 5 feet.

Conditions set forth in Exhibit "C" are imposed on said properties. Said Exhibits are incorporated by reference as if fully set forth herein.

SECTION 3. SEVERABILITY.

Should any section or provision of this Ordinance be declared invalid or unconstitutional by any court of competent jurisdiction, such declaration shall not affect the validity of this Ordinance as a whole or any part thereof which is not specifically declared to be invalid or unconstitutional.

Public Hearing Published	11/16/22	First Reading	01/19/23
Public Hearing	12/15/22	Adopted	02/02/23

SECTION 4. EFFECTIVE DATE.

The effective date of this Ordinance shall be upon adoption by the City Council of the City of Flowery Branch, Georgia.

SECTION 5. REPEALER.

All ordinances and parts of ordinances in conflict herewith are hereby repealed to the extent of the conflict.

Adopted this 2nd day of February 2023.

_____
Edward R. Asbridge, Mayor

ATTEST:

_____
Shelia R. Cooper, City Clerk

APPROVED AS TO FORM:

_____
E. Ronald Bennett, Jr., City Attorney

Exhibit "A"

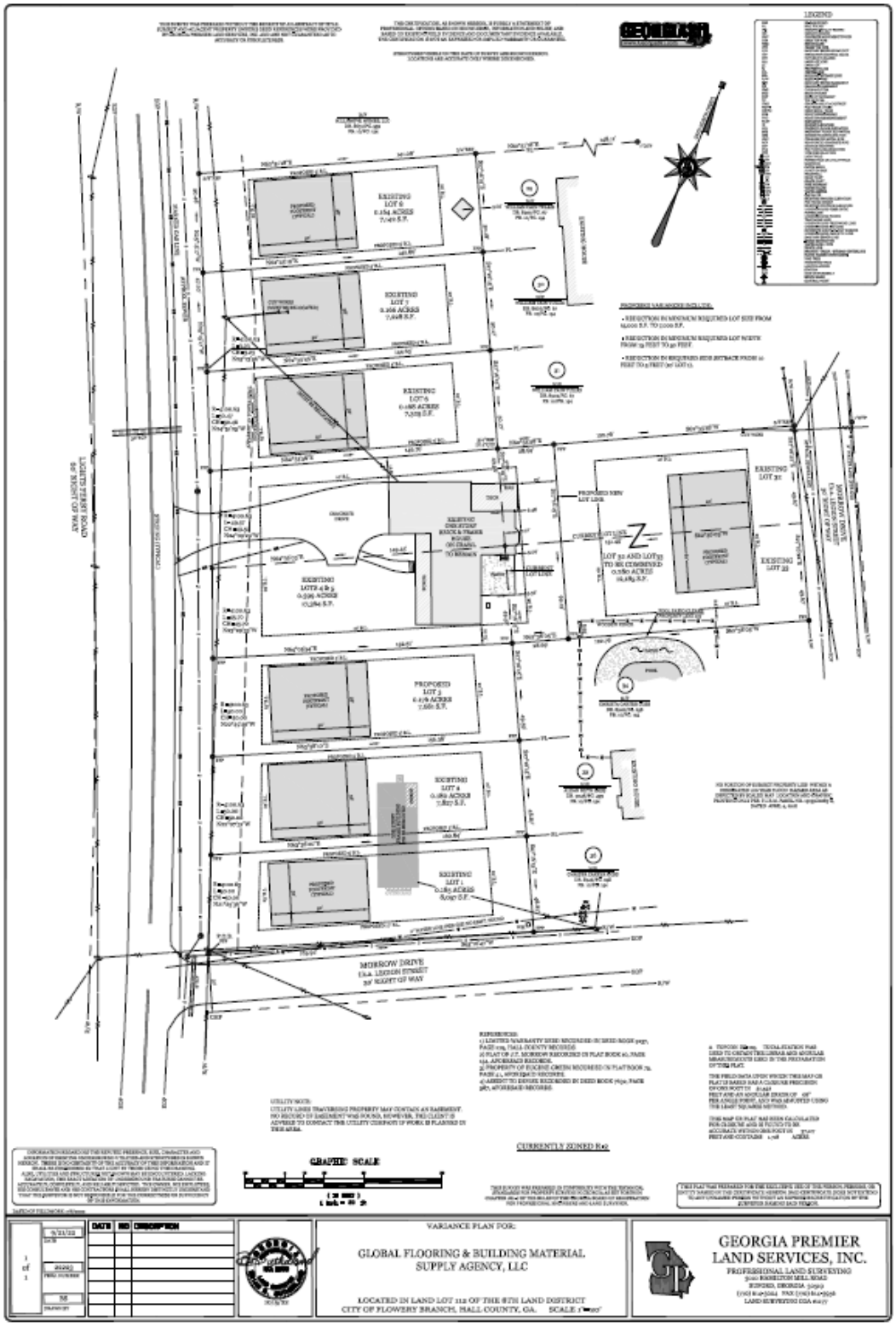

MORROW DRIVE
(A.K.A. LEGION STREET
20' RIGHT OF WAY
GRAPHIC SCALE
VARIANCE PLAN FOR:
GLOBAL FLOORING & BUILDING MATERIAL SUPPLY AGENCY, LLC
LOCATED IN LAND LOT 112 OF THE 8TH LAND DISTRICT
CITY OF FLOWERY BRANCH, HALL COUNTY, GA.
GEORGIA PREMIER LAND SERVICES, INC.
PROFESSIONAL LAND SURVEYING

Exhibit "B"

Existing Lot 2
0.180 Acres

All that tract or parcel of land lying and being in the Land Lot 112 of the 8th Land District, City of Flowery Branch, Hall County, Georgia and being more particularly described as follows;

To find the True Point of Beginning, commence at the northwest right of way of Morrow Drive (f.k.a. Legion Street – 30' right of way) and the northeast right of way of Lights Ferry Road (60' right of way), said point marked by a ½ inch rebar pin set; THENCE traveling on said northeast right of way of Lights Ferry Road along a curve to the left having a radius of 4100.63 feet and an arc length of 50.00 feet being subtended by a chord bearing of North 21 Degrees 25 Minutes 36 Seconds West and a chord distance of 50.00 feet to a point, said point marked by a ½ inch rebar pin set, said point being THE TRUE POINT OF BEGINNING.

THENCE from said point as thus established, traveling on said northeast right of way of Lights Ferry Road along a curve to the left having a radius of 4100.63 feet and an arc length of 50.00 feet being subtended by a chord bearing of North 22 Degrees 07 Minutes 31 Seconds West and a chord distance of 50.00 feet to a point, said point marked by a ½ inch rebar pin set; THENCE leaving said right of way North 63 Degrees 58 Minutes 10 Seconds East for a distance of 156.38 feet to a point, said point marked by a ½ inch rebar pin set; THENCE South 27 Degrees 16 Minutes 15 Seconds East for a distance of 48.87 feet to a point, said point marked by a ½ inch rebar pin set; THENCE South 63 Degrees 36 Minutes 20 Seconds West for a distance of 160.84 feet to a point on the northeast right of way of Lights Ferry Road, said point being THE TRUE POINT OF BEGINNING.

Said property contains 0.180 Acres as shown on Variance Plan for Global Flooring & Building Material Supply Agency, LLC prepared by Georgia Premier Land Services, Inc., dated 8/1/2022.

Exhibit "C"

1. Applicant's development shall comply with all stormwater management requirements of Article 12 of the Subdivision and Land Development Code per Section 1203.
2. Applicant shall record a final plat in accordance with Article 8 of the Subdivision and Land Development Code.
3. A landscape plan for each individual lot and the development as a whole shall be submitted to staff at the time of any land disturbance application.
4. Applicant shall construct new homes in accordance with the elevations submitted and attached hereto.

Public Hearing Published	11/16/22	First Reading	01/19/23
Public Hearing	12/15/22	Adopted	02/02/23

Public Hearing Published	11/16/22	First Reading	01/19/23
Public Hearing	12/15/22	Adopted	02/02/23

ORDINANCE 680

AN ORDINANCE GRANTING VARIANCES FROM THE R-2 (RESIDENTIAL, DETACHED SINGLE FAMILY, LOW DENSITY DISTRICT) REQUIREMENTS OF ARTICLE 6, TABLE 6.2, OF THE FLOWERY BRANCH ZONING ORDINANCE TO 6010 LIGHTS FERRY ROAD, OWNED BY GLOBAL FLOORING & BUILDING MATERIAL, SHOWN ON EXHIBIT "A", DESCRIBED ON EXHIBIT "B", AND SUBJECT TO THE CONDITIONS SET FORTH IN EXHIBIT "C", BY REDUCING THE MINIMUM REQUIRED LOT SIZE FROM 15,000 SQUARE FEET TO 7,000 SQUARE FEET, REDUCING THE MINIMUM REQUIRED LOT WIDTH FROM 75 FEET TO 50 FEET, AND BY REDUCING THE REQUIRED SIDE SETBACK FROM 10 FEET TO 5 FEET; PROVIDING FOR SEVERABILITY; REPEALING CONFLICTING ORDINANCES; PROVIDING FOR AN EFFECTIVE DATE; AND FOR ALL OTHER LAWFUL PURPOSES.

WHEREAS, Global Flooring & Building Material has submitted a written and signed application to the City of Flowery Branch, Georgia requesting specific variances for property located at 6010 Lights Ferry Road; and

WHEREAS, a survey and complete description of the property subject to the requested variances is included in the application; and

WHEREAS, the City Council of the City of Flowery Branch, Georgia held a public hearing on Global Flooring & Building Material's application at its meeting of December 15, 2022, which was duly noticed as prescribed by law and published in the Gainesville Times, as shall be set forth in the minutes of said meeting; and

WHEREAS, the City Council of the City of Flowery Branch, Georgia has considered the subject variance application of Global Flooring & Building Material in conjunction with the standards set forth in Article 37, Section 27.5 of the Zoning Ordinance.

NOW THEREFORE, THE COUNCIL OF THE CITY OF FLOWERY BRANCH HEREBY ORDAINS AS FOLLOWS:

SECTION 1. FINDINGS:

The City Council finds that the proposed variances from the City of Flowery Branch Zoning Ordinance Article 6, Table 6.2 is consistent with the adopted standards for governing the exercise of the zoning power consistent with O.C.G.A. § 36-66-5 and requirements of Article 37, Section 37.5 of the City of Flowery Branch Zoning Ordinance as identified below.

Sec. 37.5. Criteria for Granting Variances.

Any applicant requesting consideration of a variance to any provision of the zoning ordinance shall provide a written justification that one or more of the following condition(s) exist. The City Council shall not approve a variance application unless it shall have adopted findings that one or more of the following conditions exist:

(a) There are extraordinary and exceptional conditions or practical difficulties pertaining to the particular piece of property in question because of its size, shape or topography that are not applicable to other lands or structures in the same district;

(b) A literal interpretation of the provisions of this ordinance would effectively deprive the applicant of rights commonly enjoyed by other properties of the district in which the property is located;

(c) Granting the variances requested will not confer upon the property of the applicant any special privileges that are denied to other properties of the district in which the applicant's property is located;

(d) The requested variances will be in harmony with the purpose and intent of this ordinance and will not be injurious to the neighborhood or to the general welfare;

(e) The special circumstances are not the result of the actions of the applicant;

(f) The variances requested are the minimum variances that will make possible the proposed use of the land, building, or structure in the use district proposed; and

(g) The variances shall not permit a use of land, buildings or structures, which is not permitted by right in the zoning district or overlay district involved.

SECTION 2. LEGAL DESCRIPTION, VARIANCES GRANTED AND CONDITIONS IMPOSED:

The properties as shown in attached Exhibit "A" and as legally described in Exhibit "B" shall be granted the following variances from the requirements set forth in the Flowery Branch Zoning Ordinance Article 6, Table 6.2:

1. Reduction in minimum required lot size from 15,000 square feet to 7,000 square feet.
2. Reduction in minimum required lot width from 75 feet to 50 feet.
3. Reduction in required side setback from 10 feet to 5 feet.

Conditions set forth in Exhibit "C" are imposed on said properties. Said Exhibits are incorporated by reference as if fully set forth herein.

SECTION 3. SEVERABILITY.

Should any section or provision of this Ordinance be declared invalid or unconstitutional by any court of competent jurisdiction, such declaration shall not affect the validity of this Ordinance as a whole or any part thereof which is not specifically declared to be invalid or unconstitutional.

Public Hearing Published	11/16/22	First Reading	01/19/23
Public Hearing	12/15/22	Adopted	02/02/23

SECTION 4. EFFECTIVE DATE.

The effective date of this Ordinance shall be upon adoption by the City Council of the City of Flowery Branch, Georgia.

SECTION 5. REPEALER.

All ordinances and parts of ordinances in conflict herewith are hereby repealed to the extent of the conflict.

Adopted this 2nd day of February 2023.

_____
Edward R. Asbridge, Mayor

ATTEST:

_____
Shelia R. Cooper, City Clerk

APPROVED AS TO FORM:

_____
E. Ronald Bennett, Jr., City Attorney

Exhibit "A"

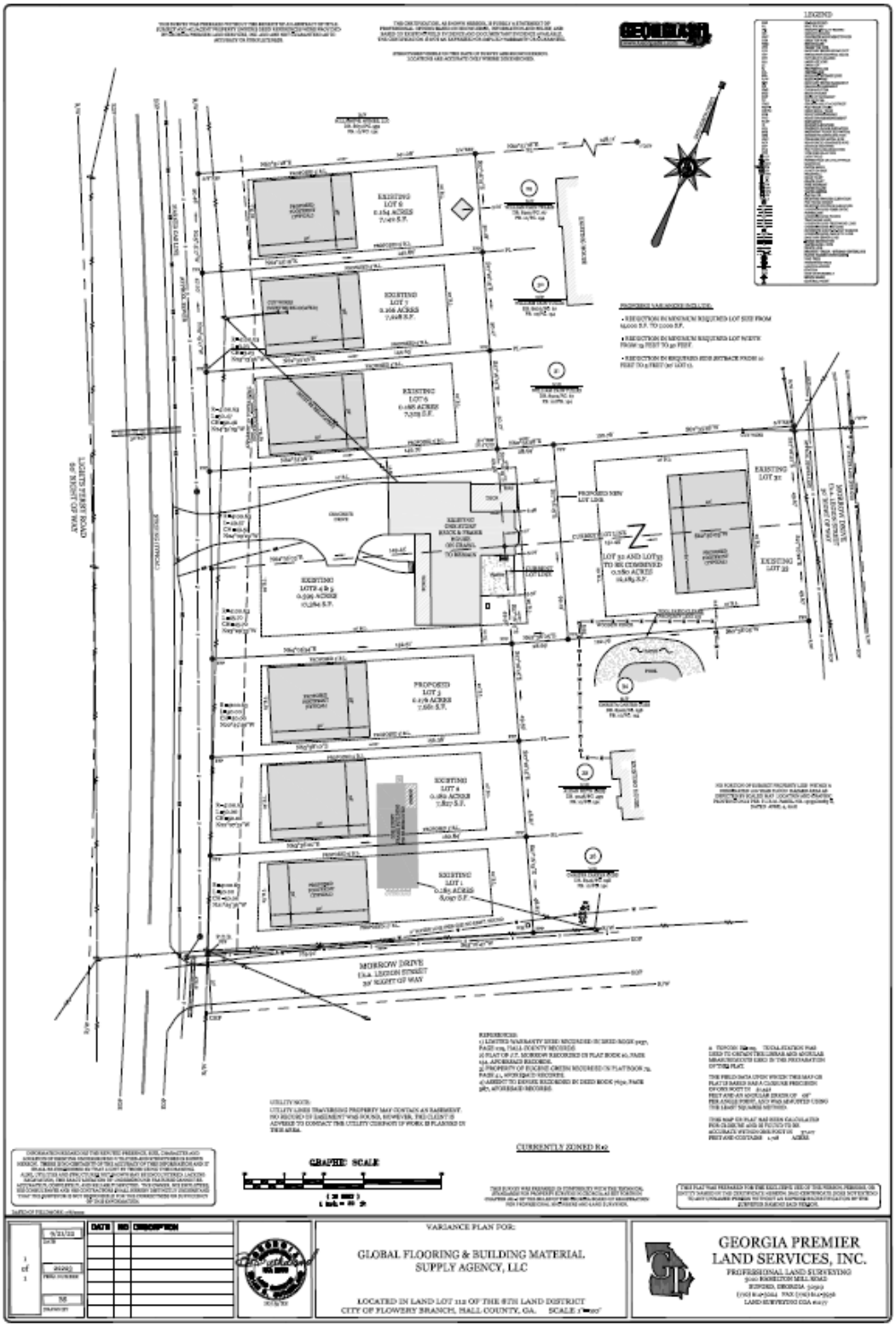

MORROW DRIVE
(A.K.A. LEGION STREET)
20' RIGHT OF WAY
GRAPHIC SCALE
CURRENTLY ZONED R-12
VARIANCE PLAN FOR:
GLOBAL FLOORING & BUILDING MATERIAL SUPPLY AGENCY, LLC
LOCATED IN LAND LOT 112 OF THE 8TH LAND DISTRICT
CITY OF FLOWERY BRANCH, HALL COUNTY, GA.
GEORGIA PREMIER LAND SERVICES, INC.
PROFESSIONAL LAND SURVEYING

Exhibit "B"

Proposed Lot 3
0.176 Acres

All that tract or parcel of land lying and being in the Land Lot 112 of the 8th Land District, City of Flowery Branch, Hall County, Georgia and being more particularly described as follows;

To find the True Point of Beginning, commence at the northwest right of way of Morrow Drive (f.k.a. Legion Street – 30' right of way) and the northeast right of way of Lights Ferry Road (60' right of way), said point marked by a ½ inch rebar pin set; THENCE traveling on said northeast right of way of Lights Ferry Road along a curve to the left having a radius of 4100.63 feet and an arc length of 50.00 feet being subtended by a chord bearing of North 21 Degrees 25 Minutes 36 Seconds West and a chord distance of 50.00 feet to a point, said point marked by a ½ inch rebar pin set; THENCE continuing on said right of way along a curve to the left having a radius of 4100.63 feet and an arc length of 50.00 feet being subtended by a chord bearing of North 22 Degrees 07 Minutes 31 Seconds West and a chord distance of 50.00 feet to a point, said point marked by a ½ inch rebar pin set, said point being THE TRUE POINT OF BEGINNING.

THENCE from said point as thus established, traveling on said northeast right of way of Lights Ferry Road along a curve to the left having a radius of 4100.63 feet and an arc length of 50.00 feet being subtended by a chord bearing of North 22 Degrees 49 Minutes 26 Seconds West and a chord distance of 50.00 feet to a point, said point marked by a ½ inch rebar pin set; THENCE leaving said right of way North 64 Degrees 05 Minutes 54 Seconds East for a distance of 152.51 feet to a point, said point, said point marked by a ½ inch rebar pin set; THENCE South 27 Degrees 16 Minutes 15 Seconds East for a distance of 49.59 feet to a point, said point marked by a ½ inch rebar pin set; THENCE South 63 Degrees 58 Minutes 10 Seconds West for a distance of 156.38 feet to a point on the northeast right of way of Lights Ferry Road, said point being THE TRUE POINT OF BEGINNING.

Said property contains 0.176 Acres as shown on Variance Plan for Global Flooring & Building Material Supply Agency, LLC prepared by Georgia Premier Land Services, Inc., dated 8/1/2022.

Existing Lots 4 & 5
0.399 Acres

All that tract or parcel of land lying and being in the Land Lot 112 of the 8th Land District, City of Flowery Branch, Hall County, Georgia and being more particularly described as follows;

To find the True Point of Beginning, commence at the northwest right of way of Morrow Drive (f.k.a. Legion Street – 30' right of way) and the northeast right of way of Lights Ferry Road (60' right of way), said point marked by a ½ inch rebar pin set; THENCE traveling on said northeast right of way of Lights Ferry Road along a curve to the left having a radius of 4100.63 feet and an arc length of 50.00 feet being subtended by a chord bearing of North 21 Degrees 25 Minutes 36 Seconds West and a chord distance of 50.00 feet to a point, said point marked by a ½ inch rebar pin set; THENCE continuing on said right of way along a curve to the left having a radius of 4100.63 feet and an arc length of 50.00 feet being subtended by a chord bearing of North 22 Degrees 07 Minutes 31 Seconds West and a chord distance of 50.00 feet to a point, said point marked by a ½ inch rebar pin set; THENCE continuing along a curve to the left having a radius of 4100.63 feet and an arc length of 50.00 feet being subtended by a chord bearing of North 22 Degrees 49 Minutes 26 Seconds West and a chord distance of 50.00 feet to a point, said point marked by a ½ inch rebar pin set, said point being THE TRUE POINT OF BEGINNING.

THENCE from said point as thus established, traveling on said northeast right of way of Lights Ferry Road along a curve to the left having a radius of 4100.63 feet and an arc length of 45.70 feet being subtended by a chord bearing of North 23 Degrees 29 Minutes 33 Seconds West and a chord distance of 45.70 feet to a point; THENCE along a curve to the left having a radius of 4100.63 feet and an arc length of 49.57 feet being subtended by a chord bearing of North 24 Degrees 09 Minutes 29 Seconds West and a chord distance of 49.57 feet to a point, said point marked by a ½ inch rebar pin set; THENCE leaving said right of way North 62 Degrees 33 Minutes 58 Seconds East for a distance of 146.76 feet to a point, said point marked by a ¾ inch rebar found in a 2 inch open top pipe; THENCE North 62 Degrees 33 Minutes 58 Seconds East for a distance of 28.69 feet to a point, said point marked by a ½ inch rebar pin set; THENCE South 27 Degrees 16 Minutes 15 Seconds East for a distance of 99.19 feet to a point, said point marked by a ½ inch rebar pin set; THENCE South 62 Degrees 38 Minutes 05 Seconds West for a distance of 28.69 feet to a point, said point marked by a ½ inch rebar pin set; THENCE South 64 Degrees 05 Minutes 54 Seconds West for a distance of 152.51 feet to a point on the northeast right of way of Lights Ferry Road, said point being THE TRUE POINT OF BEGINNING.

Said property contains 0.399 Acres as shown on Variance Plan for Global Flooring & Building Material Supply Agency, LLC prepared by Georgia Premier Land Services, Inc., dated 8/1/2022.

Exhibit "C"

1. Applicant's development shall comply with all stormwater management requirements of Article 12 of the Subdivision and Land Development Code per Section 1203.
2. Applicant shall record a final plat in accordance with Article 8 of the Subdivision and Land Development Code.
3. A landscape plan for each individual lot and the development as a whole shall be submitted to staff at the time of any land disturbance application.
4. Applicant shall construct new homes in accordance with the elevations submitted and attached hereto.

Public Hearing Published	11/16/22	First Reading	01/19/23
Public Hearing	12/15/22	Adopted	02/02/23

Public Hearing Published	11/16/22	First Reading	01/19/23
Public Hearing	12/15/22	Adopted	02/02/23

ORDINANCE 681

AN ORDINANCE GRANTING VARIANCES FROM THE R-2 (RESIDENTIAL, DETACHED SINGLE FAMILY, LOW DENSITY DISTRICT) REQUIREMENTS OF ARTICLE 6, TABLE 6.2, OF THE FLOWERY BRANCH ZONING ORDINANCE TO 6014 LIGHTS FERRY ROAD, OWNED BY GLOBAL FLOORING & BUILDING MATERIAL, SHOWN ON EXHIBIT "A", DESCRIBED ON EXHIBIT "B", AND SUBJECT TO THE CONDITIONS SET FORTH IN EXHIBIT "C", BY REDUCING THE MINIMUM REQUIRED LOT SIZE FROM 15,000 SQUARE FEET TO 7,000 SQUARE FEET, REDUCING THE MINIMUM REQUIRED LOT WIDTH FROM 75 FEET TO 50 FEET, AND BY REDUCING THE REQUIRED SIDE SETBACK FROM 10 FEET TO 5 FEET; PROVIDING FOR SEVERABILITY; REPEALING CONFLICTING ORDINANCES; PROVIDING FOR AN EFFECTIVE DATE; AND FOR ALL OTHER LAWFUL PURPOSES.

