



OPELIKA CITY COUNCIL
“ REGULAR MEETING AGENDA “
204 South 7th Street
August 15, 2017
TIME: 7:00 PM

1. CALL TO ORDER
2. ROLL CALL
 1. Patricia Jones, Tiffany Gibson-Pitts, Dozier Smith T, David Canon, Eddie Smith
3. INVOCATION
 1. Pastor Anthony Pogue from Bethesda Baptist Church will provide the invocation.
4. PLEDGE OF ALLEGIANCE
 1. Boy Scouts Luke Price, Chas Brewer and Price McWhorter will lead the Pledge of Allegiance.
5. READING OF MINUTES
 1. Minutes from the City Council meeting on 8-01-17.
6. UNFINISHED BUSINESS
7. REMARKS BY THE MAYOR
 1. July 2017 Building Report
 2. Recognize the 100th OPS GIG customer - Allyson Baker..
 3. Recognize ARPA State swim meet winners.
8. CITIZEN COMMUNICATIONS (Limit comments to five minutes or less)
9. REPORT OF DISBURSEMENTS
10. COMMITTEE REPORTS
11. GENERAL BUSINESS
 1. RYU Investment LLC (280 Marathon) Request Off-Premise Beer and Wine License
 2. Momma Goldberg's Deli Request On-Premise Beer License
 3. Public Hearing, Weed Abatement Assessment - 105 Vaughan Ave
 4. Notice of Public Hearing Weed Abatement Assessment- 308 Brannon Avenue
 5. Public Hearing, Amend Zoning Ord & Map: 73A Jeanette/221 Veterans Parkway, R-5M to C-3
 6. Public Hearing, Amend Zoning Ord & Map: 2712 South Uniroyal Road, R-4M to M-1
12. AWARDING OF BIDS
13. RESOLUTIONS

1. Expense reports from various departments.
 2. Weed Abatement Assessment - 105 Vaughan Ave
 3. Weed Abatement Assessment-308 Brannon Avenue
 4. Travel Advancement for Advanced Linemen Training (OPS)
 5. Purchase - Cisco LED Street Lights - IT
 6. Purchase - Cisco Wireless Sensors - IT
 7. 2017 Byrne JAG Grant - OPD.
 8. Special appropriation to the P&R department - Health Fair.
 9. One-Time Lump Sum Addition to the Retirement Benefits of Certain City Retirees & Beneficiaries of Deceased Retirees.
 10. Agreement with Robins & Morton Group - new Police HQ.
14. ORDINANCES
1. Amend Zoning Ord & Map: 73A Jeanette St/221 Veterans Parkway, R-5M to C-3 - 1st Reading.
 2. Amend Zoning Ord & Map: 2712 South Uniroyal Road, R-4M to M-1 - 1st Reading.
15. APPOINTMENTS
16. ADJOURN



City Council
204 South 7Th Street
Opelika, AL

SCHEDULED

CM MINUTES (ID # 2375)

Meeting: 08/15/17 07:00 PM
Department: City Clerk
Category: CM Minutes
Prepared By: Robert Shuman
Initiator: Robert Shuman
Sponsors:

DOC ID: 2375

Minutes from the City Council meeting on 8-01-17.



OPELIKA CITY COUNCIL “ REGULAR MEETING MINUTES “

204 South 7th Street

August 1, 2017

TIME: 7:00 PM

1. Call to Order

President Smith call this council meeting to order at 7:00pm asking Mr. Shuman to call the roll.

2. Roll Call

Mr. Shuman called the roll and all council members were present.

1. Patricia Jones, Tiffany Gibson-Pitts, Dozier Smith T, David Canon, Eddie Smith

3. Invocation

Mr. Henry Smith provided the invocation for this council meeting.

1. Mr. Henry Smith.

4. Pledge of Allegiance

The three Scouts listed below lead the Pledge of Allegiance. Scout Master Troy Brady and Lynn McWhorter, Dad of Scout, were present as well.

1. Boy Scout Troop 354. Price McWhorter, Cole Brady and Taylor Brady.

5. Reading of Minutes

1. Council Meeting minutes for 7-18-17.

RESULT: APPROVED [UNANIMOUS]

MOVER: Dozier Smith T, Council Member

SECONDER: Tiffany Gibson-Pitts, Council Member

AYES: Jones, Gibson-Pitts, Smith T, Canon, Smith

6. Unfinished Business

7. Remarks By the Mayor

Mayor Fuller thanked Maddie Clark for organizing the annual National Night Out (NNO) event and the city council members for participating in the walk to Covington Park. Mayor Fuller also thanked police chief John McEachern and the Opelika police officers for supporting the NNO event.

Mayor Fuller showed a door hanger that the City's Code Enforcement department is distributing in the City. The door hanger explains the City's regulations for lawn maintenance and that the home owner is responsible for taking care of their lawn and property all the way to the street.

1. Recognize Kyle Graddy for receiving his Eagle Scout and for his work at the Ross Cemetery.

Mayor Fuller presented a certificate of achievement to Kyle Graddy for receiving his Eagle Scout and for cleaning up the Ross Cemetery as his Eagle Scout project.

2. Recognize Tyler Chaffee, University of Alabama Economic Development Honors Certificate.

Mayor Fuller presented a certificate of achievement to Tyler Chaffee, the project manager in the City's Economic Development department, for receiving an economic development honors certificate from the University of Alabama.

8. Citizen Communications

(Limit comments to five minutes or less)

Betty Stallings thanked Mayor Fuller and the City's Engineering department for fixing the driveway entrance to her Mom's home and doing an outstanding job.

Jessie Ellis stated the street resurfacing on South Long street shows a total lack of concern and respect for the citizens in Ward 1. The street has been patched on top of patches and the entire street should have been re-paved. The resurfacing on Alabama Avenue is embarrassing and should have been paved properly and there are trees growing out that need to be cut back. The resurfacing and patching of streets in Ward 1 is unacceptable.

9. Report of Disbursements

10. Committee Reports

11. General Business

1. Request from Wild Wing Cafe for a Restaurant Retail Liquor & On-Premise Beer License.

RESULT: APPROVED [UNANIMOUS]

MOVER: David Canon, Council Member

SECONDER: Dozier Smith T, Council Member

AYES: Jones, Gibson-Pitts, Smith T, Canon, Smith

2. Request temporary street closure for a portion of Avenue B on August 9th.

RESULT: APPROVED [UNANIMOUS]

MOVER: Tiffany Gibson-Pitts, Council Member

SECONDER: Dozier Smith T, Council Member

AYES: Jones, Gibson-Pitts, Smith T, Canon, Smith

3. Public Hearing for Demolition - 9 Avenue B

President Smith opened the public hearing for the demolition at 9 Avenue B and asked if there was anyone present that would like to speak for or against said demolition. No one came forward to speak. President Smith closed this public hearing.

4. Notice of Public Hearing Weed Abatement Assessment - 13 Dover St.

President Smith opened the public hearing for the assessment of cost for a weed abatement at 13 Dover Street and asked if there was anyone present that would like to speak for or against said weed assessment. No one came forward to speak. President Smith closed this public hearing.

5. Notice of Public Hearing Weed Abatement Assessment - 501 S 4Th St.

President Smith opened the public hearing for the assessment of cost for a weed abatement at 501 South 4th Street and asked if there was anyone present that would like to speak for or against said weed assessment. No one came forward to speak. President Smith closed this public hearing.

6. Notice of Public Hearing Weed Abatement Assessment - 1811 Trimble St.

President Smith opened the public hearing for the assessment of cost for a weed abatement at 1811 Trimble Street and asked if there was anyone present that would like to speak for or against said weed assessment. No one came forward to speak. President Smith closed this public hearing.

12. Awarding of Bids

1. Bids 153-17 Tractor-Backhoe-Loader - OPS

RESULT: APPROVED [UNANIMOUS]
MOVER: Patricia Jones, President Pro-Tem
SECONDER: David Canon, Council Member
AYES: Jones, Gibson-Pitts, Smith T, Canon, Smith

13.