WHEREAS, Global Flooring & Building Material has submitted a written and signed application to the City of Flowery Branch, Georgia requesting specific variances for property located at 6014 Lights Ferry Road; and

WHEREAS, a survey and complete description of the property subject to the requested variances is included in the application; and

WHEREAS, the City Council of the City of Flowery Branch, Georgia held a public hearing on Global Flooring & Building Material's application at its meeting of December 15, 2022, which was duly noticed as prescribed by law and published in the Gainesville Times, as shall be set forth in the minutes of said meeting; and

WHEREAS, the City Council of the City of Flowery Branch, Georgia has considered the subject variance application of Global Flooring & Building Material in conjunction with the standards set forth in Article 37, Section 27.5 of the Zoning Ordinance.

NOW THEREFORE, THE COUNCIL OF THE CITY OF FLOWERY BRANCH HEREBY ORDAINS AS FOLLOWS:

SECTION 1. FINDINGS:

The City Council finds that the proposed variances from the City of Flowery Branch Zoning Ordinance Article 6, Table 6.2 is consistent with the adopted standards for governing the exercise of the zoning power consistent with O.C.G.A. § 36-66-5 and requirements of Article 37, Section 37.5 of the City of Flowery Branch Zoning Ordinance as identified below.

Sec. 37.5. Criteria for Granting Variances.

Any applicant requesting consideration of a variance to any provision of the zoning ordinance shall provide a written justification that one or more of the following condition(s) exist. The City Council shall not approve a variance application unless it shall have adopted findings that one or more of the following conditions exist:

(a) There are extraordinary and exceptional conditions or practical difficulties pertaining to the particular piece of property in question because of its size, shape or topography that are not applicable to other lands or structures in the same district;

(b) A literal interpretation of the provisions of this ordinance would effectively deprive the applicant of rights commonly enjoyed by other properties of the district in which the property is located;

(c) Granting the variances requested will not confer upon the property of the applicant any special privileges that are denied to other properties of the district in which the applicant's property is located;

(d) The requested variances will be in harmony with the purpose and intent of this ordinance and will not be injurious to the neighborhood or to the general welfare;

(e) The special circumstances are not the result of the actions of the applicant;

(f) The variances requested are the minimum variances that will make possible the proposed use of the land, building, or structure in the use district proposed; and

(g) The variances shall not permit a use of land, buildings or structures, which is not permitted by right in the zoning district or overlay district involved.

SECTION 2. LEGAL DESCRIPTION, VARIANCES GRANTED AND CONDITIONS IMPOSED:

The properties as shown in attached Exhibit "A" and as legally described in Exhibit "B" shall be granted the following variances from the requirements set forth in the Flowery Branch Zoning Ordinance Article 6, Table 6.2:

1. Reduction in minimum required lot size from 15,000 square feet to 7,000 square feet.
2. Reduction in minimum required lot width from 75 feet to 50 feet.
3. Reduction in required side setback from 10 feet to 5 feet.

Conditions set forth in Exhibit "C" are imposed on said properties. Said Exhibits are incorporated by reference as if fully set forth herein.

SECTION 3. SEVERABILITY.

Should any section or provision of this Ordinance be declared invalid or unconstitutional by any court of competent jurisdiction, such declaration shall not affect the validity of this Ordinance as a whole or any part thereof which is not specifically declared to be invalid or unconstitutional.

Public Hearing Published	11/16/22	First Reading	01/19/23
Public Hearing	12/15/22	Adopted	02/02/23

SECTION 4. EFFECTIVE DATE.

The effective date of this Ordinance shall be upon adoption by the City Council of the City of Flowery Branch, Georgia.

SECTION 5. REPEALER.

All ordinances and parts of ordinances in conflict herewith are hereby repealed to the extent of the conflict.

Adopted this 2nd day of February 2023.

_____
Edward R. Asbridge, Mayor

ATTEST:

_____
Shelia R. Cooper, City Clerk

APPROVED AS TO FORM:

_____
E. Ronald Bennett, Jr., City Attorney

Exhibit "A"

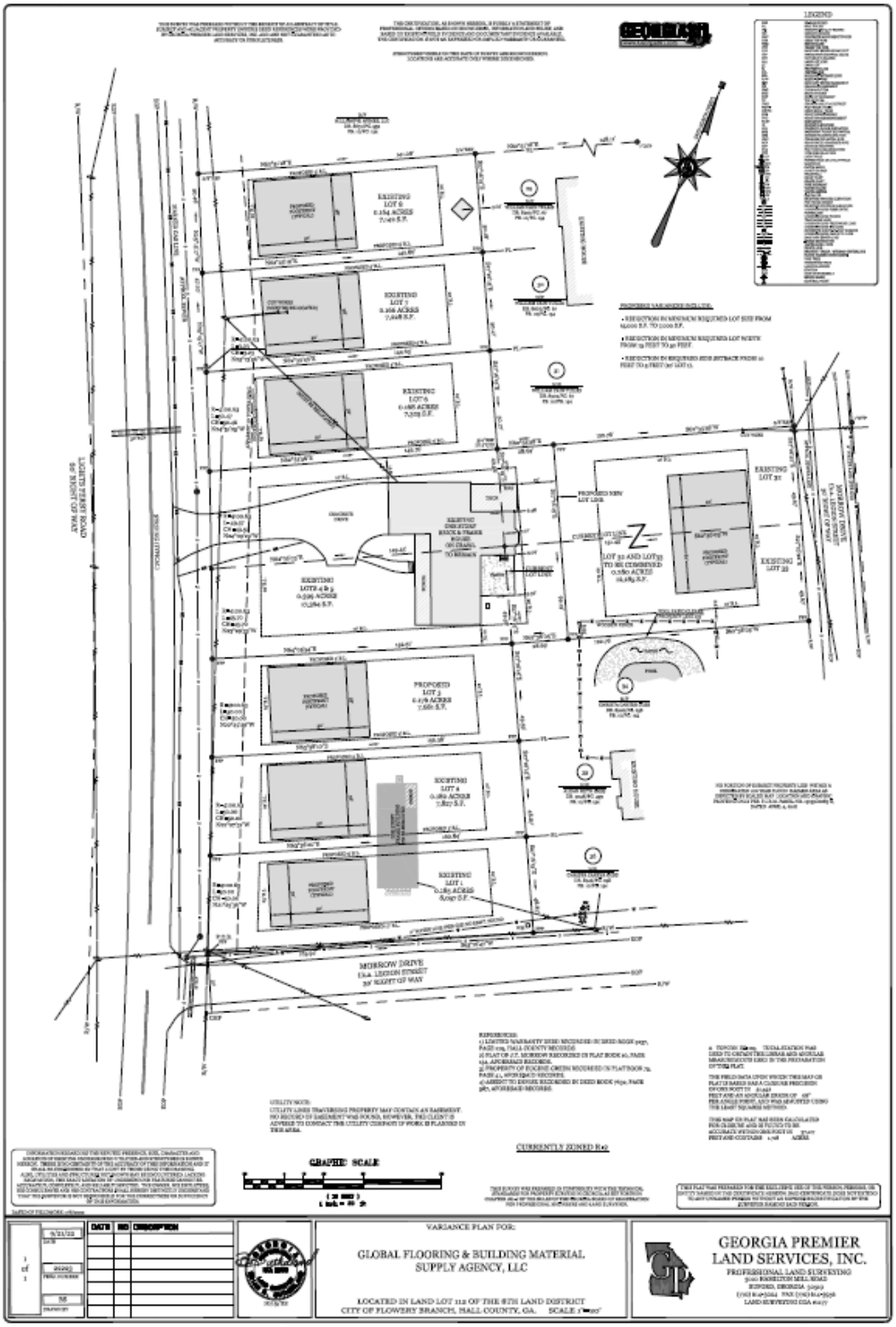

MORROW DRIVE
(A.K.A. LEGION STREET)
20' RIGHT OF WAY
GRAPHIC SCALE
CURRENTLY ZONED R-15
VARIANCE PLAN FOR:
GLOBAL FLOORING & BUILDING MATERIAL SUPPLY AGENCY, LLC
LOCATED IN LAND LOT 112 OF THE 5TH LAND DISTRICT
CITY OF FLOWERY BRANCH, HALL COUNTY, GA.
GEORGIA PREMIER LAND SERVICES, INC.
PROFESSIONAL LAND SURVEYING

Exhibit "B"

Existing Lot 6
0.168 Acres

All that tract or parcel of land lying and being in the Land Lot 112 of the 8th Land District, City of Flowery Branch, Hall County, Georgia and being more particularly described as follows;

To find the True Point of Beginning, commence at the northwest right of way of Morrow Drive (f.k.a. Legion Street – 30' right of way) and the northeast right of way of Lights Ferry Road (60' right of way), said point marked by a ½ inch rebar pin set; THENCE traveling on said northeast right of way of Lights Ferry Road along a curve to the left having a radius of 4100.63 feet and an arc length of 50.00 feet being subtended by a chord bearing of North 21 Degrees 25 Minutes 36 Seconds West and a chord distance of 50.00 feet to a point, said point marked by a ½ inch rebar pin set; THENCE continuing on said right of way along a curve to the left having a radius of 4100.63 feet and an arc length of 50.00 feet being subtended by a chord bearing of North 22 Degrees 07 Minutes 31 Seconds West and a chord distance of 50.00 feet to a point, said point marked by a ½ inch rebar pin set; THENCE continuing along a curve to the left having a radius of 4100.63 feet and an arc length of 50.00 feet being subtended by a chord bearing of North 22 Degrees 49 Minutes 26 Seconds West and a chord distance of 50.00 feet to a point, said point marked by a ½ inch rebar pin set; THENCE along a curve to the left having a radius of 4100.63 feet and an arc length of 45.70 feet being subtended by a chord bearing of North 23 Degrees 29 Minutes 33 Seconds West and a chord distance of 45.70 feet to a point; THENCE along a curve to the left having a radius of 4100.63 feet and an arc length of 49.57 feet being subtended by a chord bearing of North 24 Degrees 09 Minutes 29 Seconds West and a chord distance of 49.57 feet to a point, said point marked by a ½ inch rebar pin set, said point being THE TRUE POINT OF BEGINNING.

THENCE from said point as thus established, traveling on said northeast right of way of Lights Ferry Road along a curve to the left having a radius of 4100.63 feet and an arc length of 50.47 feet being subtended by a chord bearing of North 24 Degrees 51 Minutes 25 Seconds West and a chord distance of 50.46 feet to a point, said point marked by a ½ inch rebar pin set; THENCE leaving said right of way and traveling North 62 Degrees 39 Minutes 46 Seconds East for a distance of 144.63 feet to a point, said point marked by a ½ inch rebar pin set; THENCE South 27 Degrees 16 Minutes 15 Seconds East for a distance of 50.17 feet to a point, said point marked by a ¾ inch rebar pin found in a 2 inch open top pipe; THENCE South 62 Degrees 33 Minutes 58 Seconds West for a distance of 146.76 feet to a point on the northeast right of way of Lights Ferry Road, said point being THE TRUE POINT OF BEGINNING.

Said property contains 0.168 Acres as shown on Variance Plan for Global Flooring & Building Material Supply Agency, LLC prepared by Georgia Premier Land Services, Inc., dated 8/1/2022.

Exhibit "C"

1. Applicant's development shall comply with all stormwater management requirements of Article 12 of the Subdivision and Land Development Code per Section 1203.
2. Applicant shall record a final plat in accordance with Article 8 of the Subdivision and Land Development Code.
3. A landscape plan for each individual lot and the development as a whole shall be submitted to staff at the time of any land disturbance application.
4. Applicant shall construct new homes in accordance with the elevations submitted and attached hereto.

PLAN 1057-14
Photographs may show modified designs

Public Hearing Published	11/16/22	First Reading	01/19/23
Public Hearing	12/15/22	Adopted	02/02/23

Public Hearing Published	11/16/22	First Reading	01/19/23
Public Hearing	12/15/22	Adopted	02/02/23

ORDINANCE 682

AN ORDINANCE GRANTING VARIANCES FROM THE R-2 (RESIDENTIAL, DETACHED SINGLE FAMILY, LOW DENSITY DISTRICT) REQUIREMENTS OF ARTICLE 6, TABLE 6.2, OF THE FLOWERY BRANCH ZONING ORDINANCE TO 6016 LIGHTS FERRY ROAD, OWNED BY GLOBAL FLOORING & BUILDING MATERIAL, SHOWN ON EXHIBIT "A", DESCRIBED ON EXHIBIT "B", AND SUBJECT TO THE CONDITIONS SET FORTH IN EXHIBIT "C", BY REDUCING THE MINIMUM REQUIRED LOT SIZE FROM 15,000 SQUARE FEET TO 7,000 SQUARE FEET, REDUCING THE MINIMUM REQUIRED LOT WIDTH FROM 75 FEET TO 50 FEET, AND BY REDUCING THE REQUIRED SIDE SETBACK FROM 10 FEET TO 5 FEET; PROVIDING FOR SEVERABILITY; REPEALING CONFLICTING ORDINANCES; PROVIDING FOR AN EFFECTIVE DATE; AND FOR ALL OTHER LAWFUL PURPOSES.

WHEREAS, Global Flooring & Building Material has submitted a written and signed application to the City of Flowery Branch, Georgia requesting specific variances for property located at 6014 Lights Ferry Road; and

WHEREAS, a survey and complete description of the property subject to the requested variances is included in the application; and

WHEREAS, the City Council of the City of Flowery Branch, Georgia held a public hearing on Global Flooring & Building Material's application at its meeting of December 15, 2022, which was duly noticed as prescribed by law and published in the Gainesville Times, as shall be set forth in the minutes of said meeting; and

WHEREAS, the City Council of the City of Flowery Branch, Georgia has considered the subject variance application of Global Flooring & Building Material in conjunction with the standards set forth in Article 37, Section 27.5 of the Zoning Ordinance.

NOW THEREFORE, THE COUNCIL OF THE CITY OF FLOWERY BRANCH HEREBY ORDAINS AS FOLLOWS:

SECTION 1. FINDINGS:

The City Council finds that the proposed variances from the City of Flowery Branch Zoning Ordinance Article 6, Table 6.2 is consistent with the adopted standards for governing the exercise of the zoning power consistent with O.C.G.A. § 36-66-5 and requirements of Article 37, Section 37.5 of the City of Flowery Branch Zoning Ordinance as identified below.

Sec. 37.5. Criteria for Granting Variances.

Any applicant requesting consideration of a variance to any provision of the zoning ordinance shall provide a written justification that one or more of the following condition(s) exist. The City Council shall not approve a variance application unless it shall have adopted findings that one or more of the following conditions exist:

(a) There are extraordinary and exceptional conditions or practical difficulties pertaining to the particular piece of property in question because of its size, shape or topography that are not applicable to other lands or structures in the same district;

(b) A literal interpretation of the provisions of this ordinance would effectively deprive the applicant of rights commonly enjoyed by other properties of the district in which the property is located;

(c) Granting the variances requested will not confer upon the property of the applicant any special privileges that are denied to other properties of the district in which the applicant's property is located;

(d) The requested variances will be in harmony with the purpose and intent of this ordinance and will not be injurious to the neighborhood or to the general welfare;

(e) The special circumstances are not the result of the actions of the applicant;

(f) The variances requested are the minimum variances that will make possible the proposed use of the land, building, or structure in the use district proposed; and

(g) The variances shall not permit a use of land, buildings or structures, which is not permitted by right in the zoning district or overlay district involved.

SECTION 2. LEGAL DESCRIPTION, VARIANCES GRANTED AND CONDITIONS IMPOSED:

The properties as shown in attached Exhibit "A" and as legally described in Exhibit "B" shall be granted the following variances from the requirements set forth in the Flowery Branch Zoning Ordinance Article 6, Table 6.2:

1. Reduction in minimum required lot size from 15,000 square feet to 7,000 square feet.
2. Reduction in minimum required lot width from 75 feet to 50 feet.
3. Reduction in required side setback from 10 feet to 5 feet.

Conditions set forth in Exhibit "C" are imposed on said properties. Said Exhibits are incorporated by reference as if fully set forth herein.

SECTION 3. SEVERABILITY.

Should any section or provision of this Ordinance be declared invalid or unconstitutional by any court of competent jurisdiction, such declaration shall not affect the validity of this Ordinance as a whole or any part thereof which is not specifically declared to be invalid or unconstitutional.

Public Hearing Published	11/16/22	First Reading	01/19/23
Public Hearing	12/15/22	Adopted	02/02/23

SECTION 4. EFFECTIVE DATE.

The effective date of this Ordinance shall be upon adoption by the City Council of the City of Flowery Branch, Georgia.

SECTION 5. REPEALER.

All ordinances and parts of ordinances in conflict herewith are hereby repealed to the extent of the conflict.

Adopted this 2nd day of February 2023.

_____
Edward R. Asbridge, Mayor

ATTEST:

_____
Shelia R. Cooper, City Clerk

APPROVED AS TO FORM:

_____
E. Ronald Bennett, Jr., City Attorney

Exhibit "A"

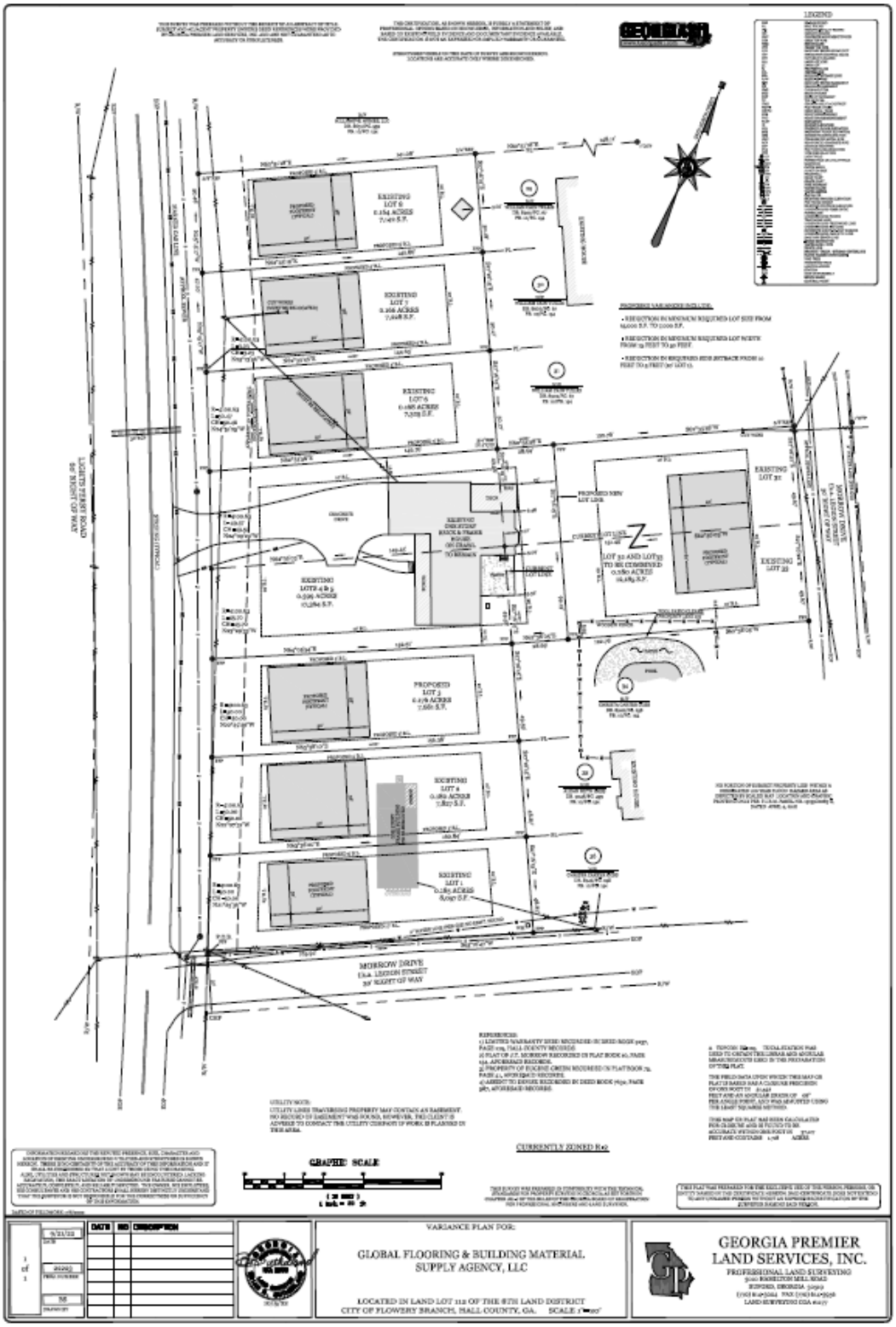

LEGEND
EXISTING LOT 6
EXISTING LOT 5
EXISTING LOT 4
EXISTING LOT 3
EXISTING LOT 2
EXISTING LOT 1
PROPOSED LOT 3
LOT 32 AND LOT 33 TO BE COMBINED
EXISTING LOT 32
EXISTING LOT 33
MORROW DRIVE
(A.K.A. LEGION STREET)
50' RIGHT OF WAY
GRAPHIC SCALE
VARIANCE PLAN FOR:
GLOBAL FLOORING & BUILDING MATERIAL SUPPLY AGENCY, LLC
LOCATED IN LAND LOT 112 OF THE 8TH LAND DISTRICT
CITY OF FLOWERY BRANCH, HALL COUNTY, GA.
GEORGIA PREMIER LAND SERVICES, INC.
PROFESSIONAL LAND SURVEYING

Exhibit "B"

Existing Lot 7
0.166 Acres

All that tract or parcel of land lying and being in the Land Lot 112 of the 8th Land District, City of Flowery Branch, Hall County, Georgia and being more particularly described as follows;

To find the True Point of Beginning, commence at the northwest right of way of Morrow Drive (f.k.a. Legion Street – 30' right of way) and the northeast right of way of Lights Ferry Road (60' right of way), said point marked by a ½ inch rebar pin set; THENCE traveling on said northeast right of way of Lights Ferry Road along a curve to the left having a radius of 4100.63 feet and an arc length of 50.00 feet being subtended by a chord bearing of North 21 Degrees 25 Minutes 36 Seconds West and a chord distance of 50.00 feet to a point, said point marked by a ½ inch rebar pin set; THENCE continuing on said right of way along a curve to the left having a radius of 4100.63 feet and an arc length of 50.00 feet being subtended by a chord bearing of North 22 Degrees 07 Minutes 31 Seconds West and a chord distance of 50.00 feet to a point, said point marked by a ½ inch rebar pin set; THENCE continuing along a curve to the left having a radius of 4100.63 feet and an arc length of 50.00 feet being subtended by a chord bearing of North 22 Degrees 49 Minutes 26 Seconds West and a chord distance of 50.00 feet to a point, said point marked by a ½ inch rebar pin set; THENCE along a curve to the left having a radius of 4100.63 feet and an arc length of 45.70 feet being subtended by a chord bearing of North 23 Degrees 29 Minutes 33 Seconds West and a chord distance of 45.70 feet to a point; THENCE along a curve to the left having a radius of 4100.63 feet and an arc length of 49.57 feet being subtended by a chord bearing of North 24 Degrees 09 Minutes 29 Seconds West and a chord distance of 49.57 feet to a point, said point marked by a ½ inch rebar pin set; THENCE along a curve to the left having a radius of 4100.63 feet and an arc length of 50.47 feet being subtended by a chord bearing of North 24 Degrees 51 Minutes 25 Seconds West and a chord distance of 50.46 feet to a point, said point marked by a ½ inch rebar pin set, said point being THE TRUE POINT OF BEGINNING.