Resolutions

1. Resolution 154-17 Expense reports from various departments.
RESULT: APPROVED [UNANIMOUS]
MOVER: Dozier Smith T, Council Member
SECONDER: Tiffany Gibson-Pitts, Council Member
AYES: Jones, Gibson-Pitts, Smith T, Canon, Smith
2. Resolution 155-17 Ordering the Demolition at 9 Avenue B.
RESULT: APPROVED [UNANIMOUS]
MOVER: David Canon, Council Member
SECONDER: Tiffany Gibson-Pitts, Council Member
AYES: Jones, Gibson-Pitts, Smith T, Canon, Smith
3. Resolution 156-17 Weed Abatement Assessment - 13 Dover St.
RESULT: APPROVED [UNANIMOUS]
MOVER: Tiffany Gibson-Pitts, Council Member
SECONDER: Dozier Smith T, Council Member
AYES: Jones, Gibson-Pitts, Smith T, Canon, Smith
4. Resolution 157-17 Weed Abatement Assessment - 501 S. 4th St.
RESULT: APPROVED [UNANIMOUS]
MOVER: Tiffany Gibson-Pitts, Council Member
SECONDER: David Canon, Council Member
AYES: Jones, Gibson-Pitts, Smith T, Canon, Smith
5. Resolution 158-17 Weed Abatement Assessment - 1811 Trimble St.
RESULT: APPROVED [UNANIMOUS]
MOVER: Patricia Jones, President Pro-Tem
SECONDER: Dozier Smith T, Council Member
AYES: Jones, Gibson-Pitts, Smith T, Canon, Smith
6. Resolution 159-17 Special Appropriation Spay and Neuter Agreement
RESULT: APPROVED [UNANIMOUS]
MOVER: Dozier Smith T, Council Member
SECONDER: Patricia Jones, President Pro-Tem
AYES: Jones, Gibson-Pitts, Smith T, Canon, Smith
7. Resolution 160-17 Professional Services with the City of Auburn - OFD
RESULT: APPROVED [UNANIMOUS]
MOVER: David Canon, Council Member
SECONDER: Patricia Jones, President Pro-Tem
AYES: Jones, Gibson-Pitts, Smith T, Canon, Smith
8. Resolution 161-17 Special appropriation to SUSCC Foundation.

- RESULT:** APPROVED [UNANIMOUS]
MOVER: Tiffany Gibson-Pitts, Council Member
SECONDER: Dozier Smith T, Council Member
AYES: Jones, Gibson-Pitts, Smith T, Canon, Smith
9. Resolution 162-17 Special appropriation to OHS Young SOD program.
RESULT: APPROVED [UNANIMOUS]
MOVER: David Canon, Council Member
SECONDER: Tiffany Gibson-Pitts, Council Member
AYES: Jones, Gibson-Pitts, Smith T, Canon, Smith
10. Resolution 163-17 Special appropriation to Lee Russell Council of Governments.
RESULT: APPROVED [UNANIMOUS]
MOVER: Dozier Smith T, Council Member
SECONDER: David Canon, Council Member
AYES: Jones, Gibson-Pitts, Smith T, Canon, Smith
11. Resolution 164-17 Special appropriation, School System, Dog Pound program.
RESULT: APPROVED [UNANIMOUS]
MOVER: Patricia Jones, President Pro-Tem
SECONDER: Dozier Smith T, Council Member
AYES: Jones, Gibson-Pitts, Smith T, Canon, Smith
12. Resolution 165-17 PY2017 CDBG Action Plan - Community Development.
RESULT: APPROVED [UNANIMOUS]
MOVER: Dozier Smith T, Council Member
SECONDER: Patricia Jones, President Pro-Tem
AYES: Jones, Gibson-Pitts, Smith T, Canon, Smith
13. Resolution 166-17 Agreement with Metaswitch Networks, Ltd - OPS
RESULT: APPROVED [UNANIMOUS]
MOVER: David Canon, Council Member
SECONDER: Dozier Smith T, Council Member
AYES: Jones, Gibson-Pitts, Smith T, Canon, Smith
14. Ordinances
1. Ordinance 117-17-ORD Amend Zoning Ord & Map: 1500 Block Spring Drive, R-3, GC to C-3, GC - 2nd Reading.
RESULT: SECOND READING AND APPROVED [UNANIMOUS]
MOVER: David Canon, Council Member
SECONDER: Dozier Smith T, Council Member
AYES: Jones, Gibson-Pitts, Smith T, Canon, Smith
2. Ordinance 116-17-ORD Amend City Code, Section 17-3, Establishing Time & Place of Holding Municipal Court - 2nd Reading.
RESULT: SECOND READING AND APPROVED [UNANIMOUS]
MOVER: Tiffany Gibson-Pitts, Council Member
SECONDER: David Canon, Council Member
AYES: Jones, Gibson-Pitts, Smith T, Canon, Smith
3. Ordinance 118-17-ORD Public Improvement Ordinance / Sutton Way SD - 2nd Reading. Guy Gunter, city attorney, provided a detailed step by step explanation of the public improvement process. This ordinance sets the public hearing date for the proposed sewer project in the Sutton Way subdivision for Tuesday, September 5, 2017.