THENCE from said point as thus established, traveling on said northeast right of way of Lights Ferry Road along a curve to the left having a radius of 4100.63 feet and an arc length of 3.23 feet being subtended by a chord bearing of North 25 Degrees 13 Minutes 56 Seconds West and a chord distance of 3.23 feet to a point; THENCE North 25 Degrees 15 Minutes 17 Seconds West for a distance of 47.20 feet to a point, said point marked by a ½ inch rebar pin set; THENCE leaving said right of way North 62 Degrees 45 Minutes 19 Seconds East for a distance of 142.86 feet to a point, said point marked by a ½ inch rebar pin set; THENCE South 27 Degrees 16 Minutes 15 Seconds East for a distance of 50.17 feet to a point, said point marked by a ½ inch rebar pin set; THENCE South 62 Degrees 39 Minutes 46 Seconds West for a distance of 144.63 feet to a point, said point being THE TRUE POINT OF BEGINNING.

Said property contains 0.166 Acres as shown on Variance Plan for Global Flooring & Building Material Supply Agency, LLC prepared by Georgia Premier Land Services, Inc., dated 8/1/2022.

Exhibit "C"

1. Applicant's development shall comply with all stormwater management requirements of Article 12 of the Subdivision and Land Development Code per Section 1203.
2. Applicant shall record a final plat in accordance with Article 8 of the Subdivision and Land Development Code.
3. A landscape plan for each individual lot and the development as a whole shall be submitted to staff at the time of any land disturbance application.
4. Applicant shall construct new homes in accordance with the elevations submitted and attached hereto.

PLAN 1057-14
Photographs may show modified designs

Public Hearing Published	11/16/22	First Reading	01/19/23
Public Hearing	12/15/22	Adopted	02/02/23

Public Hearing Published	11/16/22	First Reading	01/19/23
Public Hearing	12/15/22	Adopted	02/02/23

ORDINANCE 683

AN ORDINANCE GRANTING VARIANCES FROM THE R-2 (RESIDENTIAL, DETACHED SINGLE FAMILY, LOW DENSITY DISTRICT) REQUIREMENTS OF ARTICLE 6, TABLE 6.2, OF THE FLOWERY BRANCH ZONING ORDINANCE TO 6018 LIGHTS FERRY ROAD, OWNED BY GLOBAL FLOORING & BUILDING MATERIAL, SHOWN ON EXHIBIT "A", DESCRIBED ON EXHIBIT "B", AND SUBJECT TO THE CONDITIONS SET FORTH IN EXHIBIT "C", BY REDUCING THE MINIMUM REQUIRED LOT SIZE FROM 15,000 SQUARE FEET TO 7,000 SQUARE FEET, REDUCING THE MINIMUM REQUIRED LOT WIDTH FROM 75 FEET TO 50 FEET, AND BY REDUCING THE REQUIRED SIDE SETBACK FROM 10 FEET TO 5 FEET; PROVIDING FOR SEVERABILITY; REPEALING CONFLICTING ORDINANCES; PROVIDING FOR AN EFFECTIVE DATE; AND FOR ALL OTHER LAWFUL PURPOSES.

WHEREAS, Global Flooring & Building Material has submitted a written and signed application to the City of Flowery Branch, Georgia requesting specific variances for property located at 6014 Lights Ferry Road; and

WHEREAS, a survey and complete description of the property subject to the requested variances is included in the application; and

WHEREAS, the City Council of the City of Flowery Branch, Georgia held a public hearing on Global Flooring & Building Material's application at its meeting of December 15, 2022, which was duly noticed as prescribed by law and published in the Gainesville Times, as shall be set forth in the minutes of said meeting; and

WHEREAS, the City Council of the City of Flowery Branch, Georgia has considered the subject variance application of Global Flooring & Building Material in conjunction with the standards set forth in Article 37, Section 27.5 of the Zoning Ordinance.

NOW THEREFORE, THE COUNCIL OF THE CITY OF FLOWERY BRANCH HEREBY ORDAINS AS FOLLOWS:

SECTION 1. FINDINGS:

The City Council finds that the proposed variances from the City of Flowery Branch Zoning Ordinance Article 6, Table 6.2 is consistent with the adopted standards for governing the exercise of the zoning power consistent with O.C.G.A. § 36-66-5 and requirements of Article 37, Section 37.5 of the City of Flowery Branch Zoning Ordinance as identified below.

Sec. 37.5. Criteria for Granting Variances.

Any applicant requesting consideration of a variance to any provision of the zoning ordinance shall provide a written justification that one or more of the following condition(s) exist. The City Council shall not approve a variance application unless it shall have adopted findings that one or more of the following conditions exist:

(a) There are extraordinary and exceptional conditions or practical difficulties pertaining to the particular piece of property in question because of its size, shape or topography that are not applicable to other lands or structures in the same district;

(b) A literal interpretation of the provisions of this ordinance would effectively deprive the applicant of rights commonly enjoyed by other properties of the district in which the property is located;

(c) Granting the variances requested will not confer upon the property of the applicant any special privileges that are denied to other properties of the district in which the applicant's property is located;

(d) The requested variances will be in harmony with the purpose and intent of this ordinance and will not be injurious to the neighborhood or to the general welfare;

(e) The special circumstances are not the result of the actions of the applicant;

(f) The variances requested are the minimum variances that will make possible the proposed use of the land, building, or structure in the use district proposed; and

(g) The variances shall not permit a use of land, buildings or structures, which is not permitted by right in the zoning district or overlay district involved.

SECTION 2. LEGAL DESCRIPTION, VARIANCES GRANTED AND CONDITIONS IMPOSED:

The properties as shown in attached Exhibit "A" and as legally described in Exhibit "B" shall be granted the following variances from the requirements set forth in the Flowery Branch Zoning Ordinance Article 6, Table 6.2:

1. Reduction in minimum required lot size from 15,000 square feet to 7,000 square feet.
2. Reduction in minimum required lot width from 75 feet to 50 feet.
3. Reduction in required side setback from 10 feet to 5 feet.

Conditions set forth in Exhibit "C" are imposed on said properties. Said Exhibits are incorporated by reference as if fully set forth herein.

SECTION 3. SEVERABILITY.

Should any section or provision of this Ordinance be declared invalid or unconstitutional by any court of competent jurisdiction, such declaration shall not affect the validity of this Ordinance as a whole or any part thereof which is not specifically declared to be invalid or unconstitutional.

Public Hearing Published	11/16/22	First Reading	01/19/23
Public Hearing	12/15/22	Adopted	02/02/23

SECTION 4. EFFECTIVE DATE.

The effective date of this Ordinance shall be upon adoption by the City Council of the City of Flowery Branch, Georgia.

SECTION 5. REPEALER.

All ordinances and parts of ordinances in conflict herewith are hereby repealed to the extent of the conflict.

Adopted this 2nd day of February 2023.

_____
Edward R. Asbridge, Mayor

ATTEST:

_____
Shelia R. Cooper, City Clerk

APPROVED AS TO FORM:

_____
E. Ronald Bennett, Jr., City Attorney

Exhibit "A"

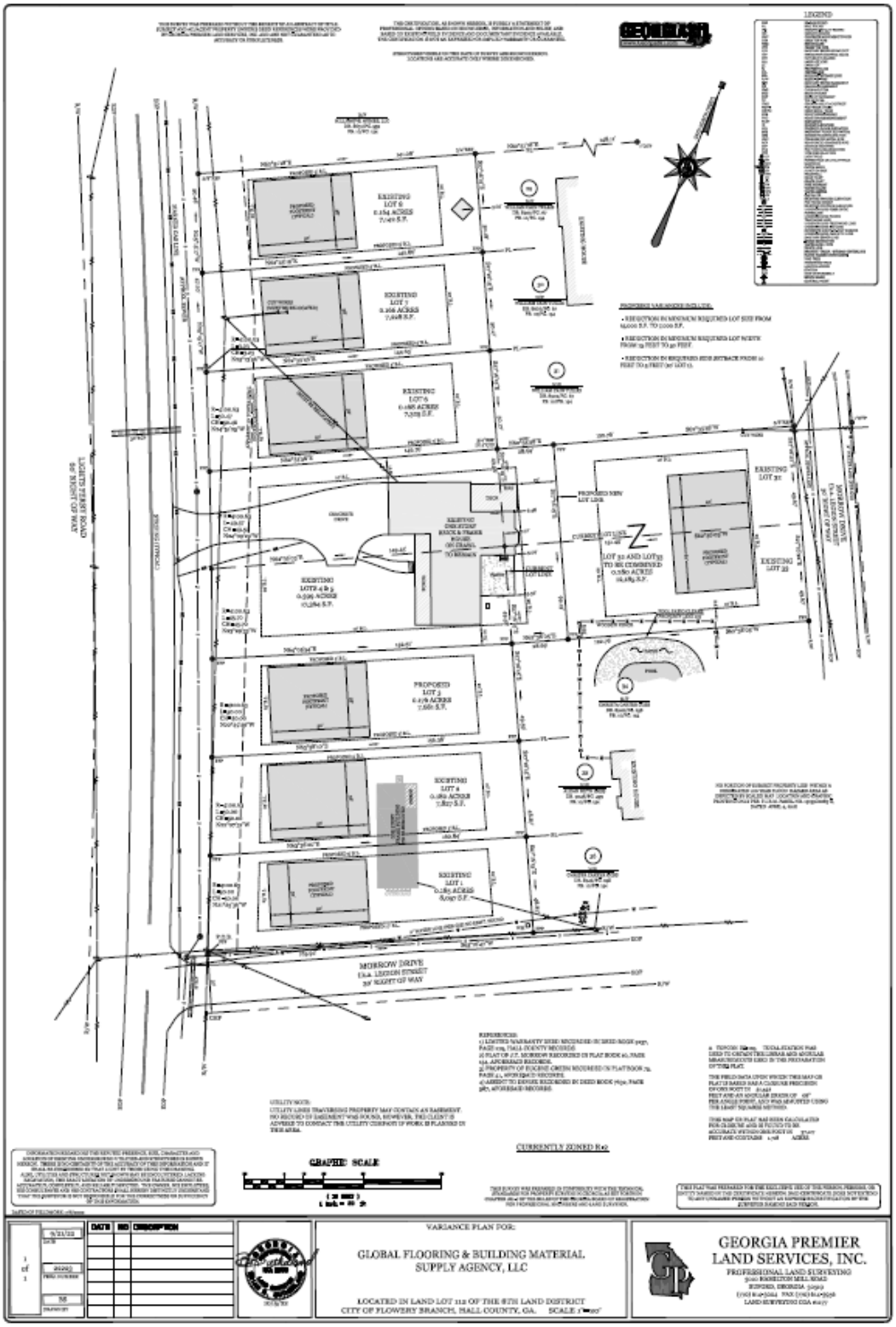

MORROW DRIVE
(A.K.A. LEGION STREET)
20' RIGHT OF WAY
GRAPHIC SCALE
CURRENTLY ZONED R-15
VARIANCE PLAN FOR:
GLOBAL FLOORING & BUILDING MATERIAL SUPPLY AGENCY, LLC
LOCATED IN LAND LOT 112 OF THE 8TH LAND DISTRICT
CITY OF FLOWERY BRANCH, HALL COUNTY, GA.
GEORGIA PREMIER LAND SERVICES, INC.
PROFESSIONAL LAND SURVEYING

Exhibit "B"

Existing Lot 8
0.164 Acres

All that tract or parcel of land lying and being in the Land Lot 112 of the 8th Land District, City of Flowery Branch, Hall County, Georgia and being more particularly described as follows;

To find the True Point of Beginning, commence at the northwest right of way of Morrow Drive (f.k.a. Legion Street – 30' right of way) and the northeast right of way of Lights Ferry Road (60' right of way), said point marked by a ½ inch rebar pin set; THENCE traveling on said northeast right of way of Lights Ferry Road along a curve to the left having a radius of 4100.63 feet and an arc length of 50.00 feet being subtended by a chord bearing of North 21 Degrees 25 Minutes 36 Seconds West and a chord distance of 50.00 feet to a point, said point marked by a ½ inch rebar pin set; THENCE continuing on said right of way along a curve to the left having a radius of 4100.63 feet and an arc length of 50.00 feet being subtended by a chord bearing of North 22 Degrees 07 Minutes 31 Seconds West and a chord distance of 50.00 feet to a point, said point marked by a ½ inch rebar pin set; THENCE continuing along a curve to the left having a radius of 4100.63 feet and an arc length of 50.00 feet being subtended by a chord bearing of North 22 Degrees 49 Minutes 26 Seconds West and a chord distance of 50.00 feet to a point, said point marked by a ½ inch rebar pin set; THENCE along a curve to the left having a radius of 4100.63 feet and an arc length of 45.70 feet being subtended by a chord bearing of North 23 Degrees 29 Minutes 33 Seconds West and a chord distance of 45.70 feet to a point; THENCE along a curve to the left having a radius of 4100.63 feet and an arc length of 49.57 feet being subtended by a chord bearing of North 24 Degrees 09 Minutes 29 Seconds West and a chord distance of 49.57 feet to a point, said point marked by a ½ inch rebar pin set; THENCE along a curve to the left having a radius of 4100.63 feet and an arc length of 50.47 feet being subtended by a chord bearing of North 24 Degrees 51 Minutes 25 Seconds West and a chord distance of 50.46 feet to a point, said point marked by a ½ inch rebar pin set; THENCE along a curve to the left having a radius of 4100.63 feet and an arc length of 3.23 feet being subtended by a chord bearing of North 25 Degrees 13 Minutes 56 Seconds West and a chord distance of 3.23 feet to a point; THENCE North 25 Degrees 15 Minutes 17 Seconds West for a distance of 47.20 feet to a point, said point marked by a ½ inch rebar pin set, said point being THE TRUE POINT OF BEGINNING.

THENCE from said point as thus established, traveling on said northeast right of way of Lights Ferry Road North 25 Degrees 15 Minutes 17 Seconds West for a distance of 50.46 feet to a point, said point marked by a 3/8 inch rebar pin found; THENCE leaving said right of way North 62 Degrees 51 Minutes 18 Seconds East for a distance of 141.08 feet to a point, said point marked by a ¾ inch rebar pin found; THENCE South 27 Degrees 16 Minutes 15 Seconds East for a distance of 50.18 feet to a point, said point marked by a ½ inch rebar pin set; THENCE South 62 Degrees 45 Minutes 19 Seconds West for a distance of 142.86 feet to a point on the northeast right of way of Lights Ferry Road, said point being THE TRUE POINT OF BEGINNING.

Exhibit "C"

1. Applicant's development shall comply with all stormwater management requirements of Article 12 of the Subdivision and Land Development Code per Section 1203.
2. Applicant shall record a final plat in accordance with Article 8 of the Subdivision and Land Development Code.
3. A landscape plan for each individual lot and the development as a whole shall be submitted to staff at the time of any land disturbance application.
4. Applicant shall construct new homes in accordance with the elevations submitted and attached hereto.

Public Hearing Published	11/16/22	First Reading	01/19/23
Public Hearing	12/15/22	Adopted	02/02/23

FLOWERY BRANCH CITY COUNCIL

EXECUTIVE SUMMARY

SUBJECT: Award Contract to Legacy Water Group, LLC for the Connection to Gainesville's Sanitary Sewer System and Declaration of an Emergency

COUNCIL MEETING DATE: February 2, 2023

HISTORY:
The City of Flowery Branch has been near capacity at its wastewater treatment plant and staff sought out several alternatives for more capacity while a new plant was being designed and constructed.

FACTS AND ISSUES:
Trey Gavin with ESG Engineering, has been working with staff to identify the lines to connect to Gainesville's sanitary sewer system and a potential route for the new pipeline. The cost of the lines and connections are anticipated to be $2,066,851.50 with funding to be provided from system development charges. An emergency exists because the current wastewater treatment plant, which is permitted to handle 910,000 gallons per day (GPD), is currently operating near capacity and the city has recently received violation notices and fines from EPD associated with these issues. Mr. Gavin believes this to be a "max not-to-exceed" price and will work to bring the project in below this total. The only unknown currently of concern is the potential for rock blasting during installation, but we believe this will not be an issue based on knowledge of the area.

OPTIONS:
1) Award contract to Legacy Water Group, LLC and declare an emergency so the work can begin immediately.
2) Do not award contract.

IF FUNDING IS INVOLVED, ARE FUNDS APPROVED IN THE CURRENT BUDGET:
Yes

AMOUNT AND SOURCE OF FUNDS:
$2,066,851.50 - System Developmnet

RECOMMENDATION:
Award Contract to Legacy Water Group, LLC for the Connection to Gainesville's Sanitary Sewer System in an amount not to exceed $2,066,851.50 and Declaration of an Emergency as stated by staff.

SAMPLE MOTION:
I make a motion to award a contract to Legacy Water Group, LLC in amount not to exceed $2,066,851.50 for immediate construction of lines to connect to Gainesville's sanitary sewer system and to declare an emergency for the work to begin, subject to the City Attorney's approval.

COLLABORATING DEPARTMENT:
Water/Wastewater

DEPARTMENT: Administration

Prepared by: Shelia Cooper

ATTACHMENTS

- Oakwood FM Proposal.pdf
- Contract Documents - Flowery Branch - Sewer System Connection.pdf
- ES - Line to Gainesville and Emergency Declaration.pdf

LEGACY
WATER GROUP, LLC.
CONSTRUCTION SOLUTIONS

January 26, 2023

ESG Engineering
6400 Peake Road
Macon, GA 31210
ATTN: Mr. Trey Gavin

RE: Oakwood/Flowery Branch Emergency Force Main Installation
Pricing Proposal

Trey –

It is our pleasure to provide this proposal to install an emergency sanitary sewer force for the City of Flowery Branch. Our understanding of the scope of work involves the following items:

Part 1: Locate an existing force main along McEver Road and test the integrity of the pipe; connect to an existing force main along Mud Creek and install isolation plug valves in precast manholes; install a mag meter to measure the flows that will be sent to the City of Gainesville; make connections to the existing force main after it is located and tested; continue installation of a new 8" force main along the east side McEver Road and the north side of Flat Creek to a manhole connection at Flat Creek Road and Oakwood Road; testing and restoration.

Part 2: Connect to an existing force main and install isolation plug valves in precast manholes near Falcon Parkway and Cantrell Road; install new 8" force main from Cantrell Road to City of Flowery Branch property west of Thurman Tanner Parkway; connect to existing force main on City of Flowey Branch Property.

Included below is a breakdown of our pricing. We have provided a daily price for locating and testing the existing force main. Additionally, due to the unknown soil conditions, we have provided a unit price for rock excavation in the event it is encountered. If rock is encountered a jack and bored crossing, a unit price will have to be negotiated.

Our proposal is based on using PVC pipe. Once t5he final route is approved, we can evaluate the use of HDPE pipe and present any cost savings to the City. Our price is based on using a Templeton Ultra Mag meter for flow measurement. We have assumed three air release valves will be required. Our price is contingent on the existing unused force main being found and passing a pressure test. We have not included any electrical or SCADA costs for the mag meter if they are required. Our price does not include any modifications to the Industrial Park Lift Station.

Item #	Item Description	Estimated Quantity	Unit	Unit Price	Total Price
McEver Road					
01	Mobilization	1.00	LS	$50,000.00	$50,000.00
02	Locate/Test Integrity Of Exist. Force Main	5.00	DY	$3,500.00	$17,500.00
03	Clearing	500.00	LF	$18.00	$9,000.00
04	Connect To Exist. Force Main	3.00	EACH	$13,250.00	$39,750.00
05	Connect To Exist. Manhole	1.00	EACH	$6,500.00	$6,500.00
06	8" Force Main	10,200.00	LF	$96.00	$979,200.00
07	Ductile Iron Fittings	1,426.00	LB	$27.00	$38,502.00
08	8" Plug Valve	1.00	EACH	$14,450.00	$14,450.00
09	Air Release Valve Ass'y	3.00	EACH	$9,000.00	$27,000.00
10	Flow Meter Ass'y	1.00	EACH	$20,000.00	$20,000.00
11	16" Jack & Bore Steel Casing	390.00	LF	$450.00	$175,500.00
12	R/R Asphalt Driveway	125.00	LF	$82.00	$10,250.00
13	R/R Concrete Curb & Gutter	90.00	LF	$38.00	$3,420.00
14	R/R Concrete Driveway	465.00	LF	$70.00	$32,550.00
15	R/R Gravel Drive	75.00	LF	$20.00	$1,500.00
16	Traffic Control	1.00	LS	$60,000.00	$60,000.00
17	Type "S" Silt Fence	10,500.00	LF	$4.50	$47,250.00
18	Check Dams	60.00	EACH	$700.00	$42,000.00
19	Erosion Control Matting	2,900.00	SY	$1.60	$4,640.00
20	Permanent Grassing	5.00	ACRE	$2,100.00	$10,500.00
21	Sod Replacement	5,850.00	SY	$11.75	$68,737.50
		Total Price for McEver Road Items:			**$1,658,249.50**
Falcon Parkway					
01	Mobilization	1.00	LS	$14,000.00	$14,000.00
02	Clearing	850.00	LF	$9.00	$7,650.00
03	Connect To Exist. Force Main	2.00	EACH	$7,100.00	$14,200.00
04	8" Force Main	2,100.00	LF	$95.00	$199,500.00
05	Ductile Iron Fittings	276.00	LB	$27.00	$7,452.00
06	8" Plug Valve	4.00	EACH	$14,450.00	$57,800.00
07	16" Jack & Bore Steel Casing	240.00	LF	$450.00	$108,000.00
		Total Price for Falcon Parkway Items:			**$408,602.00**
		Total Bid Price:		**$2,066,851.50**	

Let me know if you have any questions or require any additional information.

Sincerely,
Legacy Water Group, LLC

Jeffrey R. Klebowski
Executive Vice President

ESG ENGINEERING

ESG Engineering
6400 Peake Rd
Macon, GA 31210
(P) 478-474-5025
www.esgengineering.com

SEWER SYSTEM CONNECTION FROM FLOWERY BRANCH TO GAINESVILLE

PREPARED FOR THE

Flowery Branch

CONTRACT DOCUMENTS

CONTRACT DOCUMENTS

Sewer System Connection from Flowery Branch to Gainesville

FOR THE

CITY OF FLOWERY BRANCH

ESG ENGINEERING

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SECTION 00210
Immigration and Security Form

IMMIGRATION AND SECURITY FORM

THE SUCCESSFUL BIDDER MUST PROVIDE THE OWNER WITH THE PROPERLY COMPLETED AND PROPERLY SIGNED IMMIGRATION AND SECURITY FORMS AS REQUIRED BY GEORGIA SENATE BILL 529 "GEORGIA SECURITY AND IMMIGRATION COMPLIANCE ACT OF 2006" O.C.G.A. § 13-10-90 AND § 13-10-91

THIS FORM MUST BE COMPLETED BY ALL CONTRACTORS AND SUBCONTRACTORS

THE FORM ATTACHED HERETO.

IMMIGRATION AND SECURITY FORM

A. In order to insure compliance with the Immigration Reform and Control Act of 1986 (IRCA), Pub.L. 99-603 and the Georgia Security and Immigration Compliance Act O.C.G.A. § 13-10-90 et. seq., Contractor must initial one of the sections below:

_____ Contractor has 500 or more employees and Contractor warrants that Contractor has complied with the Immigration Reform and Control Act of 1986 (IRCA) Pub.L. 99-603 and the Georgia Security and Immigration Compliance Act by registering at https://www.vis-dhs.com/EmployerRegistration and verifying information of all new employees; and by executing any affidavits required by the rules and regulation issued by the Georgia Department of Labor set forth at Rule 300-10-1-.01 et. seq.

_____ Contractor has 100-499 employees and Contractor warrants that no later than July 1, 2008, Contractor will register at https://www.vis-dhs.com/EmployerRegistration to verify information of all new employees in order to comply with the Immigration Reform and Control Act of 1986 (IRCA) Pub.L. 99-603 and the Georgia Security and Immigration Compliance Act; and by executing any affidavits required by the rules and regulation issued by the Georgia Department of Labor set forth at Rule 300-10-1-.01 et. seq.

_____ Contractor has 99 or fewer employees and Contractor warrants that no later than July 1, 2009, Contractor will register at https://www.vis-dhs.com/EmployerRegistration to verify information of all new employees in order to comply with the Immigration Reform and Control Act of 1986 (IRCA) Pub.L. 99-603 and the Georgia Security and Immigration Compliance Act; and by executing any affidavits required by the rules and regulation issued by the Georgia Department of Labor set forth at Rule 300-10-1-.01 et. seq.

B. Contractor warrants that Contractor has included a similar provision in all written agreements with any subcontractors engaged to perform services under its Contract(s) with the City of Flowery Branch.

_____ _____

Signature Title

Firm Name:

_____

Street/Mailing Address:

_____

City, State, Zip Code:

_____

Telephone Number:

_____

Email Address:

CONTRACTOR AFFIDAVIT AND AGREEMENT

By executing this affidavit, the undersigned contractor verifies its compliance with O.C.G.A. 13-10-91, stating affirmatively that the individual, firm, or corporation which is contracting with City of Flowery Branch 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 Act of 1986 (IRCA), P.L. 99-603], in accordance with the applicability provisions and deadlines established in O.C.G.A. 13-10-91.

The undersigned further agrees that, should it employ or contract with any subcontractor(s) in connection with the physical performance of services pursuant to this contract with City of Flowery Branch, 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 City of Flowery Branch at the time the subcontractor(s) is retained to perform such service.

_____
EEV / Basic Pilot Program* User Identification Number

_____
BY: Authorized Officer or Agent
(Contractor Name)

_____
Title of Authorized Officer or Agent of Contractor

_____
Printed Name of Authorized Officer or Agent of Contractor

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)

(End of Form)

SUBCONTRACTOR AFFIDAVIT

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 engaged in the physical performance of services under a contract with City of Flowery Branch 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 Act of 1986 (IRCA), P.L. 99-603], in accordance with the applicability provisions and deadlines established in O.C.G.A. 13-10-91.

_____
EEV / Basic Pilot Program* User Identification Number

_____
BY: Authorized Officer or Agent
(Contractor Name)

_____
Title of Authorized Officer or Agent of Contractor

_____
Printed Name of Authorized Officer or Agent of Contractor

SUBSCRIBED AND SWORN
BEFORE ME ON THIS THE
_____ DAY OF _____, 200___

_____
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)

(End of Form)

END OF SECTION

SECTION 00480
CERTIFICATION OF NONSEGREGATED FACILITIES

(To be completed and submitted with Bid)

Bidder certifies that he does not maintain or provide for his employees any segregated facilities at any of his establishments, and that he does not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. The Bidder agrees that a breach of this certification will be a violation of the Equal Opportunity clause in any contract resulting from acceptance of this bid. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, timeclocks, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin, because of habit, local custom, or otherwise. The Bidder agrees that (except where he has obtained identical certification from proposed subcontractors for specific time periods) he will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding $10,000 which are not exempt from the provisions of the Equal Opportunity clause, and that he will retain such certification in his files.

Note: The penalty for making false statements in offers is prescribed in 18 U.S.C. & 1001.

Date _____, 20___ _____
(Name of Bidder)

Official Address

_____

_____

BY:_____

TITLE:_____

SECTION 00410
BID FORM

PROJECT IDENTIFICATION:
Sewer System Connection from Flowery Branch to Gainesville

CONTRACT IDENTIFICATION AND NUMBER:
F0002.004

THIS BID IS SUBMITTED TO:
City of Flowery Branch
5410 Pine Street
Flowery Branch, GA 30542

THIS BID IS SUBMITTED FROM:

Bidder: Legacy Water Group, LLC

Address: 10130 Bob Williams Parkway

Covington, GA 30014

Phone: (678) 712-2132

State of Georgia Utility Contractor's License No.: UC302290

1. The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into an agreement with Owner in the form included in the Contract Documents to perform and furnish all Work as specified or indicated in the Contract Documents for the Contract Price and within the Contract Time indicated in this Bid and in accordance with the other terms and conditions of the Contract Documents.

2. Bidder will sign and submit the Agreement with the Bonds and other documents required by the Bidding Requirements within fifteen days after the date of Owner's Notice of Award.

3. In submitting this Bid, Bidder represents, as more fully set forth in the Agreement, that:

   (a) Bidder has familiarized itself with the nature and extent of the Contract Documents, Work, site, locality, and all local conditions and Laws and Regulations that in any manner may affect cost, progress, performance or furnishing of the

Work.

(b) Bidder has studied carefully all reports and drawings of subsurface conditions and drawings of physical conditions which are identified in the Supplementary Conditions as provided in paragraph 4.2 of the General Conditions, and accepts the determination set forth in paragraph 4.2.1 of the Supplementary Conditions of the extent of the technical data contained in such reports and drawings upon which Bidder is entitled to rely.

(c) Bidder has obtained and carefully studied (or assumes responsibility for obtaining and carefully studying) all such examinations, investigations, explorations, tests and studies (in addition to or to supplement those referred to in (c) above) which pertain to the subsurface or physical conditions at the site or otherwise may affect the cost, progress, performance or furnishing of the Work as Bidder considers necessary for the performance or furnishing of the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of paragraph 4.2 of the General Conditions; and no additional examinations, investigations, explorations, tests, reports or similar information or data are or will be required by Bidder for such purposes.

(d) Bidder has reviewed and checked all information and data shown or indicated on the Contract Documents with respect to existing Underground Facilities at or contiguous to the site and assumes responsibility for the accurate location of said Underground Facilities. No additional examinations, investigations, explorations, tests, reports or similar information or data in respect of said Underground Facilities are or will be required by Bidder in order to perform and furnish the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of paragraph 4.3 of the General Conditions.

(e) Bidder has correlated the results of all such observations, examinations, investigations, explorations, tests, reports and studies with the terms and conditions of the Contract Documents. Bidder has given Engineer written notice of all conflicts, errors or discrepancies that it has discovered in the Contract Documents and the written resolution thereof by Engineer is acceptable to Bidder.

(f) This Bid is genuine and not made in the interest of or on behalf of any undisclosed person, firm or corporation and is not submitted in conformity with an agreement or rules of any group, association, organization or corporation; Bidder has not directly or indirectly induced or solicited any other corporation to refrain from bidding; and Bidder has not sought by collusion to obtain for itself any advantage over any other Bidder or over Owner.

(g) Bidder agrees to commence work under this Agreement on or before a date to be specified in a written "Notice to Proceed" of the Owner.

Bidder accepts the provisions of the Agreement as to liquidated damages in the event of failure to complete the Work on time.

4. Bidder will complete the Work in accordance with the Contract Documents for the following price(s):

(a) BASE BID:

Item #	Item Description	Estimated Quantity	Unit	Unit Price	Total Price
McEver Road					
01	Mobilization	1.00	LS	$50,000.00	$50,000.00
02	Locate/Test Integrity Of Exist. Force Main	5.00	DY	$3,500.00	$17,500.00
03	Clearing	500.00	LF	$18.00	$9,000.00
04	Connect To Exist. Force Main	3.00	EACH	$13,250.00	$39,750.00
05	Connect To Exist. Manhole	1.00	EACH	$6,500.00	$6,500.00
06	8" Force Main	10,200.00	LF	$96.00	$979,200.00
07	Ductile Iron Fittings	1,426.00	LB	$27.00	$38,502.00
08	8" Plug Valve	1.00	EACH	$14,450.00	$14,450.00
09	Air Release Valve Ass'y	3.00	EACH	$9,000.00	$27,000.00
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13	R/R Concrete Curb & Gutter	90.00	LF	$38.00	$3,420.00
14	R/R Concrete Driveway	465.00	LF	$70.00	$32,550.00
15	R/R Gravel Drive	75.00	LF	$20.00	$1,500.00
16	Traffic Control	1.00	LS	$60,000.00	$60,000.00
17	Type "S" Silt Fence	10,500.00	LF	$4.50	$47,250.00
18	Check Dams	60.00	EACH	$700.00	$42,000.00
19	Erosion Control Matting	2,900.00	SY	$1.60	$4,640.00
20	Permanent Grassing	5.00	ACRE	$2,100.00	$10,500.00
21	Sod Replacement	5,850.00	SY	$11.75	$68,737.50
				Total Price for McEver Road Items:	**$1,658,249.50**

Falcon Parkway					
01	Mobilization	1.00	LS	$14,000.00	$14,000.00
02	Clearing	850.00	LF	$9.00	$7,650.00
03	Connect To Exist. Force Main	2.00	EACH	$7,100.00	$14,200.00
04	8" Force Main	2,100.00	LF	$95.00	$199,500.00
05	Ductile Iron Fittings	276.00	LB	$27.00	$7,452.00
06	8" Plug Valve	4.00	EACH	$14,450.00	$57,800.00
07	16" Jack & Bore Steel Casing	240.00	LF	$450.00	$108,000.00
				Total Price for Falcon Parkway Items:	**$408,602.00**

Total Bid Price:	**2,066,851.50**

5. Bidder agrees that the Work will be substantially complete and ready for final payment in accordance with paragraph 14.13 of the General Conditions within 180 calendar days after the date when the Contract Times commence to run.

6. Bidder accepts the provisions of the Agreement as to liquidated damages in the event of failure to complete the Work within the times specified in the Agreement.

7. The undersigned further agrees that in case of failure on his part to execute the said contract and the Bond within fifteen (15) consecutive calendar days after written notice being given of the award of the contract, the check or bid bond accompanying this bid, and the monies payable thereon shall be paid into the funds of the Owner as liquidated damages for such failure, otherwise, the check or bid bond accompanying this proposal shall be returned to the undersigned.

8. Communications concerning this Bid shall be addressed to:
   ESG Engineering, Inc
   6400 Peake Rd
   Macon, GA 31210
   Attn: Margaret Hildebrand
   mhildebrand@esgengineering.com

Terms used in this Bid which are defined in the General Conditions or Instructions to Bidders will have the meanings indicated in the General Conditions of Instructions.

SUBMITTED on January 27, 2023.

BIDDER: Legacy Water Group, LLC

BY: _____

TITLE: Executive Vice President

STATE CONTRACTOR
LICENSE NO. UC302290

ADDRESS: 10130 Bob Williams Parkway

Covington, GA 30014

PHONE: (678) 712-2132

Seal: (if bid by a Corporation)

END OF SECTION

SECTION 00500
AGREEMENT

THIS AGREEMENT is dated as of the ___ day of _____ in the year 20___, by and between the City of Flowery Branch (hereinafter called OWNER) and Legacy Water Group, LLC (hereinafter called CONTRACTOR).

OWNER and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

Article 1. WORK.

CONTRACTOR shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

Part 1: Locate an existing force main along McEver Road and test the integrity of the pipe; connect to an existing force main along Mud Creek and install isolation plug valves in precast manholes; install a mag meter to measure the flows that will be sent to the City of Gainesville; make connections to the existing force main after it is located and tested; continue installation of a new 8" force main along the east side McEver Road and the north side of Flat Creek to a manhole connection at Flat Creek Road and Oakwood Road; testing and restoration.

Part 2: Connect to an existing force main and install isolation plug valves in precast manholes near Falcon Parkway and Cantrell Road; install new 8" force main from Cantrell Road to City of Flowery Branch property west of Thurman Tanner Parkway; connect to existing force main on City of Flowey Branch Property.

Article 2. ENGINEER.

The Project has been designed by **ESG Engineering** who is hereinafter called ENGINEER and who is to act as OWNER's representative, assume all duties and responsibilities and have the rights and authority assigned to ENGINEER in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

Article 3. CONTRACT TIME.

3.1. CONTRACTOR agrees to commence Work under this Agreement on or before a date to be specified on a written "Notice to Proceed" of the OWNER and to fully complete

the Work within 180 consecutive calendar days from the "Notice to Proceed" date.

3.2. Liquidated Damages. OWNER and CONTRACTOR recognize that time is of the essence of this Agreement and that OWNER will suffer financial loss if the Work is not completed within the times specified in paragraph 3.1 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. They also recognize the delays, expense and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by OWNER if the Work is not completed on time. Accordingly, instead of requiring any such proof, OWNER and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty) CONTRACTOR shall pay OWNER Five Hundred Dollars ($500.00) for each day that expires after the time specified in paragraph 3.1.

Article 4. CONTRACT PRICE.

OWNER shall pay CONTRACTOR for completion of the Work in accordance with the Contract Documents in current as follows:

Two Million Sixty Six Thousand Eight Hundred Fifty One and 50/100 Dollars
($2,066,851.50)

Article 5. PAYMENT PROCEDURES.

CONTRACTOR shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by ENGINEER as provided in the General Conditions.

5.1 Progress Payments; Retainage. OWNER shall make progress payments on account of the Contract Price on the basis of CONTRACTOR'S Applications for Payment as recommended by ENGINEER, on or about the 25th day of each month during performance of the Work as provided in paragraphs 5.1.1, 5.1.1.2 and 5.2 below. All such payments will be measured by the schedule of values established in paragraph 14.1 of the General Conditions.

5.1.1 For Cost of Work: Progress payments on account of the Cost of the Work will be made:

5.1.1.1 Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below, but, in each case, less the aggregate of payments previously made and less such amounts as ENGINEER shall determine, or OWNER may withhold, including but not limited to liquidated damages, in accordance with

paragraph 14.2 of the General Conditions.

90% of the work completed (with balance being retainage). If Work has been 50% completed as determined by ENGINEER, and if the character and progress of the Work have been satisfactory to OWNER and ENGINEER, OWNER, on recommendation of ENGINEER, may determine that as long as the character and progress of the Work remain satisfactory to them, there will be no additional retainage on account of Work completed, in which case the remaining progress payments prior to Substantial Completion will be in an amount equal to 100% of the Work completed.

90% of the Cost of the Work (with the Balance being retainage) applicable to materials and equipment not incorporated in the Work (but delivered, suitably stored and accompanied by documentation satisfactory to OWNER as provided in paragraph 14.2 of the General Conditions).

5.1.1.2 Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to 100 percent of the Work completed, less 200 percent of the Market value of the Work remaining and less such amounts as Engineer shall determine in accordance with Paragraph 14.7 of the General Conditions.

5.2 Final Payment. Upon final completion and acceptance of the Work in accordance with paragraph 14.7 of the General Conditions, OWNER shall pay the remainder of the Contract Price as recommended by ENGINEER as provided in said paragraph 14.13.

Article 6. CONTRACTOR'S REPRESENTATIONS.

In order in induce OWNER to enter into this Agreement CONTRACTOR makes the following representations:

6.1 CONTRACTOR has familiarized itself with the nature and extent of the Contract Documents, Work, site, locality, and all local conditions and Laws and Regulations that in any manner may affect cost, progress, performance or furnishing of the Work.

6.2 CONTRACTOR has studied carefully all reports of explorations and tests of subsurface conditions and drawings of physical conditions which are identified in the Supplementary Conditions as provided in paragraph 4.2 of the General Conditions, and accepts the determination set forth in paragraph 5 of the

Supplementary Conditions of the extent of the technical data contained in such reports and drawings upon which CONTRACTOR is entitled to reply.

6.3 CONTRACTOR has obtained and carefully studied (or assumes responsibility for obtaining and carefully studying) all such examinations, investigations, explorations, tests, reports and studies (in addition to or to supplement those referred to in paragraph 6.2 above) which pertain to the subsurface or physical conditions at or contiguous to the site or otherwise may affect the cost, progress, performance or furnishing of the Work as CONTRACTOR considers necessary for the performance or furnishing of the Work at the Contract Price, within the Contract Time and in accordance of paragraph 4.2 of the General Conditions; and no additional examinations, investigations, explorations, tests, reports, studies or similar information or data are or will be required by CONTRACTOR for such purposes.

6.4 CONTRACTOR has reviewed and checked all information and data shown or indicated on the Contract Documents with respect to existing Underground Facilities at or contiguous to the site and assumes responsibility for the accurate location of said Underground Facilities. No additional examinations, investigations, explorations, tests, reports, studies or similar information or data in respect of said Underground Facilities are or will be required by CONTRACTOR in order to perform and furnish the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of paragraph 4.3 of the General Conditions.

6.5 CONTRACTOR has correlated the results of all such observations, examinations, investigations, explorations, tests, reports and studies with the terms and conditions of the Contract Documents.

6.6 CONTRACTOR has given ENGINEER written notice of all conflicts, errors or discrepancies that he has discovered in the Contract Documents and the written resolution thereof by ENGINEER is acceptable to CONTRACTOR.

Article 7. CONTRACT DOCUMENTS.

7.1 This Agreement

7.2 Exhibits to this Agreement

7.3 Performance and other Bonds

7.4 Notice of Award

7.5 General Conditions

7.6 Supplementary Conditions

7.11 CONTRACTOR's Bid

7.12 Documentation submitted by or to CONTRACTOR prior to Notice of Award.

7.13 The following which may be delivered or issued after the Effective Date of the Agreement and are not attached hereto: All Written Amendments and other documents amending, modifying, or supplementing the Contract Documents pursuant to paragraphs 3.4 and 3.5 of the General Conditions.

7.14 The documents listed in paragraphs 7.2 et seq. above are attached to this Agreement

(Except as expressly noted otherwise above).

There are no Contract Documents other than those listed above in this Article 7. The Contract Documents may only be amended, modified or supplemented as provided in paragraphs 3.4 and 3.5 of the General Conditions.

Article 8. MISCELLANEOUS

8.1 Terms used in this Agreement which are defined in Article 1 of the General Conditions will have the meanings indicated in the General Conditions.

8.2 No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically but without limitation moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

8.3 OWNER and CONTRACTOR each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect of all covenants, agreements and obligations contained in the Contract Documents.

8.4 Any provision or part of the Contract documents held void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall

continue to be valid and binding upon OWNER and CONTRACTOR, who agree that the Contract documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

Article 9. OTHER PROVISIONS.

IN WITNESS WHEREOF. OWNER and CONTRACTOR have signed this Agreement in four (4) counterparts. One counterpart each has been delivered to OWNER, CONTRACTOR and ENGINEER. All portions of the Contract Documents have been signed or identified by OWNER and CONTRACTOR or by ENGINEER on their behalf.

This Agreement will be effective on _____, 20___.

OWNER	CONTRACTOR
By _____	BY _____
[CORPORATE SEAL]	[CORPORATE SEAL]
Attest _____	Attest _____
Address for giving notices	Address for giving notices
City of Flowery Branch	Legacy Water Group, LLC
5410 Pine Street	10130 Bob Williams Pkwy
Flowery Branch, GA 30542	Covington, GA 30014
(If OWNER is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of Agreement)	(If CONTRACTOR is a corporation, attach evidence of authority to sign) License No._____

END OF SECTION

SECTION 00610
PERFORMANCE BOND

STATE OF GEORGIA

COUNTY OF HALL

KNOW ALL MEN BY THESE PRESENTS, that we, Legacy Water Group, LLC
10130 Bob Williams Parkway Covington, GA 30014
(Name and Address of Contractor)

as Principal (hereinafter known as "CONTRACTOR"), and we,_____,
(Name and Address of Surety)

as Surety, do hereby acknowledge ourselves indebted and firmly bound and held unto the City of Flowery Branch.
(Name of Owner)

for the use and benefit of those entitled thereto, in the sum of Two Million, Sixty-Six Thousand, Eight Hundred Fifty-One and 50/100 Dollars ($2,066,851.50)
for the payment of which well and truly to be made, in lawful money of the United States, we do hereby bind ourselves, successors, assigns, heirs, and personal representatives.

BUT THE CONDITION OF THE FOREGOING OBLIGATION OR BOND IS THIS:

WHEREAS, the OWNER has engaged the said CONTRACTOR for the sum of Two Million, Sixty-Six Thousand, Eight Hundred Fifty-One and 50/100 Dollars ($2,066,851.50)
(Contract Sum)

for the construction of: Sewer System Connection from Flowery Branch to Gainesville
(Name of Contract/Project)

as more fully appears in a written Agreement bearing the date of _____, 20_____, a copy of which Agreement is by reference hereby made a part hereof.

NOW, THEREFORE, if said Contractor shall fully and faithfully perform all the undertakings and obligations under the said agreement or contract hereinbefore referred to and shall fully indemnify and save harmless the said OWNER from all costs and damage whatsoever which it may

suffer by reason of any failure on the part of said CONTRACTOR to do so, and shall fully reimburse and repay the said default, and shall guarantee all products and workmanship against defects for a period of one year, then this obligation or bond shall be null and void, otherwise, it shall remain in full force and effect.

And for value received it is hereby stipulated and agreed that no change, extension of time, alteration or addition to the terms of the said Agreement or Contract or in the work to be performed there under, or the Specifications accompanying the same shall in any way affect the obligations under the obligation or bond, and notice is hereby waived of any such damage, extension of time, alteration or addition to the terms of the Agreement or Contract or to the work or to the Specifications.

This bond is given pursuant to and in accordance with the provisions of O.C.G.A. Section 36-91-40 et seq and 36-91-70 et seq and all the provisions of the law referring to this character of bond as set forth in said sections or as may be hereinafter enacted and these are hereby made a part hereof to the same extent as if set out herein in full.

IN WITNESS WHEREOF, the said CONTRACTOR has hereunder affixed its signature and said Surety has hereunto caused to be affixed its corporate signature and seal, by its duly authorized officers, on this ___ day of _____, 20____. Executed in 3 counterparts.

SECTION IS CONTINUED ON PAGE 3

CONTRACTOR: Legacy Water Group, LLC

Signed and sealed in the presence of:

By: _____

1._____ Title: _____

2._____ (SEAL)

SURETY: _____

Signed and sealed in the presence of:

By: _____

1. _____ Title: _____

2. _____ (SEAL)

NOTE:

1. Date of bond must not be prior to date of contract. If CONTRACTOR is a PARTNERSHIP, all partners should execute bond.

2. Surety companies executing bonds must appear on the Treasure Department's most current list (circular 570 as amended) and be authorized to transact business in the state where the PROJECT is located.

END OF SECTION

SECTION 00615
PAYMENT BOND

STATE OF GEORGIA

COUNTY OF HALL

KNOW ALL MEN BY THESE PRESENTS, that we, Legacy Water Group, LLC
10130 Bob Williams Parkway Covington, GA 30014
(Name and Address of Contractor)

as Principal (hereinafter known as "CONTRACTOR"), and we,_____
_____,
(Name and Address of Surety)

as Surety, do hereby acknowledge ourselves indebted and firmly bound and held unto the City of Flowery Branch.
(Name of Owner)

for the use and benefit of those entitled thereto, in the sum of Two Million, Sixty-Six Thousand, Eight Hundred Fifty-One and 50/100 Dollars ($2,066,851.50)
(Contract Sum)
for the payment of which well and truly to be made, in lawful money of the United States, we do hereby bind ourselves, successors, assigns, heirs, and personal representatives.

BUT THE CONDITION OF THE FOREGOING OBLIGATION OR BOND IS THIS:

WHEREAS, the OWNER has engaged the said CONTRACTOR for the sum of
Two Million, Sixty-Six Thousand, Eight Hundred Fifty-One and 50/100 Dollars ($2,066,851.50)
(Contract Sum)

for the construction of: Sewer System Connection from Flowery Branch to Gainesville
(Name of Contract/Project)

as more fully appears in a written Agreement bearing the date of _____,
20_____, a copy of which Agreement is by reference hereby made a part hereof.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if said CONTRACTOR and all subcontractors to whom any portion of the work provided for in said Contract is sublet and all assignees of said Contractor and of such subcontractors shall promptly make payments to all persons supplying him or them with labor, products, services, or supplies for or in the prosecution of the work provided for in such Contract, or in any amendment or extension of or addition to said Contract, and for the payment of reasonable attorney's fees, incurred by the claimants in suits on this bond, then the above obligation shall be void; otherwise, it shall remain if full force and effect.

HOWEVER, this bond is subject to the following conditions and limitations:

(a) Any person, firm or corporation that has furnished labor, products, or supplies for or in the prosecution of the work provided for in said Contract shall have a direct right of action against the CONTRACTOR and Surety on this bond, which right of action shall be asserted in a proceeding, instituted in the County in which the work provided for in said Contract is to be performed or in any county in which Contractor or Surety does business. Such right of action shall be asserted in proceedings instituted in the name of the claimant or claimants for his or their use and benefit against said CONTRACTOR or Surety or either of them (but not later than one year after the final settlement or said Contract) in which action such claim or claims shall be adjudicated and judgment rendered thereon.