Ms. Jones asked the city council members to support this ordinance which sets a public hearing date so her constituents in the Sutton Way subdivision will have the opportunity to voice their opinion at the September 5th public hearing.

RESULT: SECOND READING AND APPROVED [UNANIMOUS]

MOVER: Patricia Jones, President Pro-Tem

SECONDER: David Canon, Council Member

AYES: Jones, Gibson-Pitts, Smith T, Canon, Smith

4. Ordinance 119-17-ORD City investment options, CDARS program - 2nd Reading.

RESULT: SECOND READING AND APPROVED [UNANIMOUS]

MOVER: Dozier Smith T, Council Member

SECONDER: Patricia Jones, President Pro-Tem

AYES: Jones, Gibson-Pitts, Smith T, Canon, Smith

15. Appointments

1. Appoint Derek Lee to the Electircal Board of Examiners.

RESULT: APPROVED [UNANIMOUS]

MOVER: Dozier Smith T, Council Member

SECONDER: Patricia Jones, President Pro-Tem

AYES: Jones, Gibson-Pitts, Smith T, Canon, Smith

16. Adjourn

The City Council meeting minutes of August 1, 2017 are hereby adopted and approved this the ____ day of _____, 2017.

/s/

President of the City Council

City of Opelika, Alabama

ATTEST:

/s/

R. G. "Bob" Shuman

City Clerk - Treasurer

1. Motion to adjourn.

This council meeting ended at 7:44 PM.

RESULT: APPROVED [UNANIMOUS]

MOVER: Patricia Jones, President Pro-Tem

SECONDER: Tiffany Gibson-Pitts, Council Member

AYES: Jones, Gibson-Pitts, Smith T, Canon, Smith



City Council
204 South 7Th Street
Opelika, AL

SCHEDULED

Meeting: 08/15/17 07:00 PM
Department: Building Inspection
Category: Building Permit Report.
Prepared By: William Ott
Initiator: Jeff Kappelman
Sponsors:

MAYOR'S REMARKS (ID # 2378)

DOC ID: 2378

July 2017 Building Report

**CITY OF OPELIKA - PLANNING DEPARTMENT
BUILDING INSPECTION DIVISION
JULY, 2017 - MONTHLY BUILDING PERMIT DETAIL REPORT**