(b) The Principal and Surety hereby designate and appoint the _____, as the agent of each them to receive and accept service of process or other pleading issued or filed in any proceeding instituted on this bond and hereby consent that such service shall be the same as personal service on the CONTRACTOR and/or Surety.

(c) In no event shall the Surety be liable for a greater sum than the penalty of this bond, or subject to any suit, action or preceding thereon that is instituted later than one year after the final settlement of said Contract.

(d) This bond is given pursuant to and in accordance with provisions of O.C.G.A. Section 36-91-40 et seq and 36-91-90 et seq and all the provisions of law referring to this character of bond as set forth in said sections or as may be hereinafter enacted, and these are hereby made a part hereof to the same extent as if set out herein in full.

IN WITNESS WHEREOF, the said CONTRACTOR has hereunder affixed its signature and said Surety has hereunto caused to be affixed its corporate signature and seal, by its duly authorized officers, on this __ day of _____, 20_____. Executed in 3 counterparts.

CONTRACTOR: _Legacy Water Group, LLC__

Signed and sealed in the presence of:

By: _____

1._____ Title: _____

2._____ (SEAL)

SURETY: _____

Signed and sealed in the presence of:

By: _____

1. _____ Title: _____

2. _____ (SEAL)

NOTE:

1. Date of bond must not be prior to date of contract. If CONTRACTOR is a PARTNERSHIP, all partners should execute bond.

2. Surety companies executing bonds must appear on the Treasure Department's most current list (circular 570 as amended) and be authorized to transact business in the state where the PROJECT is located.

END OF SECTION

SECTION 00621
NOTICE OF AWARD

PROJECT DESCRIPTION:

Sewer System Connection from Flowery Branch to Gainesville

The OWNER has considered the BID submitted by you for the above described WORK

You are hereby notified that your BID has been accepted for items in the amount of Two Million, Sixty-Six Thousand Eight Hundred Fifty-One and 50/100 Dollars ($2,066,851.50).

You are required by the Instructions to Bidders to execute the Agreement and furnish the required CONTRACTOR's Performance BOND, Payment BOND and Certificates of Insurance with fifteen (15) calendar days from the date of the Notice to you.

If you fail to execute said Agreement and to furnish said BONDS within fifteen (15) days from the date of this notice, said OWNER will be entitled to consider all your rights arising out of the OWNER'S acceptance of your BID as abandoned and as a forfeiture of your BID BOND. The OWNER will be entitled to such other rights as may be granted by law.

You are required to return an acknowledged copy of this NOTICE of AWARD to the OWNER.

Dated this _____ day of _____, 20___.

City of Flowery Branch
OWNER

By: _____

Title: _____

ACCEPTANCE OF NOTICE

Receipt of the above NOTICE OF AWARD is hereby acknowledged by Legacy Water Group, LLC this ____ day of _____, 20____.
(Contractor)

By: _____
Title: _____

SECTION 00622
NOTICE TO PROCEED

To: Legacy Water Group Date: _____

Project: Sewer System Connection from Flowery Branch to Gainesville

You are hereby notified to commence WORK in accordance with the Agreement dated _____ , on or before _____, and you are to complete the WORK within 180 consecutive calendar days thereafter. The date of completion of all WORK is therefore _____.

City of Flowery Branch

OWNER

By _____

Title:_____

ACCEPTANCE OF NOTICE

Receipt of the above NOTICE
TO PROCEED is hereby
acknowledged by

Legacy Water Group, LLC ,

this the _____ day of _____, 20___

By _____

Title _____

SECTION 00700
GENERAL CONDITIONS

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SECTION 00700
GENERAL CONDITIONS

ARTICLE 1 - DEFINITIONS

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

Addenda - Written or graphic instruments issued prior to the opening of Bids which clarify, correct or change the bidding documents or the Contract Documents.

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

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

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

Bonds - Bid, performance and payment bonds and other instruments of security.

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

Contract Documents - The Agreement, Addenda (which pertain to the Contract Documents), CONTRACTOR'S Bid (including documentation accompanying the Bid and any post-Bid documentation submitted prior to the Notice of Award) when attached as an exhibit to the Agreement, the Bonds, these General Conditions, the Supplementary Conditions, the Specifications and the Drawings as the same are more specifically identified in the Agreement, together with all amendments, modifications and supplements issued pursuant to paragraphs 3.4 and 3.5 on or after the Effective Date of the Agreement.

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

Contract Time - The number of days (computed as provided in paragraph 17.2) or the date stated in the Agreement for the completion of the Work.

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

Defective - An adjective which when modifying the word Work refers to Work that is unsatisfactory, faulty or deficient, or does not conform to the Contract Documents, or does not meet the requirements of any inspection, reference standard, test or approval referred to in the Contract Documents, or has been damaged prior to ENGINEER's recommendation of final payment (unless responsibility for the protection thereof has been assumed by OWNER at Substantial Completion in accordance with paragraph 14.8 or 14.10).

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

Effective Date of the Agreement - The date indicated in the Agreement on which it becomes effective, but if no such date is indicated it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.

ENGINEER - The person, firm or corporation named as such in the Agreement.

Field Order - A written order issued by ENGINEER which orders minor changes in the Work in accordance with paragraph 9.5 but which does not involve a change in the Contract Price or the Contract Time.

General Requirements - Sections of Division 1 of the Specifications.

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

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

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

OWNER - The public body or authority, corporation, association, firm or person with whom CONTRACTOR has entered into the Agreement and for whom the Work is to be provided.

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

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

Resident Project Representative - The authorized representative of ENGINEER who is assigned to the site or any part thereof.

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

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

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

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

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

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

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

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

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

Work Directive Change - A written directive to CONTRACTOR, issued on or after the Effective Date of the Agreement and signed by OWNER and recommended by ENGINEER, ordering and addition, deletion or revision in the Work, or responding to differing or unforeseen physical conditions under which the Work is to be performed as provided in paragraph 4.2 or 4.3 or to emergencies under paragraph 6.22. A Work Directive Change may not change the Contract Price or the Contract Time, but is evidence that the parties expect that the change directed or documented by a Work Directive Change will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Time as provided in paragraph 10.2.

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

ARTICLE 2 - PRELIMINARY MATTERS

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Delivery of Bonds:

2.1 When CONTRACTOR delivers the executed Agreements to OWNER, CONTRACTOR shall also deliver to OWNER such Bonds as CONTRACTOR may be required to furnish in accordance with paragraph 5.1.

Copies of Documents:

2.2 OWNER shall furnish to CONTRACTOR up to ten copies (unless otherwise specified in the Supplementary Conditions) of the Contract Documents as are reasonably necessary for the execution of the Work. Additional Copies will be furnished, upon request, at the cost of reproduction.

Commencement of Contract Time; Notice to Proceed:

2.3 The Contract Time will commence to run on the thirtieth day after the Effective Date of the Agreement, or, if a Notice to Proceed is given, on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within thirty days after the Effective Date of the Agreement. In no event will the Contract Time commence to run later than the seventy-fifth day after the day of Bid opening or the thirtieth day after the Effective Date of the Agreement, whichever date is earlier.

Starting the Project:

2.4 CONTRACTOR shall start to perform the Work on the date when the Contract Time commences to run, but no Work shall be done at the site prior to the date on which the Contract Time commences to run.

Before Starting Construction:

2.5 Before undertaking each part of the Work, CONTRACTOR shall carefully study and compare the Contract Documents and check and verify pertinent figures shown thereon and all applicable field measurements. CONTRACTOR shall promptly report in writing to ENGINEER any conflict, error or discrepancy which CONTRACTOR may discover and shall obtain a written interpretation or clarification from ENGINEER before proceeding with any Work affected thereby; however, CONTRACTOR shall not be liable to OWNER or ENGINEER for failure to report any conflict, error or discrepancy in the Contract Documents, unless CONTRACTOR had actual knowledge thereof or should reasonably have known thereof.

2.6 Within ten days after the Effective Date of the Agreement (unless otherwise specified in the General Requirements), CONTRACTOR shall submit to ENGINEER for review:

2.6.1 a preliminary Progress Schedule;

2.6.2 a preliminary Schedule of Submittals; and

2.6.3 a preliminary Schedule of Values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

2.7 Before any Work at the site is started, CONTRACTOR shall deliver to OWNER, with a copy to ENGINEER, certificates (and other evidence of insurance requested by OWNER) which CONTRACTOR is required to purchase and maintain in accordance with paragraphs 5.3 and 5.4.,

and OWNER shall deliver to CONTRACTOR certificates (and other evidence of insurance requested by CONTRACTOR) which OWNER is required to purchase and maintain in accordance with paragraphs 5.6 and 5.7.

Preconstruction Conference:

Initial Acceptance of Schedules:

2.8 At least 10 days before submission of the first Application for Payment a conference attended by Contractor, Engineer, and others as appropriate will be held to review for acceptability to Engineer as provided below the schedules submitted in accordance with Paragraph 2.6. Contractor shall have an additional 10 days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to Contractor until acceptable schedules are submitted to Engineer.

2.8.1 The Progress Schedule will be acceptable to Engineer if it provides an orderly progression of the Work to completion within the Contract Times. Such acceptance will not impose on Engineer responsibility for the Progress Schedule, for sequencing, scheduling, or progress of the Work nor interfere with or relieve Contractor from Contractor's full responsibility therefor.

2.8.2 Contractor's Schedule of Submittals will be acceptable to Engineer if it provides a workable arrangement for reviewing and processing the required submittals.

2.8.3 Contractor's Schedule of Values will be acceptable to Engineer as to form and substance if it provides a reasonable allocation of the Contract Price to component parts of the Work.

ARTICLE 3 - CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

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Intent:

3.1 The Contract Documents comprise the entire agreement between OWNER and CONTRACTOR concerning the Work. The Contract Documents are complementary; what is called for by one is as binding as if called for by all. The Contract Documents will be construed in accordance with the law of the place of the Project.

3.2 It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents. Any Work, materials or equipment that may reasonably be inferred from the Contract Documents as being required to produce the intended result will be supplied whether or not specifically called for. When words which have a well-known technical or trade meaning are used to describe Work, materials or equipment such words shall be interpreted in accordance with that meaning. Reference to standard specifications, manuals or codes of any technical society, organization or association, or to the Laws or Regulations of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard specification, manual, code or Laws or Regulations in effect at the time of opening of Bids (or, on the Effective Date of the Agreement if there were no Bids), except as may be otherwise specifically stated. However, no provision of

any referenced standard specification, manual or code (whether or not specifically incorporated by reference in the Contract Documents) shall be effective to change the duties and responsibilities of OWNER, CONTRACTOR or ENGINEER, or any of their consultants, agents or employees from those set forth in the Contract Documents, nor shall it be effective to assign to ENGINEER, or any of ENGINEER's consultants, agents or employees, any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of paragraph 9.15 or 9.16. Clarifications and interpretations of the Contract Documents shall be issued by ENGINEER as provided in paragraph 9.4.

3.3 If, during the performance of the Work, CONTRACTOR finds a conflict, error or discrepancy in the Contract Documents, CONTRACTOR shall so report to ENGINEER in writing at once and before proceeding with the Work affected thereby shall obtain a written interpretation or clarification from ENGINEER; however, CONTRACTOR shall not be liable to OWNER or ENGINEER for failure to report any conflict, error or discrepancy in the Contract Documents unless CONTRACTOR had actual knowledge thereof or should reasonable have known thereof.

Amending and Supplementing Contract Documents:

3.4 The Contract Documents may be amended to provide for additions, deletions and revisions in the Work or to modify the terms and conditions thereof in one or more of the following ways:

3.4.1 a formal Written Amendment,

3.4.2 a Change Order (pursuant to paragraph 10.4), or

3.4.3 a Work Directive Change (pursuant to paragraph 10.1).

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

3.5 In addition, the requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized, in one or more of the followings ways:

3.5.1 a Field Order (pursuant to paragraph 9.5),

3.5.2 ENGINEER's approval of a Shop Drawing or sample (pursuant to paragraphs 6.26 and 6.27), or

3.5.3 ENGINEER's written interpretation or clarification (pursuant to paragraph 9.4).

Reuse of Documents:

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

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

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Availability of Lands:

4.1 OWNER shall furnish, as indicated in the Contract Documents, the lands upon which the Work is to be performed, rights-of-way and easements for access thereto, and such other lands which are designated for the use of CONTRACTOR. Easements for permanent structures or permanent changes in existing facilities will be obtained and paid for by OWNER, unless otherwise provided in the Contract Documents. If CONTRACTOR believes that any delay in OWNER's furnishing these lands, rights-of-way or easements entitles CONTRACTOR to an extension of the Contract Time, CONTRACTOR may make a claim therefore as provided in Article 12. CONTRACTOR shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

Physical Conditions:

4.2.1 *Explorations and Reports:* Reference is made to the Supplementary Conditions for identification of those reports of explorations and tests of subsurface conditions at the site that have been utilized by ENGINEER in preparation of the Contract Documents. CONTRACTOR may rely upon the accuracy of the technical data contained in such reports, but not upon nontechnical data, interpretations or opinions contained therein or for the completeness thereof for CONTRACTOR's purposes. Except as indicated in the immediately preceding sentence and in paragraph 4.2.6, CONTRACTOR shall have full responsibility with respect to subsurface conditions at the site.

4.2.2 *Existing Structures:* Reference is made to the Supplementary Conditions for identification of those drawings of physical conditions in or relating to existing surface and subsurface structures (except Underground Facilities referred to in paragraph 4.3) which are at our contiguous to the site that have been utilized by ENGINEER in preparation of the Contract Documents. CONTRACTOR may rely upon the accuracy of the technical data contained in such drawings, but not for the completeness thereof for CONTRACTOR's purposes. Except as indicated in the immediately preceding sentence and in paragraph 4.2.6, CONTRACTOR shall have full responsibility with respect to physical conditions in or relating to such structures.

4.2.3 *Report of Differing Conditions:* If CONTRACTOR believes that:

4.2.3.1 any technical data on which CONTRACTOR is entitled to rely as provided in paragraphs 4.2.1 and 4.2.2 is inaccurate, or

4.2.3.2 any physical condition uncovered or revealed at the site differs materially from that indicated, reflected or referred to in the Contract Documents,

CONTRACTOR shall, promptly after becoming aware thereof and before performing any Work in connection therewith (except in an emergency as permitted by paragraph 6.22), notify OWNER and ENGINEER in writing about the inaccuracy or difference.

4.2.4 *ENGINEER's Review:* ENGINEER will promptly review the pertinent conditions, determine the necessity of obtaining additional explorations or tests with respect thereto and advise OWNER in Writing (with a copy to CONTRACTOR) of ENGINEER's findings and conclusions.

4.2.5 *Possible Document Change:* IF ENGINEER concludes that there is a material error in the Contract Documents or that because of newly discovered conditions a change in the Contract Documents is required, a Work Directive Change or a change Order will be issued as provided in Article 10 to reflect and document the consequences of the inaccuracy or difference.

4.2.6 *Possible Price and Time Adjustments:* In each such case, an increase or decrease in the Contract Price or an extension or shortening of the Contract Time, or any combination thereof, will be allowable to the extent that they are attributable to any such inaccuracy of difference. If OWNER and CONTRACTOR are unable to agree as to the amount or length thereof, a claim may be made therefore as provided in Articles 11 and 12.

Physical Conditions - Underground Facilities:

4.3.1 *Shown or Indicated:* The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the site is based on information and data furnished to OWNER or ENGINEER by the owners of such Underground Facilities or by others. Unless it is otherwise expressly provided in the Supplementary Conditions:

4.3.1.1 OWNER and ENGINEER shall not be responsible for the accuracy or completeness or any such information or data; and,

4.3.1.2 CONTRACTOR shall have full responsibility for reviewing and checking all such information and data, for locating all Underground Facilities shown or indicated in the Contract Documents, for coordination of the Work with the owners of such Underground Facilities during construction, for the safety and protection thereof as provided in paragraph 6.20 and repairing any damage thereto resulting from the Work, the cost of all of which will be considered as having been included in the Contract Price.

4.3.2 *Not Shown or Indicated.* If an Underground Facility is uncovered or revealed at or contiguous to the site which was not shown or indicated in the Contract Documents and which CONTRACTOR could not reasonably have been expected to be aware of, CONTRACTOR shall, promptly after becoming aware thereof and before performing any Work affected thereby (except in an emergency as permitted by paragraph 6.22), identify the owner of such Underground Facility and give written notice thereof to that owner and to OWNER and ENGINEER. ENGINEER will promptly review the Underground Facility to determine the extent to which the Contract Documents should be modified to reflect and document the consequences of the existence of the Underground Facility, and the Contract Documents will be amended or supplemented to the extent necessary. During such time, CONTRACTOR shall be responsible for the safety and protection of such Underground Facility as provided in paragraph 6.20. CONTRACTOR shall be

allowed an increase in the Contract Price or an extension of the Contract Time, or both, to the extent that they are attributable to the extent to the existence of any Underground Facility that was not shown or indicated in the Contract Documents and which CONTRACTOR could not reasonably have been expected to be aware of. If the parties are unable to agree as to the amount or length thereof, CONTRACTOR may make a claim therefore as provided in Articles 11 and 12.

Reference Points:

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

ARTICLE 5 - BONDS AND INSURANCE

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Performance and Other Bonds:

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

5.2 If the surety on any Bond furnished by CONTRACTOR is declared a bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of paragraph 5.1, CONTRACTOR shall within five days thereafter substitute another Bond and Surety, both of which must be acceptable to OWNER.

Contractor's Liability Insurance:

5.3 CONTRACTOR shall purchase and maintain such comprehensive general liability and other insurance as is appropriate for the Work being performed and furnished and as will provide protection from claims set forth below which may arise out of or result from CONTRACTOR's performance and furnishing of the Work and CONTRACTOR's other obligations under the Contract Documents, whether it is to be performed or

furnished by CONTRACTOR, by any Subcontractor, by anyone directly or indirectly employed by any of them to perform or furnish any of the Work, or by anyone for whose acts any of them may be liable.

5.3.1 Claims under workers' or workmen's compensation, disability benefits and other similar employee benefit acts;

5.3.2 Claims for damages because of bodily injury occupational sickness or disease, or death on CONTRACTOR's employees;

5.3.3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than CONTRACTOR's employees;

5.3.4 Claims for damages insured by personal injury liability coverage which are sustained (a) by any person as a result of an offense directly or indirectly related to the employment of such person by CONTRACTOR, or (b) by any other person for any other reason;

5.3.5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting there from;

5.3.6 Claims arising our of operation of Laws or Regulations for damages because of bodily injury or death of any person or for damage to property; and

5.3.7 Claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.

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

Contractual Liability Insurance:

5.4 The comprehensive general liability insurance required by paragraph 5.3 will include contractual liability insurance applicable to CONTRACTOR's obligations under paragraphs 6.30 and 6.31.

Owner's Liability Insurance:

5.5 OWNER shall be responsible for purchasing and maintaining OWNER's own

liability insurance and, at OWNER's option, may purchase and maintain such insurance as will protect OWNER against claims which may arise from operations under the Contract Documents.

Property Insurance:

5.6 Unless otherwise provided in the Supplementary Conditions, 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 the Supplementary Conditions or required by Laws and Regulations). This insurance shall include the interests of OWNER, CONTRACTOR, Subcontractors, ENGINEER and ENGINEER's consultants in the Work, all of whom shall be listed as insured or additional insured parties, shall insure against the perils of fire and extended coverage and shall include "all risk" insurance for physical loss and damage including theft, vandalism and malicious mischief, collapse and water damage, and such other perils as may be provided in the Supplementary Conditions, and shall include damages, losses and expenses arising out of or resulting from any insured loss or incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers, architects, attorneys and other professionals). If not covered under the "all risk" insurance or otherwise provided in the Supplementary Conditions, CONTRACTOR shall purchase and maintain similar property insurance on portions of the Work stored on and off the site or in transit when such portions of the Work are to be included in an Application for Payment.

5.7 OWNER shall purchase and maintain such boiler and machinery insurance or additional property insurance as may be required by the Supplementary Conditions or Laws and Regulations which will include the interests of OWNER, CONTRACTOR, Subcontractors, ENGINEER and ENGINEER's consultants in the Work, all of whom shall be listed as insured or additional insured parties.

5.8 All the policies of insurance (or the certificates or other evidence thereof) required to be purchased and maintained by CONTRACTOR in accordance with paragraphs 5.6 and 5.7 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least thirty days' prior written notice has been given to OWNER by certified mail and will contain waiver provisions in accordance with paragraph 5.11.2.

5.9 OWNER shall not be responsible for purchasing and maintaining any property insurance to protect the interests of CONTRACTOR, Subcontractors or others in the Work to the extent of any deductible amounts that are provided in the Supplementary Conditions. The risk of loss within the deductible amount, will be borne by CONTRACTOR, Subcontractor or others suffering any such loss and if any of them wishes property insurance coverage within the limits of such amounts, each may purchase and maintain it at the purchaser's own expense.

5.10 If OWNER requests in writing that other special insurance be included in the property insurance policy, CONTRACTOR shall, if possible, include such insurance, and the cost thereof will be charged to CONTRACTOR by appropriate Change Order or Written Amendment. Prior to commencement of the Work at the site, CONTRACTOR shall in writing advise OWNER

whether or not such other insurance has been procured by CONTRACTOR.

Waiver of Rights:

5.11.1 OWNER and CONTRACTOR waive all rights against each other for all losses and damages caused by any of the perils covered by the policies of insurance provided in response to paragraphs 5.6 and 5.7 and any other property insurance applicable to the Work, and also waive all such rights against the Subcontractors, ENGINEER, ENGINEER's consultants and all other parties names as insured in such policies for losses and damages so caused. As required by paragraph 6.11, each subcontract between CONTRACTOR and a Subcontractor will contain similar waiver provisions by the Subcontractor in favor of OWNER, CONTRACTOR, ENGINEER, ENGINEER's consultants and all other parties named as insured. None of the above waivers shall extend to the rights that any of the insured parties may have to the proceeds of insurance held by OWNER as trustee or otherwise payable under any policy so issued.

5.11.2 OWNER and CONTRACTOR intend that any policies provided in response to paragraphs 5.6 and 5.7 shall protect all of the parties insured and provide primary coverage for all losses and damages caused by the perils covered thereby. Accordingly, all such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurer will have no rights of recovery against any of the parties named as insureds or additional insureds, and if the insurers require separate waiver forms to be signed by ENGINEER or ENGINEER's consultant OWNER will obtain the same, and if such waiver forms are required of any Subcontractor, CONTRACTOR will obtain the same.

Receipt and Application of Proceeds:

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

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

Acceptance of Insurance:

5.14 If OWNER has any objection to the coverage afforded by or other provisions of the insurance required to be purchased and maintained by CONTRACTOR in accordance with paragraphs 5.3 and 5.4 on the basis of

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

Partial Utilization - Property Insurance:

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

ARTICLE 6 - CONTRACTOR'S RESPONSIBILITIES

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Supervision and Superintendence:

6.1 CONTRACTOR shall supervise and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. CONTRACTOR shall be solely responsible for the means, methods, techniques, sequences and procedures of construction, but CONTRACTOR shall not be responsible for the negligence of others in the design or selection of a specific means, method, technique, sequence or procedure of construction which is indicated in and required by the Contract Documents. CONTRACTOR shall be responsible to see that the finished Work complies accurately with the Contract Documents.

6.2 CONTRACTOR shall keep on the Work at all times during its progress a competent resident superintendent, who shall not be replaced without written notice to OWNER and ENGINEER except under extraordinary circumstances. The superintendent will be CONTRACTOR's representative at the site and shall have authority to act on behalf of CONTRACTOR. All communications given to the superintendent shall be as binding as if given to CONTRACTOR.

Labor, Materials and Equipment:

6.3 CONTRACTOR shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract

Documents. CONTRACTOR shall at all times maintain good discipline and order at the site. Except in connection with the safety or protection of persons or the Work or property at the site or adjacent thereto, and except as otherwise indicated in the Contract Documents, all Work at the site shall be performed during regular working hours, and CONTRACTOR will not permit overtime work or the performance of Work on Saturday, Sunday or any legal holiday without OWNER's written consent give after prior written notice to ENGINEER.

6.4 Unless otherwise specified in the General Requirements, CONTRACTOR shall furnish and assume full responsibility for all materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water sanitary facilities, temporary facilities and all other facilities and incidentals necessary for the furnishing, performance, testing, start-up and completion of the Work.

6.5 All materials and equipment shall be of good quality and new, except as otherwise provided in the Contract Documents. If required by ENGINEER, CONTRACTOR shall furnish satisfactory evidence (including reports of required tests) as to the kind and quality of materials and equipment. All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instruction of the applicable Supplier except as otherwise provided in the Contract Documents; but no provision of any such instructions will be effective to assign to ENGINEER, or any of ENGINEER's consultants, agents or employees, any duty or authority to supervise or direct the furnishing or perfor-mance of the Work or any duty or authority to undertake responsibility contrary to the provisions of paragraph 9.15 or 9.16.

Adjusting Progress Schedule:

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

Substitutes or "Or-Equal" Items:

6.7.1 Whenever materials or equipment are specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier the naming of the item is intended to establish the type, function and quality required. In the case where the name is followed by words indicating that substitutions/ “or equals” are permitted, materials or equipment of other Suppliers may be accepted by ENGINEER if sufficient information is submitted by BIDDER to allow ENGINEER to determine that the material or equipment proposed is equivalent or equal to that named. The procedure for review by ENGINEER will include the following as supplemented in the General Requirements. Requests for review of substitute/ “or-equal” items of material and equipment will not be accepted by ENGINEER from anyone other than BIDDER. If BIDDER wishes to furnish or use a substitute/ “or-equal” item of material or equipment, BIDDER shall make written application to ENGINEER for acceptance thereof, certifying that the proposed substitute/ “or-equal” or will perform adequately the functions and achieve the results called for by the general design, be similar and of equal substance to

that specified and be suited to the same use as that specified. The application will state that the evaluation and acceptance of the proposed substitute/ "or-equal" item will not prejudice BIDDER'S achievement of Substantial Completion on time, whether or not acceptance of the substitute/ "or-equal" item for use in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with OWNER for work on the Project) to adapt the design to the proposed item and whether or not incorporation or use of the item in connection with the Work is subject to payment of any license fee or royalty. All variations of the proposed substitute/ "or-equal" item from that specified will be identified in the application and available maintenance repair and replacement service will be indicated. The application will also contain an itemized estimate of all costs that will result directly or indirectly from acceptance of such item, including costs for redesign and claims of other contractors affected by the resulting change, all of which shall be considered by ENGINEER in evaluating the proposed substitute/ "or-equal" item. ENGINEER may require BIDDER to furnish at BIDDER'S expense additional data about the proposed substitute/ "or-equal" item.

6.7.2 If a specific means, method, technique, sequence or procedure of construction is indicated in or required by the Contract Documents, BIDDER may furnish or utilize a substitute/ "or-equal" means, method, sequence, technique or procedure of construction acceptable to ENGINEER, if BIDDER submits sufficient information to allow ENGINEER to determine that the substitute/ "or-equal" item proposed is equivalent to that indicated or required by the Contract Documents. The procedure for review by ENGINEER will be similar to that provided in paragraph 6.7.1 as applied by ENGINEER and as may be supplemented in the General Requirements.

6.7.3 ENGINEER will be allowed a reasonable time within which to evaluate each proposed substitute/ "or equal" item. ENGINEER will be the sole judge of acceptability, and no item will be ordered, installed or utilized without ENGINEER's prior written acceptance which will be evidenced by either a Change Order or an approved Shop Drawing. OWNER may require BIDDER to furnish at BIDDER's expense a special performance guarantee or other surety with respect to any substitute/ "or-equal" item. ENGINEER will record time required by ENGINEER and ENGINEER's consultants in evaluating items proposed by BIDDER and in making changes in the Contract Documents occasioned thereby. Whether or not ENGINEER accepts a proposed substitute/ "or-equal" item, BIDDER shall reimburse OWNER for the charges of ENGINEER and ENGINEER's consultants for evaluating each proposed item.

Concerning Subcontractors, Suppliers and Others:

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

6.8.2 If the Supplementary Conditions require the identity of certain Subcontractors, Suppliers or other persons

or organizations (including those who are to furnish the principal items of materials and equipment) to be submitted to OWNER in advance of the specified date prior to the Effective Date of the Agreement for acceptance by OWNER and ENGINEER and if CONTRACTOR has submitted a list thereof in accordance with the Supplementary Conditions, OWNER's or ENGINEER's acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the bidding documents or the Contract Documents) of any such Subcontractor, Supplier or other person or organization so identified may be revoked on the basis of reasonable objection after due investigation, in which case CONTRACTOR shall submit an acceptable substitute/ "or-equal" item, the Contract Price will be increased by the difference in the cost occasioned by such substitution and an appropriate Change Order will be issued or Written Amendment signed. No acceptance by OWNER or ENGINEER of any such Subcontractor, Supplier or other person or organization shall constitute a waiver of any right of OWNER or ENGINEER to reject *defective* Work.

6.9 CONTRACTOR shall be fully responsible to OWNER and ENGINEER for all acts and omissions of the Subcontractors, Suppliers and other persons and organization performing or furnishing any of the Work under a direct or indirect contract with CONTRACTOR just as CONTRACTOR is responsible for CONTRACTOR's own acts and omissions. Nothing in the Contract Documents shall create any contractual relationship between OWNER or ENGINEER and any such Subcontractor, Supplier or other person or organization, nor shall it create any obligation on the part of OWNER or ENGINEER to pay or to see to the payment of any moneys due any such Subcontractor, Supplier or other person or organization except as may other wise be required by Laws and Regulations.

6.10 The divisions and sections of the Specifications and the identifications of any Drawings shall not control CONTRACTOR in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.

6.11 All Work performed for CONTRACTOR by a Subcontractor will be pursuant to an appropriate agreement between CONTRACTOR and the Subcontractor which specifically binds the Subcontractor to the applicable terms and conditions of the Contract Documents for the benefit of OWNER and ENGINEER and contains waiver provisions as required by paragraph 5.11. CONTRACTOR shall pay each Subcontractor a just share of any insurance moneys received by CONTRACTOR on account of losses under policies issued pursuant to paragraphs 5.6 and 5.7.

Patent Fees and Royalties:

6.12 CONTRACTOR shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product or device which is the subject of patent rights or copyrights held by others. If a particular invention, design process, product or device is specified in the Contract Documents for use in the performance of the Work and if to the actual knowledge of OWNER or ENGINEER its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by OWNER in the Contract Documents. CONTRACTOR shall indemnify and hold harmless OWNER

and ENGINEER and anyone directly or indirectly employed by either of them from and against all claims, damages, losses and expenses (including attorneys' fees and court and arbitration costs) arising our of any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product or device not specified in the Contract Documents, and shall defend all such claims in connection with any alleged infringement of such rights.

Permits:

6.13 Unless otherwise provided in the Supplementary Conditions, CONTRACTOR shall obtain and pay for all construction permits and licenses. OWNER shall assist CONTRACTOR, when necessary, in obtaining such permits and licenses. CONTRACTOR shall pay all governmental charges and inspection fees necessary for the prosecution of the Work, which are applicable at the time of opening the Bids, or if there are no Bids on the Effective Date of the Agreement. CONTRACTOR shall pay all charges of utility owners for connections to the Work, and OWNER shall pay all charges of such utility owners for capital costs related thereto such as plant investment fees.

Laws and Regulations:

6.14.1 CONTRACTOR shall give all notices and comply with all Laws and Regulations applicable to furnishing and performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither OWNER nor ENGINEER shall be responsible for monitoring CONTRACTOR's compliance with any Laws or Regulations.

6.14.2 If CONTRACTOR observes that the Specifications or Drawings are at variance with any Laws or Regulations, CONTRACTOR shall give ENGINEER prompt written notice thereof, and any necessary changes will be authorized by one of the methods indicated in paragraph 3.4. If CONTRACTOR performs any Work knowing or having reason to know that it is contrary to such Laws or Regulations, and without such notice to ENGINEER, CONTRACTOR shall bear all costs arising there from; however, it shall not be CONTRACTOR's primary responsibility to make certain that the Specifications and Drawings are in accordance with such Laws and Regulations.

Taxes:

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

Use of Premises:

6.16 CONTRACTOR shall confine construction equipment, the storage of materials and equipment and the operations of workers to the Project site and land and areas identified in and permitted by the Contract Documents and other land and areas permitted by Laws and Regulations, rights-of-way, permits and easements, and shall not unreasonably encumber the premises which construction equipment or other materials or equipment. CONTRACTOR shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof or of any land or areas contiguous thereto, resulting from the

performance of the Work. Should any claim be made against OWNER or ENGINEER by any such owner or occupant because of the performance of the Work, CONTRACTOR shall promptly attempt to settle with such other party by agreement or otherwise resolve the claim by arbitration or at law. CONTRACTOR shall, to the fullest extent permitted by Laws and Regulations, indemnify and hold OWNER and ENGINEER harmless from and against all claims damages, losses and expenses (including, but not limited to fees or engineers, architects, attorneys and other professionals and court and arbitration costs) arising directly, indirectly or consequentially out of any action, legal or equitable, brought by any such other party against OWNER or ENGINEER to the extent based on a claim arising out of CONTRACTOR's performance of the Work.

6.17 During the progress of the Work, CONTRACTOR shall keep the premises free from accumulations of waste materials, rubbish and other debris resulting from the Work. At the completion of the Work CONTRACTOR shall remove all waste materials, rubbish and debris from and about the premises as well as all tools, appliances, construction equipment and machinery, and surplus materials, and shall leave the site clean and ready for occupancy by OWNER. CONTRACTOR shall restore to original condition all property not designated for alteration by the Contract Documents.

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

Record Documents:

6.19 CONTRACTOR shall maintain in a safe place at the site one record copy of all Drawings, Specifications, Addenda, Written Amendments, Change Orders, Work Directive Changes, Field Orders and written interpretations and clarifications (issued pursuant to paragraph 9.4) in good order and annotated to show all changes made during construction. These record documents together with all approved samples and a counterpart of all approved Shop Drawings will be available to ENGINEER for reference. Upon completion of the Work, these record documents, samples and Shop Drawings will be delivered to ENGINEER for OWNER.

Safety and Protection:

6.20 CONTRACTOR shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. CONTRACTOR shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:

6.20.1 all employees on the Work and other persons and organizations who may be affected thereby:

6.20.2 all the Work and materials and equipment to be incorporated therein, whether in storage on or off the site; and

6.20.3 other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities and Underground Facilities not designated for removal, relocation or replacement in the course of

construction.

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

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

Emergencies:

6.22 In emergencies affecting the safety or protection of persons or the Work or property at the site or adjacent thereto, CONTRACTOR, without special instruction or authorization from ENGINEER or OWNER, is obligated to act to prevent threatened damage, injury or loss. CONTRACTOR shall give ENGINEER prompt written notice if CONTRACTOR believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby. If ENGINEER determines that a change in the Contract Documents is required because of the action taken in response to an emergency, a Work Directive Change or Change Order will be issued to document the consequences of the changes or variations.

Shop Drawings and Samples:

6.23 After checking and verifying all field measurements and after complying with applicable procedures specified in the General Requirements, CONTRACTOR shall submit to ENGINEER for review and approval in accordance with the accepted schedule of Shop Drawing submissions (see paragraph 2.9), or for other appropriate action if so indicated in the Supplementary Conditions, five copies (unless otherwise specified in the General Requirements) of all Shop Drawings, which will bear a stamp or specific written indication that CONTRACTOR has satisfied CONTRACTOR's responsibilities under the Contract Documents with respect to the review submission. All submissions will be

identified as ENGINEER may require. The data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials and similar data to enable ENGINEER to review the information as required.

6.24 CONTRACTOR shall also submit to ENGINEER for review and approval with such promptness as to cause no delay in Work, all samples required by the Contract Documents. All samples will have been checked by and accompanied by a specific written indication that CONTRACTOR has satisfied CONTRACTOR's responsibilities under the Contract Documents with respect to the review of the submission and will be identified clearly as to material, Supplier, pertinent data such as catalog numbers and the use for which intended.

6.25.1 Before submission of each Shop Drawing or sample CONTRACTOR shall have determined and verified all quantities, dimensions, specified performance criteria, installation requirements, materials, catalog numbers and similar data with respect thereto and reviewed or coordinated each Shop Drawing or sample with other Shop Drawings and samples and with the requirements of the Work and the Contract Documents.

6.25.2 At the time of each submission, CONTRACTOR shall give ENGINEER specific written notice of each variation that the Shop Drawings or samples may have from the requirements of the Contract Documents, and, in addition, shall cause a specific notation to be made on each Shop Drawing submitted to ENGINEER for review and approval of each such variation.

6.26 ENGINEER will review and approve with reasonable promptness Shop Drawings and samples, but ENGINEER's review and approval will be only for conformance with the design concept of the Project and for compliance with the information given in the Contract Documents and shall not extend to means, methods, techniques, sequences or procedures of construction (except where a specific means, method, technique, sequence or procedure of construction is indicated in or required by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions. CONTRACTOR shall make corrections required by ENGINEER, and shall return the required number of corrected copies of Shop Drawings and submit as required new samples for review and approval. CONTRACTOR shall direct specific attention in writing to revisions other than the corrections called for by ENGINEER on previous submittals.

6.27 ENGINEER's review and approval of Shop Drawings or samples shall not relieve CONTRACTOR from responsibility for any variation from the requirements of the Contract Documents unless CONTRACTOR has in writing called ENGINEER's attention to each such variation at the time of submission as required by paragraph 6.25.2 and ENGINEER has given written approval of each such variation by a specific written notation thereof incorporated in or accompanying the Shop Drawing or sample approval; nor will any approval by ENGINEER relieve CONTRACTOR from responsibility for errors or omissions in the Shop Drawings or from responsibility for having complied with the provisions of paragraph 6.25.1.

6.28 Where a Shop Drawing or sample is required by the Specifications, any related Work performed prior to ENGINEER's review and approval of the pertinent submission

will be the sole expense and responsibility of CONTRACTOR.

Continuing the Work:

6.29 CONTRACTOR shall carry on the Work and adhere to the progress schedule during all disputes or disagreements with OWNER. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as permitted by paragraph 15.5 or as CONTRACTOR and OWNER may otherwise agree in writing.

Indemnification:

6.30 To the fullest extent permitted by Laws and Regulations CONTRACTOR shall indemnify and hold harmless OWNER and ENGINEER and their consultants, agents and employees from and against all claims, damages, losses and expenses, direct, indirect or consequential (including but not limited to fees and charges of engineers, architects, attorneys and other professionals and court and arbitration costs) arising out of or resulting from the performance of the Work, provided that any such claim, damage, loss or expense (a) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including the loss of use resulting there from and (b) is caused in whole or in part by an negligent act or omission of CONTRACTOR, any Subcontractor, any person or organization directly or indirectly employed by any of them to perform or furnish any of the Work or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder or arises by or is imposed by Law and Regulations regardless of the negligence of any such party.

6.31 In any and all claims against OWNER or ENGINEER or any of their consultants, agents or employees by any employee of CONTRACTOR, any Subcontractor, any person or organization directly or indirectly employed by any of them to perform or furnish any of the Work or anyone for whose acts any of them may be liable, the indemnification obligation under paragraph 6.30 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for CONTRACTOR or any such Subcontractor or other person or organization under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

6.32 The obligations of CONTRACTOR under paragraph 6.30 shall not extend to the liability of ENGINEER, ENGINEER's consultants, agents or employees arising out of the preparation or approval of maps, drawings, opinions, reports, surveys, Change Orders, designs or specifications.

ARTICLE 7 - OTHER WORK

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Related Work at Site:

7.1 OWNER may perform other work related to the Project at the site by OWNER's own forces, have other work performed by utility owners or let other direct contracts therefore which shall contain General Conditions similar to these. If the fact that such other work is to be performed was not noted in the Contract Documents, written notice thereof will be given to CONTRACTOR prior to starting any such other work; and, if

CONTRACTOR believes that such performance will involve additional expense to CONTRACTOR or requires additional time and the parties are unable to agree as to the extent thereof, CONTRACTOR may make a claim therefore as provided in Articles 11 and 12.

7.2 CONTRACTOR shall afford each utility owner and other contractor who is a party to such a direct contract (or OWNER, if OWNER is performing the additional work with OWNER's employees) proper and safe access to the site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such work, and shall properly connect and coordinate the Work with theirs. CONTRACTOR shall do all cutting, fitting and patching of the Work that may be required to make its several parts come together properly and integrate with such other work. CONTRACTOR shall not endanger any work of others by cutting, excavating or otherwise altering their work and will only cut or alter their work with the written consent of ENGINEER and the others whose work will be affected. The duties and responsibilities of CONTRACTOR under this paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of CONTRACTOR in said direct contracts between OWNER and such utility owners and other contractors.

7.3 If any part of CONTRACTOR's Work depends for proper execution or results upon the work of any such other contractor or utility owner (or OWNER), CONTRACTOR shall inspect and promptly report to ENGINEER in writing any delays, defects or deficiencies in such work that render it unavailable or unsuitable for such proper execution and results. CONTRACTOR's failure so to report will constitute an acceptance of the other work as fit and proper for integration with CONTRACTOR's Work except for latent or nonapparent defects and deficiencies in the other work.

Coordination:

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

ARTICLE 8 - OWNER'S RESPONSIBILITIES

8.1 OWNER shall issue all communications to CONTRACTOR through ENGINEER.

8.2 In case of termination of the employment of ENGINEER, OWNER shall appoint an engineer against whom CONTRACTOR makes no reasonable objection, whose status under the Contract Documents shall be that of the former ENGINEER. Any dispute in connection with such appointment shall be subject to arbitration.

8.3 OWNER shall furnish the data required of OWNER under the Contract

Documents promptly and shall make payments to CONTRACTOR promptly after they are due as provided in paragraphs 14.4 and 14.13.

8.4 OWNER's duties in respect of providing lands and easements and providing engineering surveys to establish reference points are set forth in paragraphs 4.1 and 4.4. Paragraph 4.2 refers to OWNER's identifying and making available to CONTRACTOR copies of reports of explorations and tests of subsurface conditions at the site and in existing structures which have been utilized by ENGINEER in preparing the Drawings and Specifications.

8.5 OWNER's responsibilities in respect of purchasing and maintaining liability and property insurance are set forth in paragraphs 5.5 through 5.8.

8.6 OWNER is obligated to execute Change Orders as indicated in paragraph 10.4.

8.7 OWNER's responsibility in respect of certain inspections, tests and approvals is set forth in paragraph 13.4.

8.8 In connection with OWNER's right to stop Work or suspend Work, see paragraphs 13.10 and 15.1 Paragraph 15.2 deals with OWNER's right to terminate services of CONTRACTOR under certain circumstances.

ARTICLE 9 - ENGINEER'S STATUS DURING CONSTRUCTION

Owner's Representative:

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

Visits to Site:

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

Project Representation:

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

ENGINEER's agent or employee, the duties, responsibilities and limitations of authority of such other person will be as provided in the Supplementary Conditions.

Clarifications and Interpretation:

9.4 ENGINEER will issue with reasonable promptness such written clarifications or interpretations of the requirements of the Contract Documents (in the form of Drawings or otherwise) as ENGINEER may determine necessary, which shall be consistent with or reasonably inferable from the overall intent of the Contract Documents. If CONTRACTOR believes that a written clarification or interpretation justifies an increase in the Contract Price or an extension of the Contract Time and the parties are unable to agree to the amount or extent thereof, CONTRACTOR may make a claim therefore as provided in Article 11 or Article 12.

Authorized Variations in Work:

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

Rejecting Defective Work:

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

Shop Drawings, Change Orders and Payments:

9.7 In connection with ENGINEER's responsibility for Shop Drawings and samples, see paragraphs 6.23 through 6.29 inclusive.

9.8 In connection with ENGINEER's responsibilities as to Change Orders, see Articles 10, 11, and 12.

9.9 In connection with ENGINEER's responsibilities in respect of Applications for Payment, etc., see Article 14.

Determinations for Unit Prices:

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

the Agreement and to ENGINEER written notice of intention to appeal from such a decision.

Decisions on Disputes:

9.11 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 performance and furnishing of the Work and claims under Articles 11 and 12 in respect of changes in the Contract Price or Contract Time will be referred initially to ENGINEER in writing with a request for a formal decision in accordance with this paragraph, which ENGINEER will render in writing within a reasonable time. Written notice of each such claim, dispute and other matter will be delivered by the claimant to ENGINEER and the other party to the Agreement promptly (but in no event later than thirty days) after the occurrence of the event giving rise thereto, and written supporting data will be submitted to ENGINEER and the other party within sixty days after such occurrence unless ENGINEER allows an additional period of time to ascertain more accurate data in support of the claim.

9.12 When functioning as interpreter and judge under paragraphs 9.10 and 9.11, ENGINEER will not show partiality to OWNER or CONTRACTOR and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity. The rendering of a decision by ENGINEER pursuant to paragraphs 9.10 and 9.11 with respect to any such claim, dispute or other matter (except any which have been waived by the making or acceptance of final payment as provided in paragraph 14.16) will be a condition precedent to any exercise by OWNER or CONTRACTOR of such rights or remedies as either may otherwise have under the Contract Documents or by Laws or Regulations in respect of any such claim, dispute or other matter.

Limitations on ENGINEER's Responsibilities:

9.13 Neither ENGINEER's authority to act under this Article 9 or elsewhere in the Contract Documents nor any decision made by ENGINEER in good faith either to exercise or not exercise such authority shall give rise to any duty or responsibility of ENGINEER to CONTRACTOR, any Subcontractor, any Supplier, or any other person or organization performing any of the Work, or to any surety for any of them.

9.14 Whenever in the Contract Documents the terms "as ordered", "as directed", "as required", "as allowed", "as approved" 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 a requirement, direction, review or judgment of ENGINEER as to the Work, it is intended that such requirement, direction, review or judgment 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 shall not be effective to assign to ENGINEER any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of paragraph 9.15 or 9.16.

9.15 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 ENGINEER will not be responsible for CONTRACTOR's failure to perform or furnish the Work in accordance with the Contract Documents.

9.16 ENGINEER will not be responsible for the acts or omissions of CONTRACTOR or of any Subcontractor, any Supplier, or of any other person or organization performing or furnishing any of the Work.

ARTICLE 10 - CHANGES IN THE WORK

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10.1 Without invalidating the Agreement and without notice to any surety, OWNER may, at any time or from time to time, order additions, deletions or revisions in the Work; these will be authorized by a Written Amendment, a Change Order, or a Work Directive Change. Upon receipt of any such document, CONTRACTOR shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).

10.2 If OWNER and CONTRACTOR are unable to agree as to the extent, if any, of an increase or decrease in the Contract Price or an extension or shortening of the Contract Time that should be allowed as a result of a Work Directive Change, a claim may be made therefore as provided in Article 11 or Article 12.

10.3 CONTRACTOR shall not be entitled to an increase in the Contract Price or an extension of the Contract Time with respect to any Work performed that is not required by the Contract Documents as amended, modified and supplemented as provided in paragraphs 3.4 and 3.5, except in the case of an emergency as provided in paragraph 6.22 and except in the case of uncovering Work as provided in paragraph 13.9.

10.4 OWNER and CONTRACTOR shall execute appropriate Change Orders (or Written Amendments)

10.4.1 changes in the Work which are ordered by OWNER pursuant to paragraph 10.1, are required because of acceptance of *defective* Work under paragraph 13.13 or correcting *defective* Work under paragraph 13.14, or are agreed to by the parties;

10.4.2 changes in the Contract Price or Contract Time which are agreed to by the parties; and

10.4.3 changes in the Contract Price or Contract Time which embody the substance of any written decision rendered by ENGINEER pursuant to paragraph 9.11;

provided that, in lieu of executing any such Change Order, an appeal may be taken from any such decision in accordance with the provisions of the Contract Documents and applicable Laws and Regulations, but during any such appeal, CONTRACTOR shall carry on the Work and adhere to the progress schedule as provided in paragraph 6.29.