ISSUE DATE	ADDRESS	COMPANY / OWNER	WORK CLASS	VALUATION
7/3/2017	2510 PEPPERELL PKWY	DORRIS SIGN INC	SIGNS	\$6,000.00
7/3/2017	2180 1ST AVE	DORRIS SIGN INC	SIGNS	\$30,800.00
7/3/2017	820 FLORAL ST	GAYLE BAKER	ACCESSORY BUILDING	\$1,956.00
7/5/2017	2000 PEPPERELL PKWY	BAILEY HARRIS CONST CO	ALTERATION	\$2,487,171.00
7/6/2017	947 TOWNE LAKE PKWY	STONE MARTIN BUILDERS	NEW SINGLE FAMILY DETACHED	\$245,985.00
7/7/2017	2901 CORPORATE PARK DR	J&L CONTRACTORS INC	NEW COMMERCIAL BUILDING	\$1,077,576.00
7/7/2017	3419 LAKESHORE DR DR	TOLAND CONSTRUCTION LLC	NEW SINGLE FAMILY DETACHED	\$238,032.00
7/10/2017	3906 JUDSON CT	DACK HOMES WEST LLC	NEW SINGLE FAMILY DETACHED	\$120,897.00
7/10/2017	2802 STONYBROOK RD	SUN POOL COMPANY	SWIMMING POOL	\$25,500.00
7/10/2017	9 AVENUE B	MILTON CANNON	ALTERATION	\$1,000.00
7/10/2017	208 N 23RD ST	TRIPLE B CONSTRUCTION LLC	ROOFS	\$7,800.00
7/11/2017	1809 COLUMBUS PKWY	EFFECTIVE SIGNS LLC	SIGNS	\$5,100.00
7/12/2017	2205 ROCKY BROOK RD	MID SOUTH SIDING	ALTERATION	\$2,000.00
7/12/2017	2105 INTERSTATE DR	EFFECTIVE SIGNS LLC	SIGNS	\$25,236.00
7/12/2017	405 AVENUE E	MID SOUTH SIDING	ROOFS	\$3,100.00
7/13/2017	609 CUSSETA RD	ALEX BLACK	ACCESSORY BUILDING	\$2,565.00
7/13/2017	2703 YOUNGWOOD LN	JERMY CARR	ACCESSORY BUILDING	\$1,956.00
7/14/2017	1101 AUBURN ST	J MARSH ENTERPRISES INC	ALTERATION	\$22,500.00
7/14/2017	507 FRUITLAND AVE	J MARSH ENTERPRISES INC	ALTERATION	\$22,500.00
7/14/2017	1220 FOX RUN AVE 206	VICTOR VANCE	ALTERATION	\$3,000.00
7/18/2017	2115 PEPPERELL PKWY	EFFECTIVE SIGNS LLC	SIGNS	\$3,075.00
7/19/2017	1403 SAWYER DR	DANIEL NICHOLS	ACCESSORY BUILDING	\$3,000.00
7/19/2017	4400 NORTH PARK DR MAX	BC CONSTRUCTION & DEVELOPMENT	ADDITION	\$19,806,148.00
7/20/2017	3454 LAKESHORE DR DR	TOLAND CONSTRUCTION LLC	NEW SINGLE FAMILY DETACHED	\$287,960.00
7/20/2017	1109 GWYNNE'S WAY	BUILDERS PROFESSIONAL GRP LLC	NEW SINGLE FAMILY DETACHED	\$322,564.00
7/20/2017	1315 MADISON AVE A	MASTEC NETWORK SOLUTIONS LLC	COMMUNICATION TOWERS	\$14,500.00
7/21/2017	2909 ANDERSON LAKES CIR	EDGAR HUGHSTON BUILDER INC	NEW SINGLE FAMILY DETACHED	\$236,345.00
7/21/2017	2600 ANDERSON LAKES DR	EDGAR HUGHSTON BUILDER INC	NEW SINGLE FAMILY DETACHED	\$273,349.00
7/21/2017	2604 ANDERSON LAKES DR	EDGAR HUGHSTON BUILDER INC	NEW SINGLE FAMILY DETACHED	\$245,779.00
7/24/2017	1008 TOWNE LAKE PKWY	MR. POOL	SWIMMING POOL	\$32,000.00
7/24/2017	1815 TOOMER ST	GOLD HILL CONSTRUCTION	ALTERATION	\$4,575.00
7/24/2017	513 M L KING BLVD	SIMPSON ROOFING	ROOFS	\$3,800.00
7/25/2017	721 N 10TH ST	B&L ROOFING	ROOFS	\$4,250.00