10.5 If notice of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Time) is required by the provisions of any Bond to be given to a surety, the giving of

any such notice will be CONTRACTOR's responsibility, and the amount of each applicable Bond will be adjusted accordingly.

ARTICLE 11 - CHANGE OF CONTRACT PRICE

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11.1 The Contract Price constitutes the total compensation (subject to authorized adjustments) payable to CONTRACTOR for performing the Work. All duties, responsibilities and obligations assigned to or undertaken by CONTRACTOR shall be at his expense without change in the Contract Price.

11.2 The Contract Price may only be changed by a Change Order or by a Written Amendment. Any claim for an increase or decrease in the Contract Price shall be based on written notice delivered by the party making the claim to the other party and to ENGINEER promptly (but in no event later than thirty days) after the occurrence of the event giving rise to the claim and stating the general nature of the claim. Notice of the amount of the claim with supporting data shall be delivered within sixty days after such occurrence (unless ENGINEER allows an additional period of time to ascertain more accurate data in support of the claim) and shall be accompanied by claimant's written statement that the amount claimed covers all known amounts (direct, indirect and consequential) to which the claimant is entitled as a result of the occurrence of said event. All claims for adjustment in the Contract Price shall be determined by ENGINEER in accordance with paragraph 9.11 if OWNER and CONTRACTOR cannot otherwise agree on the amount involved. No claim for an adjustment in the Contract Price will be valid if not submitted in accordance with this paragraph 11.2.

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

11.3.1 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 (subject to the provisions of paragraphs 11.9.1. through 11.9.3, inclusive).

11.3.2 By mutual acceptance of a lump sum (which may include an allowance for overhead and profit not necessarily in accordance with paragraph 11.6.2.1.).

11.3.3 On the basis of the Cost of the Work (determined as provided in paragraphs 11.4 and 11.5) plus a CONTRACTOR's Fee for overhead and profit (determined as provided in paragraphs 11.6 and 11.7).

Cost of the Work:

11.4 The term Cost of the Work means the sum of all costs necessarily incurred and paid by CONTRACTOR in the proper performance of the Work. Except as otherwise may be agreed to in writing by OWNER, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall include only the following items and shall not include any of the costs itemized in paragraph 11.5:

11.4.1 Payroll costs for employees in the direct employ of CONTRACTOR in the performance of the Work under schedules of job classifications

agreed upon by OWNER and CONTRACTOR. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits which shall include social security contributions unemployment, excise and payroll taxes, workers' or workmen's compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. Such employees shall include superintendents and foremen at the site. The expenses of performing Work after regular working hours, on Saturday, Sunday or legal holidays, shall be included in the above to the extent authorized by OWNER.

11.4.2 Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to CONTRACTOR unless OWNER deposits funds with CONTRACTOR with which to make payments, in which case the cash discounts shall accrue to OWNER. All trade discounts, rebates and refunds and all returns from sale of surplus materials and equipment shall accrue to OWNER, and CONTRACTOR shall make provisions so that they may be obtained.

11.4.3 Payments made by CONTRACTOR to the Subcontractors for Work performed by Subcontractors. If required by OWNER, CONTRACTOR shall obtain competitive bids from Subcontractors acceptable to CONTRACTOR and shall deliver such bids to OWNER who will then determine, with the advice of ENGINEER, which bids will be accepted. If a subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work Plus a Fee, the Subcontractor's Cost of the Work shall be determined in the same manner as CONTRACTOR's Cost of the Work. All subcontracts shall be subject to the other provisions of the Contract Documents insofar as applicable.

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

11.4.5 Supplemental costs including the following:

11.4.5.1 The proportion of necessary transportation, travel and subsistence expenses of CONTRACTOR's employees incurred in discharge of duties connected with the Work.

11.4.5.2 Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office and temporary facilities at the site and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost less market value of such items used

by not consumed which remain the property of CONTRACTOR.

11.4.5.3 Rentals of all construction equipment and machinery and the parts thereof whether rented from CONTRACTOR or others in accordance with rental agreements approved by OWNER with the advice of 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 not longer necessary for the Work.

11.4.5.4 Sales, consumer, use or similar taxes related to the Work, and for which CONTRACTOR is liable, imposed by Laws and Regulations.

11.4.5.5 Deposits lost for causes other than negligence of CONTRACTOR, any Subcontractor or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.

11.4.5.6 Losses and damages (and related expenses), not compensated by insurance or otherwise, to the Work or otherwise sustained by CONTRACTOR in connection with the performance and furnishing of the Work (except losses and damages within the deductible amounts of property insurance established by OWNER in accordance with paragraph 5.9), provided they have resulted from causes other than the negligence of CONTRACTOR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of OWNER. No such losses, damages and expenses will be included in the Cost of Work for the purpose of determining CONTRACTOR's Fee. If, however, any such loss or damage requires reconstruction and CONTRACTOR is placed in charge thereof, CONTRACTOR shall be paid for services a fee proportionate to that stated in paragraph 11.6.2.

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

11.4.5.8 Minor expenses such as telegrams, long distance telephone calls, telephone service at the site, expressage and similar petty cash items in connection with the Work.

11.4.5.9 Cost of premiums for additional Bonds and insurance required because of changes in the Work and premiums for property insurance coverage within the limits of the deductible amounts established by OWNER in accordance with paragraph 5.9.

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

11.5.1 Payroll costs and other compensation of CONTRACTOR's officers, executives, principals (of partnership and sole proprietorships), general managers, engineers, architects, estimators,

attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks and other personnel employed by CONTRACTOR whether at the site or in CONTRACTOR's principal or a branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in paragraph 11.4.1 or specifically covered by paragraph 11.4.4 - all of which are to be considered administrative costs covered by the CONTRACTOR's Fee.

11.5.2 Expenses of CONTRACTOR's principal and branch offices other than CONTRACTOR's office at the site.

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

11.5.4 Cost of premiums for all Bonds and for all insurance whether or not CONTRACTOR is required by the Contract Documents to purchase and maintain the same (except for the cost of premiums covered by subparagraph 11.4.5.9 above).

11.5.5 Cost due to the negligence of CONTRACTOR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of *defective* Work, disposal of materials or equipment wrongly supplied and making good any damage to property.

11.5.6 Other overhead or general expenses costs of any kind and the costs of any item not specifically and expressly included in paragraph 11.4.

CONTRACTOR's Fee:

11.6 The CONTRACTOR's Fee allowed to CONTRACTOR for overhead and profit shall be determined as follows:

11.6.1 a mutually acceptable fixed fee; or if none can be agreed upon,

11.6.2 a fee based on the following percentages of the various portions of the Cost of the Work:

11.6.2.1 for costs incurred under paragraphs 11.4.1 and 11.4.2, the CONTRACTOR's Fee shall be fifteen percent;

11.6.2.2 for costs incurred under paragraph 11.4.3, the CONTRACTOR's Fee shall be five percent; and if a subcontract is on the basis of Cost of the Work Plus a Fee, the maximum allowable to CONTRACTOR on account of overhead and profit of all Subcontractors shall be fifteen percent;

11.6.2.3 no fee shall be payable on the basis of costs itemized under paragraphs 11.4.4, 11.4.5 and 11.5;

11.6.2.4 the amount of credit to be allowed by CONTRACTOR to OWNER for any such change which results in a net decrease in cost will be the amount of the actual net decreases

plus a deduction in CONTRACTOR's Fee by an amount equal to ten percent of the net decrease; and

11.6.2.5 when both additions and credits are involved in any one change, the adjustment in CONTRACTOR's Fee shall be computed on the basis of the net change in accordance with paragraphs 11.6.2.1 through 11.6.2.4, inclusive.

11.7 Whenever the cost of any Work is to be determined pursuant to paragraph 11.4 or 11.5, CONTRACTOR will submit in form acceptable to ENGINEER an itemized cost breakdown together with supporting data.

Cash Allowances:

11.8 It is understood that CONTRACTOR has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be done by such Subcontractors or Suppliers and for such sums within the limit of the allowances as may be acceptable to ENGINEER. CONTRACTOR agrees that:

11.8.1. The allowances include the cost to CONTRACTOR (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the site, and all applicable taxes; and

11.8.2. CONTRACTOR's costs for un-loading and handling on the site, labor, installation costs, overhead, profit and other expenses contemplated for the allowances have been included in the Contract Price and not in the allowances. No demand for additional payment on account of any thereof will be valid.

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

Unit Price Work:

11.9.1 Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the established unit prices for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by CONTRACTOR will be made by ENGINEER in accordance with Paragraph 9.10.

11.9.2 Each unit price will be deemed to include an amount considered by CONTRACTOR to be adequate to cover CONTRACTOR's overhead and profit for each separately identified item.

11.9.3 There the quantity of any item of Unit Price Work performed by CONTRACTOR differs materially and significantly from the estimated quantity of such item indicated in the Agreement and there is no corresponding adjustment with respect to any other item of Work and if CONTRACTOR

believes that CONTRACTOR has incurred additional expenses as a result thereof, CONTRACTOR may make a claim for an increase in the CONTRACTOR may make a claim for an increase in the Contract Price in accordance with Article 11 if the parties are unable to agree as to the amount of any such increase.

ARTICLE 12 - CHANGE OF CONTRACT TIME

12.1 The Contract Time may only be changed by a Change Order or a Written Amendment. Any claim for an extension or shortening of the Contract Time shall be based on written notice delivered by the party making the claim to the other party and to ENGINEER promptly (but in no event later than thirty days) after the occurrence of the event giving rise to the claim and stating the general nature of the claim. Notice of the extent of the claim with supporting data shall be delivered within sixty days after such occurrence (unless ENGINEER allows an additional period of time to ascertain more accurate data in support of the claim) and shall be accompanied by the claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant has reason to believe it is entitled as a result of the occurrence of said event. All claims for adjustment in the Contract Time shall be determined by ENGINEER in accordance with paragraph 9.11 if OWNER and CONTRACTOR cannot other wise agree. No claim for an adjustment in the Contract Time will be valid if not submitted in accordance with the requirements of this paragraph 12.1.

12.2 The Contract Time will be extended in an amount equal to time lost due to delays beyond the control of CONTRACTOR if a claim is made therefore as provided in paragraph 12.1. Such delays shall include, but not be limited to, acts or neglect by OWNER or others performing additional work as contemplated by Article 7, or to fires, floods, labor disputes, epidemics, abnormal weather conditions or acts of God.

12.3 All time limits stated in the Contract Documents are of the essence of the Agreement. The provisions of this Article 12 shall not exclude recovery for damages (including but not limited to fees and charges of engineers, architects, attorneys and other professionals and court and arbitration costs) for delay by either party.

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

Warranty and Guarantee:

13.1 CONTRACTOR warrants and guarantees to OWNER and ENGINEER that all Work will be in accordance with the Contract Documents and will not be *defective*. Prompt notice of all defects shall be given to CONTRACTOR. All *defective* Work, whether or not in place, may be rejected, corrected or accepted as provided in this Article 13.

Access to Work:

13.2 ENGINEER and ENGINEER's representatives, other representative of OWNER, testing agencies and governmental agencies with jurisdictional interests will have access to the Work at reasonable times

for their observation, inspecting and testing. CONTRACTOR shall provide proper and safe conditions for such access.

Tests and Inspection:

13.3 CONTRACTOR shall give ENGINEER timely notice of readiness of the Work for all required inspection, tests or approvals.

13.4 If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) to specifically be inspected, tested or approved, CONTRACTOR shall assume full responsibility therefore, pay all costs in connection therewith and furnish ENGINEER the required certificates of inspection, testing or approval. CONTRACTOR shall also be responsible for and shall pay all costs in connection with any inspection or testing required in connection with OWNER's or ENGINEER's acceptance of a Supplier of materials or equipment proposed to be incorporated in the Work, or of materials or equipment submitted for approval prior to CONTRACTOR's purchase thereof for incorporation in the Work. The cost of all inspections, tests and approvals in addition to the above which are required by the Contract Documents shall be paid by OWNER (unless otherwise specified).

13.5 All inspections, tests or approvals other than those required by Laws or Regulations of any public body having jurisdiction shall be performed by organizations acceptable to OWNER and CONTRACTOR (or by ENGINEER if so specified).

13.6 If any Work (including the work of others) that is to be inspected, tested or approved is covered without written concurrence of ENGINEER, it must, if requested by ENGINEER, be uncovered for observation. Such uncovering shall be at CONTRACTOR's expense unless CONTRACTOR has given ENGINEER timely notice of CONTRACTOR's intention to cover the same and ENGINEER has not acted with reasonable promptness in response to such notice.

13.7 Neither observations by ENGINEER nor inspections, tests or approvals by others shall relieve CONTRACTOR with CONTRACTOR's obligations to perform the Work in accordance with the Contract Documents.

Uncovering Work:

13.8 If any Work is covered contrary to the written request of ENGINEER, it must, if requested by ENGINEER, be uncovered for ENGINEER's observations and replaced at CONTRACTOR's expense.

13.9 If ENGINEER considers it necessary or advisable that covered Work be observed by ENGINEER or inspected or tested by others, CONTRACTOR, at ENGINEER's request, shall uncover, expose or otherwise make available for observation, inspection or testing as ENGINEER may require, that portion of the Work in question, furnishing all necessary labor, material and equipment. If it is found that such Work is *defective*, CONTRACTOR shall bear all direct, indirect and consequential costs of such uncovering, exposure, observation, inspection and testing and of satisfactory reconstruction, (including but not limited to fees and charges of engineers, architects, attorneys and other professionals), and OWNER shall be entitled to an appropriate decrease in the CONTRACT Price, and, if the parties are unable to agree as to the amount thereof, may make a claim therefore as provided in Article 11. If, however, such Work is not

found to be *defective*, CONTRACTOR shall be allowed an increase in the Contract Price or an extension of the Contract Time, or both, directly attributable to such uncovering, exposure, observation, inspection, testing and reconstruction; and, if the parties are unable to agree as to the amount or extent thereof, CONTRACTOR may make a claim therefore as provided in Articles 11 and 12.

Owner May Stop the Work:

13.10 If the Work is *defective*, or CONTRACTOR fails to supply sufficient skilled workers or suitable materials or equipment, or fails to furnish or perform the Work in such a way that the completed Work will conform to the Contract Documents, OWNER may order CONTRACTOR to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of OWNER to stop the Work shall not give rise to any duty on the part of OWNER to exercise this right for the benefit of CONTRACTOR or any other party.

Correction or Removal of Defective Work:

13.11 If required by ENGINEER, CONTRACTOR shall promptly, as directed, either correct all *defective* Work, whether or not fabricated, installed or completed, or, if the Work has been rejected by ENGINEER, remove it from the site and replace it with *nondefective* Work. CONTRACTOR shall bear all direct, indirect and consequential costs of such correction or removal (including but not limited to fees and charges of engineers, architects, attorneys and other professionals) made necessary thereby.

One Year Correction Period:

13.12 If within one year after the date of Substantial Completion or such longer period of time as may be prescribed by Laws or Regulations or by the terms of any applicable special guarantee required by the Contract Documents or by any specific provision of the Contract Documents, any Work is found to be *defective*, CONTRACTOR shall promptly, without cost to OWNER and in accordance with OWNER's written instruction, either correct such *defective* Work, or, if it has been rejected by OWNER, remove it from the site and replace it with *nondefective* Work. If CONTRACTOR does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, OWNER may have the *defective* Work corrected or the rejected Work removed and replaced, and all direct, indirect and consequential costs of such removal and replacement (including but not limited to fees and charges or engineers, architects, attorneys and other professionals) will be paid by CONTRACTOR. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications or by Written Amendment.

Acceptance of Defective Work:

13.13 If, instead of requiring correction or removal and replacement of *defective* Work, OWNER (and, prior to ENGINEER's recommendation of final payment, also ENGINEER) prefers to accept it, OWNER may do so. CONTRACTOR shall bear all direct, indirect and consequential costs attributable to OWNER's evaluation of and determination to accept such *defective* Work (such costs to be approved by ENGINEER as to

reasonableness and to include but not be limited to fees and charges of engineers, architects, attorneys and other professionals). If any such acceptance occurs prior to ENGINEER's recommendation of final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and OWNER shall be entitled to an appropriate decrease in the Contract Price, and, if the parties are unable to agree as to the amount thereof, OWNER may make a claim therefore as provided in Article 11. If the acceptance occurs after such recommendation, an appropriate amount will be paid by CONTRACTOR to OWNER.

OWNER May Correct Defective Work:

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

ARTICLE 14 - PAYMENTS TO CONTRACTOR AND COMPLETION

Schedule of Values:

14.1 The schedule of values established as provided in paragraph 2.8 will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to ENGINEER. Progress payments on account of Unit Price Work will

be based on the number of units completed.

Application for Progress Payment:

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

CONTRACTOR's Warranty of Title:

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

Review of Applications for Progress Payment:

14.4 ENGINEER will, within ten days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application to OWNER, or return the Application to CONTRACTOR indicating in writing ENGINEER's reasons for refusing to recommend payment. In the latter case, CONTRACTOR may make the necessary corrections and resubmit the Application. Thirty days after presentation of the Application for Payment with ENGINEER's recommendation, the amount recommended will (subject to the provisions of the last sentence of paragraph 14.7) become due and when due will be paid by OWNER to CONTRACTOR.

14.5 ENGINEER's recommendation of any payment requested in an Application for Payment will constitute a representation by ENGINEER to OWNER, based on ENGINEER's on-site observations of the Work in progress as an experienced and qualified design professional and on ENGINEER's review of the Application for Payment and the accompanying data and schedules that the Work has progressed to the point indicated; that, to the best of ENGINEER's knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents, to a final determination of quantities and classifications for Unit Price Work under paragraph 9.10, and to any other qualifications stated in the recommendation); and that CONTRACTOR is

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

14.6 ENGINEER's recommendation of final payment will constitute an additional representation by ENGINEER to OWNER that the conditions precedent to CONTRACTOR's being entitled to final payment as set forth in paragraph 14.13 have been fulfilled.

14.7 ENGINEER may refuse to recommend the whole or any part of any payment if, in ENGINEER's opinion, it would be incorrect to make such representations to OWNER. ENGINEER may also refuse to recommend any such payment, or, because of subsequently discovered evidence or the results of subsequent inspections or tests, nullify any such payment previously recommended, to such extents as may be necessary in ENGINEER's opinion to protect OWNER from loss because:

14.7.1 the Work is *defective*, or completed Work has been damaged requiring correction or replacement.

14.7.2 the Contract Price has been reduced by Written Amendment or Change Order,

14.7.3 OWNER has been required to correct *defective* Work or complete Work in accordance with paragraph 13.14, or

14.7.4 of ENGINEER's actual knowledge of the occurrence of any of the events enumerated in paragraphs 15.2.1 through 15.2.9 inclusive.

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

Substantial Completion:

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

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

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

Partial Utilization:

14.10 Use by OWNER of any finished part of the Work, which has specifically been identified in the Contract Documents, or which OWNER, ENGINEER and CONTRACTOR agree constitutes a separately functioning and useable part of the Work that can be used by OWNER without significant interference with CONTRACTOR's performance of the remainder of the Work, may be accomplished prior to Substantial Completion of all the Work subject to the following:

14.10.1 OWNER at any time may request CONTRACTOR in writing to permit OWNER to use any such part of the Work which OWNER believes to be ready for its intended use and substantial complete. If CONTRACTOR agrees, CONTRACTOR will certify to OWNER and ENGINEER that said part of the Work is substantially complete and request ENGINEER to issue a certificate of Substantial Completion for that part of the Work. CONTRACTOR at any time may notify OWNER and ENGINEER in writing that CONTRACTOR considers any such part of the Work ready for its intended use and substantially complete and request ENGINEER to issue a certificate of Substantial Completion for that part of the Work. Within a reasonable time after either such request, OWNER, CONTRACTOR and ENGINEER shall make an inspection of that part of the Work to determine its status of completion. If ENGINEER does not consider that part of the Work to be substantially complete, ENGINEER will notify OWNER and CONTRACTOR in writing giving the reasons therefore. If ENGINEER

considers that part of the Work to be substantially complete, the provisions of paragraphs 14.8 and 14.9 will apply with respect to certification of Substantial Completion of that part of the Work and the division or responsibility in respect thereof and access thereto.

14.10.2 OWNER may at any time request CONTRACTOR in writing to permit OWNER to take over operation of any such part of the Work although it is not substantially complete. A copy of such request will be sent to ENGINEER and within a reasonable time thereafter OWNER, CONTRACTOR and ENGINEER shall make an inspection of that part of the Work to determine its status of completion and will prepare a list of the items remaining to be completed or corrected thereon before final payment. If CONTRACTOR does not object in writing to OWNER and ENGINEER that such part of the Work is not ready for separate operation by OWNER, ENGINEER will finalize the list of items to be completed or corrected and will deliver such list to OWNER and CONTRACTOR together with a written recommendation as to the division of responsibilities pending final payment between OWNER and CONTRACTOR with respect to security, operation, safety, maintenance, utilities, insurance warranties and guarantees for that part of the Work which will become binding upon OWNER and CONTRACTOR at the time when OWNER takes over such operation (unless they shall have otherwise agreed in writing and so informed ENGINEER). During such operation and prior to Substantial Completion of such part of the Work, OWNER shall allow CONTRACTOR reasonable access to complete or correct items on said list and to complete other related Work.

14.10.3 No occupancy or separate operation of part of the Work will be accomplished prior to compliance with the requirements of paragraph 5.15 in respect of property insurance.

Final Inspection:

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

Final Application for Payment:

14.12 After CONTRACTOR has completed all such corrections to the satisfaction of ENGINEER and delivered all maintenance and operating instruction, schedules, guarantees, Bonds, certificates of inspection, marked-up record documents (as provided in paragraph 6.19) and other documents - all as required by the Contract Documents, and after ENGINEER has indicated that the Work is acceptable (subject to the provisions of paragraph 14.16), CONTRACTOR may make application for final payment following the procedure for progress payments. The final Application for Payment shall be accompanied by all documentation called for

in the Contract Documents, together which complete and legally effective releases of waivers (satisfactory to OWNER) of all Liens arising out of or filed in connection with the Work. In lieu thereof and as approved by OWNER, CONTRACTOR may furnish receipts or leases in full; an affidavit of CONTRACTOR 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 OWNER or OWNER's 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 of Supplier fails to furnish a release or receipt in full, CONTRACTOR may furnish a Bond or other collateral satisfactory to OWNER to indemnify OWNER against any Lien.

Final Payment and Acceptance:

14.13 If, on the basis of ENGINEER's observation of the Work during construction and final inspection, and ENGINEER's review of the final Application for Payment and accompanying documentation - all as required by the Contract Documents, ENGINEER is satisfied that the Work has been completed and CONTRACTOR's other obligations under the Contract Documents have been fulfilled, ENGINEER will, within ten days after receipt of the final Application for Payment, indicate in writing ENGINEER's recommendation of payment and present the Application to OWNER for payment. Thereupon ENGINEER will give written notice to OWNER and CONTRACTOR that the Work is acceptable subject to the provisions of paragraph 14.16. Otherwise, ENGINEER will return the Application to CONTRACTOR, indicating in writing the reasons for refusing to recommend final payment, in which case CONTRACTOR shall make the necessary corrections and resubmit the Application. Thirty days after presentation to OWNER of the Application and accompanying documentation, in appropriate form and substance, and with ENGINEER's recommendation and notice of acceptability, the amount recommended by ENGINEER will become due and will be paid by OWNER to CONTRACTOR.

14.14 If, through no fault of CONTRACTOR, final completion of the Work is significantly delayed and if ENGINEER so confirms, OWNER shall, upon receipt of CONTRACTOR's final Application for Payment and recommendation of ENGINEER, and without terminating the Agreement, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by OWNER for Work not fully completed or corrected is less than the retainage stipulated in the Agreement, and if Bonds have been furnished as required in paragraph 5.1, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by CONTRACTOR to ENGINEER with the Application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

Contractor's Continuing Obligation:

14.15 CONTRACTOR's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. Neither recommendation of any progress or final payment by ENGINEER, nor the issuance of a certificate of Substantial Completion, nor any payment by OWNER to CONTRACTOR under the Contract Docu-

ments, nor any use or occupancy of the Work or any part thereof by OWNER, nor any act of acceptance by OWNER nor any failure to do so, nor any review and approval of a Shop Drawing or sample submission, nor the issuance of a notice of acceptability by ENGINEER pursuant to paragraph 14.13, nor any correction of *defective* Work by OWNER will constitute an acceptance of Work not in accordance with the Contract Documents or a release of CONTRACTOR's obligation to perform the Work in accordance with the Contract Documents (except as provided in paragraph 14.16).

Waiver of Claims:

14.16 The making and acceptance of final payment will constitute:

14.16.1 a waiver of all claims by OWNER against CONTRACTOR, except claims arising from unsettled Liens, from *defective* Work appearing after final inspection pursuant to paragraph 14.11 or from failure to comply with the Contract Documents or the terms of any special guarantees specified therein; however, it will not constitute a waiver by OWNER of any rights in respect of CONTRACTOR's continuing obligations under the Contract Documents; and

14.16.2 a waiver of all claims by CONTRACTOR against OWNER other than those previously made in writing and still unsettled.

ARTICLE 15 - SUSPENSION OF WORK AND TERMINATION

_____

Owner May Suspend Work:

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

Owner May Terminate:

15.2 Upon the occurrence of any one or more of the following events:

15.2.1 if CONTRACTOR commences a voluntary case under any chapter of the Bankruptcy Code (Title 11, United States Code), as now or hereafter in effect, or if CONTRACTOR takes any equivalent or similar action by filing a petition or otherwise under any other federal or state law in effect at such time relating to the bankruptcy or insolvency;

15.2.2 if a petition if filed against CONTRACTOR under any chapter of the Bankruptcy Code as now or hereafter in effect at the time of filing, or if a petition is filed seeking any such equivalent or similar relief against CONTRACTOR under any other federal or state law in effect at the time relating to bankruptcy or insolvency;

15.2.3 if CONTRACTOR makes a general assignment for the benefit or creditors;

15.2.4 if a trustee, receiver, custodian or agent of CONTRACTOR is appointed under applicable law or under contract, whose appointment or authority to take charge or property of CONTRACTOR is for the purpose of enforcing a Lien against such property or for the purpose of general administration of such property for the benefit of CONTRACTOR's creditors:

15.2.5 if CONTRACTOR admits in writing an inability to pay its debts generally as they become due;

15.2.6 if CONTRACTOR persistently fails to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the progress schedule established under paragraph 2.9 as revised from time to time);

15.2.7 if CONTRACTOR disregards Laws or Regulations of any public body having jurisdiction;

15.2.8 if CONTRACTOR disregards the authority of ENGINEER; or

15.2.9 if CONTRACTOR otherwise violates in any substantial way any provisions of the Contract Documents;

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

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

15.4 Upon seven days' written notice to CONTRACTOR and ENGINEER, OWNER may, without cause and without prejudice to any other right or remedy, elect to abandon the Work and terminate the Agreement. In such case, CONTRACTOR shall be paid for all Work executed and any expense sustained plus reasonable termination expenses, which will include, but not be limited to, direct, indirect and consequential costs (including, but not limited to, fees and charges of engineers, architects, attorneys and other professionals and court and arbitration costs).

Contractor May Stop Work or Terminate:

15.5 If, through no act or fault of CONTRACTOR, the Work is suspended for a period of more than ninety days by OWNER or under an order of court or other public authority, or ENGINEER fails to act on any Application for Payment within thirty days after it is submitted, or OWNER fails for thirty days to pay CONTRACTOR any sum finally determined to be due, then CONTRACTOR may, upon seven days' written notice to OWNER and ENGINEER, terminate the Agreement and recover from OWNER payment for all Work executed and any expense sustained plus reasonable termination expenses. In addition and in lieu of terminating the Agreement, if ENGINEER has failed to act on an Application for Payment or OWNER has failed to make any payment as aforesaid, CONTRACTOR may upon seven days' written notice to OWNER and ENGINEER stop the Work until payment of all amounts then due. The provisions of this under paragraph 6.29 to carry on the Work in accordance with the progress schedule and without delay during disputes and disagreements with OWNER.

ARTICLE 16 - DISPUTE RESOLUTION

_____

16.1 METHODS AND PROCEDURES

In an effort to resolve any conflicts that arise during the construction of the project or following the completion of the project, the OWNER and the CONTRACTOR agree that all disputes between them arising out of or relating to this Agreement shall be submitted to nonbinding mediation, unless the parties mutually agree otherwise.

The OWNER and the CONTRACTOR further agree to include a similar mediation provision in all agreements with independent contractors and consultants retained for the project and to require all independent contractors and consultants also to include a similar mediation provision in all agreements with subcontractors, subconsultants, suppliers or fabricators so retained, thereby providing for mediation as the primary method for dispute resolution between the parties to those agreements.

ARTICLE 17 - MISCELLANEOUS

_____

Giving Notice:

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

to the last business address known to the giver of the notice.

Computation of Time:

17.2.1 When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

17.2.2 A calendar day of twenty-four hours measured from midnight to the next midnight shall constitute a day.

General:

17.3 Should OWNER or CONTRACTOR suffer injury or damage to person or property because of any error, omission or act of the other party or of any of the other party's employees or agents or others for whose acts the other party is legally liable, claim will be made in writing to the other party within a reasonable time of the firs observance of such injury or damage. The provisions of this paragraph 17.3 shall not be construed as a substitute for or a waiver of the provisions of any applicable statute of limitations or repose.

17.4 The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto, and, in particular but without limitation, the warranties, guarantees and obligations imposed upon CONTRACTOR by paragraphs 6.30, 13.1, 13.12, 13.14, 14.3 and 15.2 and all of the rights and remedies available to OWNER and ENGINEER thereunder, are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee or by other provisions of the Contract Documents, and the provisions of this paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right and remedy to which they apply. All representations, warranties and guarantees made in the Contract Documents will survive final payment and termination or completion of the Agreement.

SECTION 00800
SUPPLEMENTARY CONDITIONS

These Supplementary Conditions amend or supplement the Standard General Conditions of the Construction Contract and other provisions of the Contract Documents as indicated below. All provisions that are not so amended or supplemented remain in full force and effect.

The terms used in these Supplementary Conditions will have the meanings indicated in the General Conditions. Additional terms used in these Supplementary Conditions have the meanings stated below, which are applicable to both the singular and plural thereof.

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SC-2.3. Delete Paragraph 2.3 in its entirety and insert the following in its place:

The Contract Time will commence to run on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within 30 days after the Effective Date of the Agreement.

SC-2.4. Delete Paragraph 2.4 in its entirety and insert the following in its place:

The Contractor shall start to perform the Work within 10 calendar days of the date when the Contract Time commences to run, but no Work shall be done at the site prior to the date on which the Contract Time commences to run.

SC-2.5. Add the following to the end of Paragraph 2.5:

Any known discrepancy that Contractor adjusts without requesting interpretation or clarification from the Engineer shall be made at the risk of the Contractor, and Contractor shall bear all expenses arising from complications from such adjustment.

SC-2.7. Add the following to the end of Paragraph 2.7:

Failure of the Owner to demand such certificates or other evidence of full compliance with these insurance requirements or failure of the Owner to identify a deficiency from evidence provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.

SC-4.2.1 Add the following to the end of Paragraph 4.2.1

In the preparation of Drawings and Specifications, Engineer has relied upon the following reports of explorations and test of sub-surface conditions at the site of the Work:

4.2.1.1 NONE

SC-4.3.3 Add a new Paragraph immediately after Paragraph 4.3.2:

4.3.3 In the preparation of Drawings and Specifications, Engineer has relied upon the following drawings of physical conditions in or relating to existing surface and sub-surface structures (except Underground Utilities) which are contiguous to the site of the Work:

4.3.1.1 NONE

SC-5.4. Delete Paragraph 5.4 and the heading entitled "Contractual Liability Insurance:" in its entirety and insert the following in its place:

5.4 The limits of liability for insurance required by Paragraph 5.3 of the General Conditions shall provide coverage for not less than the following amounts or greater where required by Laws and Regulations:

5.4.1. Workers' Compensation, and related coverages under Paragraphs 5.3.1 and 5.3.2 of the General Conditions:

5.4.1.1. State: Statutory

5.4.1.2. Applicable Federal
(e.g., Longshoremen's) Statutory

5.4.1.3. Employer's Liability $ 200,000

5.4.1.4. Contractor shall show Owner as additional insured.

5.4.2. Contractor's Comprehensive General Liability under Paragraphs 5.3.3 through 5.3.6 of the General Conditions:

5.4.2.1 Combined Single Limit for Bodily Injury and Property Damage

$1,000,000	Each Occurrence
Or combined single limit	$2,000,000
General Aggregate	$2,000,000
Operations Aggregate	$2,000,000

5.4.2.2. Property Damage liability insurance will provide Explosion, Collapse and Underground coverages where applicable.

5.4.2.3. Personal Injury, with employment exclusion deleted

$1,000,000	Annual Aggregate
$1,000,000	Each Occurrence

5.4.3. Comprehensive Automobile Liability under Paragraph 5.3.7 of the General Conditions:

5.4.3.1. Bodily Injury:

$1,000,000	Each Person
$2,000,000	Each Occurrence

5.4.3.2 Property Damage:

$1,000,000	Each Occurrence
Or combined single limit	$2,000,000

5.4.4 Builders Risk Insurance (Fire and Extended Coverage):

5.4.4.1 100% completed value based on the insurable portion of the project

5.4.4.2 Policy must protect the interests of the Owner, Contractor, and Sub-Contractors against loss by fire, vandalism, malicious mischief, and all hazards included in a standard "All Risk" Coverage endorsement. Policies shall be in the name of the Owner and Contractor.

5.4.5 The comprehensive general liability insurance will include contractual liability insurance applicable to CONTRACTOR's obligations under paragraphs 6.30 and 6.31 of the General Conditions. Contractual Liability coverage shall provide coverage for not less than the following amounts:

5.4.5.1. Bodily Injury:

$500,000	Each Occurrence

5.4.5.2 Property Damage:

$100,000	Each Occurrence
$ N/A	Annual Aggregate

SC-6.4 Add the following language at the end of paragraph 6.4:

Contractor shall arrange for all necessary services through the local agencies at his own expense.

SC-6.7.3. Delete Paragraph 6.7.3 in its entirety and insert the following in its place:

6.7.3 ENGINEER will be allowed a reasonable time within which to evaluate each proposed substitute/ "or-equal" item. Complete written applications as detailed in Section 6.7 of the General Conditions must be submitted by a Bidder listed on the official Bidders List and must be received by ENGINEER at least fifteen (15) calendar days prior to the date (by end-of-business) for receipt of Bids. The burden of proof of the merit of the substitute/ "or-equal" item is upon the Bidder. ENGINEER will be the sole judge of acceptability, and ENGINEER'S decision of approval or disapproval of an item will be final. If ENGINEER approves any substitute/ "or-equal" item, such approval will be set forth in an Addendum issued to prospective Bidders. Bidders shall not rely upon approvals made in any other manner.

SC-6.7.4-6 Add new paragraphs immediately after Paragraph 6.7.3:

6.7.4 Submittals for substitute/ "or-equal" items shall include illustrative drawings, specifications, descriptive brochures, installation lists, weights, metal thickness of principal components, drive arrangements, torques, power requirements,

performance curves, installation requirements, availability of spare parts, local service capability, and other items necessary for the ENGINEER to determine that the intent of the Specifications is to be met. Submittal must also include an enumeration of any and all changes required in the contract documents for incorporation of the proposed item. Incomplete submittals will not be reviewed or commented upon.

6.7.5 Submitted items that are determined to be "equal" or acceptable substitute to the named equipment or item in the specifications will be approved and commented upon by addendum to notify all Bidders of approval and any stipulations for the products use in preparation of his/her bid.

SC-6.8.3 Add a new paragraph immediately after Paragraph 6.8.2:

6.8.3. The Contractor shall not award work valued at more than fifty (50%) percent of the Contract Price to Subcontractor(s), without prior written approval of the Owner.

SC-6.21 Add the following language at the end of paragraph 6.21:

The Contractor shall provide, at the site, such equipment and medical facilities as are necessary to supply first-aid service to anyone who may be injured in connection with the work. The Contractor must report in writing to the Engineer all accidents whatsoever arising out of, or in connection with, the performance of the work, whether on or adjacent to the site, which causes death, personal injury or property damages, giving full details and statement of witnesses. In addition, if death or serious injuries or serious damages are caused, the accident shall be reported immediately by telephone or messenger to the Contractor and any subcontractor so that Contractor may promptly report the facts to the Engineer, giving full details of the accident. The Contractor shall advise his superintendent and foreman, who are on the site of the work, the name of the hospital and phone number and the name and phone number of the doctor he proposes to use in case of an accident.

SC-6.33 Add a new paragraph immediately after Paragraph 6.32:

6.33 Contractor shall require any and all subcontractors to conform to the obligations under paragraph 6.30 prior to commencing any work.

SC-9.3 Add the following language at the end of paragraph 9.3:

The Owner reserves the right to provide Resident Project Representative services for this project through the services of the Engineer. The Duties, Responsibilities, and Limitations of Authority of the Resident Project Representative will be as stated in the Agreement Between Owner and Engineer, executed for this specific Project.

SC-11.9.2 Add the following language at the end of paragraph 11.9.2:

Direct payment will only be made items specifically listed in the Bid Form, and the cost of any other work will be included in the unit price for the item to which it relates.

SC-12.3.1 Add the following sub-Paragraph to Paragraph 12.3:

12.3.1 If the Contractor fails to prosecute the work with such diligence as will insure the completion of each portion of the work within the Contract Time, plus any extensions made in accordance with Article 12 of the General Conditions, and if the Owner does not exercise his reservations as set forth in Article 13 of the General Conditions, the Contractor shall continue the work, in which event, actual damages for the delay will be impossible to determine. In lieu thereof, liquidated damages in the amount of $500 per calendar day for each day that the work is delayed beyond the contract completion will be assessed to the Contractor until the work is completed.

SC-13.2 Delete Paragraph 13.2 in its entirety and insert the following in its place:

Engineer and Engineer's representatives, other representative of Owner, testing agencies, the Georgia Department of Natural Resources, the Environmental Protection Division, the Department of Labor, and any other governmental agencies with jurisdictional interests will have access to the Work at reasonable times for their observation, inspection, and testing. Contractor shall provide proper and safe conditions for such access.

SC-17.5 Add the following new Paragraphs immediately after Paragraph 17.4:

17.5 The Contractor acknowledges the requirement of the High Voltage Act of the General Assembly of Georgia by execution of the Agreement.

17.6 The Contractor shall comply with the Department of Labor Safety and Health Regulation for Construction promulgated under the Occupational Safety and Health Act of 1970 (PL 91-596) and under Section 107 of the Contract Work and Safety Standards Act (PL 91-54). These regulations are administered by the Department of Labor and the Contractor shall allow access to the project to personnel from that Department.

17.7 The Contractor shall occupy the status of an Independent Contractor and the Contractor's employees are not employees of the Owner.

FLOWERY BRANCH CITY COUNCIL

EXECUTIVE SUMMARY

SUBJECT: Award Contract to Legacy Water Group, LLC for the Connection to Gainesville's Sanitary Sewer System and Declaration of an Emergency

DATE: January 26, 2023

(X)RECOMMENDATION
( ) POLICY DISCUSSION
( ) STATUS REPORT
( ) OTHER

BUDGET INFORMATION:
ANNUAL- $2,066,851.50
CAPITAL-

COUNCIL ACTION REQUESTED ON: February 2, 2023

PURPOSE: To award contract to Legacy Water Group, LLC for the construction of the lines and connections to connect to Gainesville's sanitary sewer system immediately, and to declare and emergency for this work to be completed.

HISTORY: The City of Flowery Branch has been near capacity at its wastewater treatment plant and staff sought out several alternatives for more capacity while a new plant was being designed and constructed.

FACTS AND ISSUES: Trey Gavin with ESG Engineering, has been working with staff to identify the lines to connect to Gainesville's sanitary sewer system and a potential route for the new pipeline. The cost of the lines and connections are anticipated to be $2,066,851.50 with funding to be provided from system development charges. An emergency exists because the current wastewater treatment plant, which is permitted to handle 910,000 gallons per day (GPD), is currently operating near capacity and the city has recently received violation notices and fines from EPD associated with these issues. Mr. Gavin believes this to be a "max not-to-exceed" price and will work to bring the project in below this total. The only unknown currently of concern is the potential for rock blasting during installation, but we believe this will not be an issue based on knowledge of the area.

OPTIONS:

1) Award contract to Legacy Water Group, LLC and declare an emergency so the work can begin immediately.
2) Do not award contract.

RECOMMENDED SAMPLE MOTION:

I make a motion to award a contract to Legacy Water Group, LLC in amount not to exceed $2,066,851.50 for immediate construction of lines to connect to Gainesville's sanitary sewer system and to declare an emergency for the work to begin – subject to the City Attorney's approval.

DEPARTMENT: Administration

Prepared by: Tonya Parrish

FLOWERY BRANCH CITY COUNCIL

EXECUTIVE SUMMARY

SUBJECT: Consider Executing a Performance Agreement for Swingin' Medallions on Saturday, September 23, 2023 at the September Fall Event

COUNCIL MEETING DATE: February 2, 2023

HISTORY:
Last year we hosted the Swinging Medallions for the first time and we would like to make this an annual event. Events include food trucks, free entertainment for families, live music.

FACTS AND ISSUES:
This year I am planning a new event in September, it will center on all the fun things of fall; sports, food, crafts and fun. This event will take place on Saturday, September 23, 2023 from 2pm – 10pm. We will have craft & art vendors, food trucks, sports themed games & a focus on the Falcons. I have been able to book the Swinging Medallions for our closing act for the event. They will be performing at the Market Pavilion from 7:30pm – 9:30pm. The cost is $6,000 which includes all lights and sound needs.

OPTIONS:
Approve or Deny

IF FUNDING IS INVOLVED, ARE FUNDS APPROVED IN THE CURRENT BUDGET:
Yes

AMOUNT AND SOURCE OF FUNDS:
$6000 Funded by Concert annual budget.

RECOMMENDATION:

SAMPLE MOTION:
I make a motion to approve for the City Manager to execute the performance agreement with the Swinging Medallions for the event on Saturday, Sept. 23, 2023, upon final review and approval of the agreement from the City Attorney.

COLLABORATING DEPARTMENT:
Administration

DEPARTMENT: Administration

Prepared by: Shelia Cooper

ATTACHMENTS

- Executive Summary Swingin' Medallions Agreement 2023.pdf
- Swingin Medallions Performance Agreement.pdf

FLOWERY BRANCH CITY COUNCIL

EXECUTIVE SUMMARY

SUBJECT: Consideration of Executing a Performance Agreement for Swinging Medallions on Saturday, September 23, 2023 at the September Fall Event

DATE:

(X) RECOMMENDATION
( ) POLICY DISCUSSION
( ) STATUS REPORT
( ) OTHER

BUDGET INFORMATION:
ANNUAL- $6,000
CAPITAL-

COUNCIL ACTION REQUESTED ON: February 2, 2023

PURPOSE: Sign performance agreement with The Swinging Medallions to perform at the September Fall Event on Saturday, Sept. 23, 2023.

HISTORY:

- Last year we hosted the Swinging Medallions for the first time and we would like to make this an annual event.
- Events include food trucks, free entertainment for families, live music

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FACTS AND ISSUES: This year I am planning a new event in September, it will center on all the fun things of fall; sports, food, crafts and fun. This event will take place on Saturday, September 23, 2023 from 2pm – 10pm. We will have craft & art vendors, food trucks, sports themed games & a focus on the Falcons. I have been able to book the Swinging Medallions for our closing act for the event. They will be performing at the Market Pavilion from 7:30pm – 9:30pm. The cost is $6,000 which includes all lights and sound needs.

OPTIONS: Approve or Deny

RECOMMENDED SAMPLE MOTION:
I make a motion to approve for the City Manager to execute the performance agreement with the Swinging Medallions for the event on Saturday, Sept. 23, 2023, upon final review and approval of the agreement from the City Attorney.

DEPARTMENT: Tourism
Prepared by: Renee Carden

Performance Agreement

This Contract and Agreement is made on this date, February 2, 2023, between (Artist) THE SWINGIN' MEDALLIONS and (Purchaser) Renee Carden, Downtown Events/Public Information Officer, City of Flowery Branch. **Contract and deposit should be returned within ten days of date of issue. If contracts and deposits are not returned within this period of time, the date will be considered open and available and will not be held.** Artist and Purchaser agree to the following Terms and Conditions:

- **PURCHASER NAME, ADDRESS, AND CONTACT INFORMATION:**
  Renee Carden, Downtown Events/Public Information Officer, City of Flowery Branch
  Renee@flowerybranchga.org, Direct: 770-967-6371 #8
  5410 Pine Street, P.O. Box 757, Flowery Branch, GA 30542
- **VENUE NAME, ADDRESS, AND CONTACT INFORMATION:**
  Downtown Flowery Branch, GA
- **DATE (S) AND TIME (S) OF PERFORMANCE:**
  Saturday, September 23, 2023. Artist to perform 7:30-9:30pm, with 15-minute intermission.
- **LOAD-IN AND SET-UP TIME (MINIMUM OF FOUR HOURS PRIOR TO PERFORMANCE):**
  TBD
- **PRICE AND TERMS OF PERFORMANCE: $6000.00 (plus attached Rider)**
  Purchaser to provide staging. Artist to provide audio/lighting.
  Purchaser provides, at no cost to Artist, 6 double hotel rooms and rider
- **PAYMENT TERMS:** $1500 **non-refundable deposit** due with signed contract.
  Balance of $4,500 due the day of event.

PLEASE MAKE CHECKS PAYABLE TO Medallion Productions, LLC (Tax ID# 32-0149929)
ANY ATTACHED RIDERS AND SPECIAL CONDITIONS SHALL BE DEEMED INTEGRAL PARTS OF THESE TERMS AND CONDITIONS. APPLICABLE RIDERS MUST BE SIGNED AND RETURNED WITH CONTRACT/DEPOSIT.

Artist's obligations are subject to normal and customary "force majure" conditions, including, but not limited to, Acts of God, riots, strikes, labor difficulties, illness, accidents, means of transportation, any act of Public Authority intervention, or any other condition or circumstance beyond Artist's control. Under such circumstance, there shall be no claims for damages by either party to this Contract and Agreement. Any and all costs and expenses (including Attorney fees) incurred by Artist in connection with the enforcement of this Contract and Agreement or collection of wages and fees, due to a default or breach by the Purchaser will be paid by the Purchaser. **Cancellation by Purchaser of event, after Agreement is fully executed, will require full payment of balance, unless otherwise agreed to by The Swingin' Medallions.** Purchaser shall be liable for any and all damages to Artist's equipment caused by Purchaser, his employees, guests, or any other person not associated with or connected to Artist. Purchaser agrees to hold harmless The Swingin' Medallions or any of its agents, members, guests, employees or independent contractors for any damages or claims arising from this performance, preparation, set-up and breakdown.

In the event of inclement weather that renders any performance hazardous or unsafe, Purchaser shall remain liable for payment of the full agreed upon compensation, even if the performance is prevented by such weather conditions. Artist to be paid in full, rain or shine.

_____.
Robby Cox
Authorized Representative of
The Swingin' Medallions

_____Date

_____.
Renee Carden
Authorized Representative of
City of Flowery Branch

_____Date

PLEASE REMIT CONTRACT/DEPOSIT TO:
Robby Cox, 1025 Sunset Road, Brentwood TN 37027