ISSUE DATE	ADDRESS	COMPANY / OWNER	WORK CLASS	VALUATION
7/26/2017	2701 ANDREWS RD	MRBRAZ & ASSOCIATES PLLC	ADDITION	\$1,494,818.00
7/26/2017	1205 DOUGLAS ST	CAM CONTRACTING	ROOFS	\$4,100.00
7/26/2017	2207 ROCKY BROOK RD	ADAMSON CONSTRUCTION GROUP	NEW SINGLE FAMILY DETACHED	\$232,040.00
7/27/2017	1320 SPRING LAKES XING	HOMEWORKS OF ALABAMA INC	NEW SINGLE FAMILY DETACHED	\$302,019.00
7/27/2017	1601 BLACKHAWK DR	BACKYARD EXPERIENCE, THE	SWIMMING POOL	\$34,000.00
7/27/2017	2920 MCKINLEY DR	BUILDERS PROFESSIONAL GRP LLC	NEW SINGLE FAMILY DETACHED	\$354,412.00
7/27/2017	705 DINGO DR	BUILDERS PROFESSIONAL GRP LLC	NEW SINGLE FAMILY DETACHED	\$322,564.00
7/28/2017	600 COLUMBUS PKWY	MORGAN SIGNS	SIGNS	\$2,055.00
7/28/2017	1509 AUBURN ST	LEE CO ALA HABITAT/HUMANITY	NEW SINGLE FAMILY DETACHED	\$117,500.00
7/28/2017	2330 BIRMINGHAM HWY	MIHADA CONSTRUCTION LLC	NEW COMMERCIAL BUILDING	\$1,500,000.00
7/31/2017	2000 PEPPERELL PKWY	BAILEY HARRIS CONST CO	ALTERATION	\$3,269,962.00
7/31/2017	3314 DOUBLE EAGLE LN	BILLY MOORE	ADDITION	\$8,000.00
7/31/2017	3700 ROBERT TRENT JONES TRL	JESCO INC	HOTELS AND MOTELS	\$18,000,000.00
7/31/2017	1203 LIVE OAK CIR	SUN POOL COMPANY	SWIMMING POOL	\$26,000.00
7/31/2017	2420 GRAND NATIONAL PKWY	KELLI & EARL KETCHUM	NEW SINGLE FAMILY DETACHED	\$476,627.00
Total				\$51,716,366.00

TAKEN FROM THE RECORDS OF THE BUILDING INSPECTOR


 JEFF KAPPELMAN
 Chief Building Inspector



*Rich in heritage,
with a vision
for the future*

Planning Department - Building Inspections Division

Telephone 334-705-5420

Fax 334-705-5159

Monthly Permits For July, 2017

Work & Repair On Buildings:

Building Repairs	Commercial	Residential
Buildings Condemned	0	2
Buildings Demolished	0	0
Building Repairs	4	5
Plumbing Upgrades	1	2
Electrical Upgrades	0	7
Mechanical Upgrades	1	4
Reroofs And Roof Repairs	0	6
Mobile Home Services	0	0
Building Additions/Accessory Structures	3	9

Monthly Totals For July 2008-2017

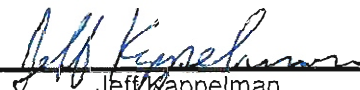
2008	\$5,358,602.00
2009	\$9,826,422.00
2010	\$30,161,881.00
2011	\$5,095,676.00
2012	\$10,502,559.00
2013	\$4,398,986.00
2014	\$3,395,401.00
2015	\$7,013,066.00
2016	\$61,671,714.00
2017	\$51,716,366.00

Total Permits Issued:

5	New Buildings: Commercial	\$41,878,542.00
4	Commercial Renovations And Repairs	\$5,774,633.00
6	Signs	\$72,266.00
14	New Single Family Homes	\$3,776,073.00
20	Residential Repairs And Renovations	\$214,852.00
0	New Apartment Units	\$0.00
0	New Duplex Residences	\$0.00
49	Total Building Permits Issued	\$51,716,366.00

49	Total Permits Issued For July, 2017	\$51,716,366.00
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TAKEN FROM THE RECORDS OF THE
BUILDING INSPECTOR


Jeff Kappelman
Chief Building Inspector

Attachment: Building Permit Reports - July, 2017 (2378 : Building Permit Reports - July, 2017)



*Rich in heritage,
with a vision
for the future*

Planning Department - Building Inspections Division

Telephone 334-705-5420

Fax 334-705-5159

Fiscal Year To Date Report - 2017

Building Repairs	Commercial	Residential
Buildings Condemned	1	0
Buildings Demolished	1	0
Building Repairs	100	76
Plumbing Upgrades	21	144
Electrical Upgrades	34	133
Mechanical Upgrades	67	99
Reroofs And Roof Repairs	6	45
Mobile Home Services	0	15
Building Additions/Accessory Structures	9	49

Yearly Totals For Oct. 1st - Sept. 30th	
2008	\$127,407,288.00
2009	\$67,359,271.00
2010	\$96,662,342.00
2011	\$45,352,237.00
2012	\$178,221,004.00
2013	\$61,881,917.00
2014	\$79,409,560.00
2015	\$192,080,600.00
2016	\$127,079,852.00
2017	\$148,898,936.00

Total Permits Issued:

24	New Buildings: Commercial	\$77,818,359.00
116	Commercial Renovations And Repairs	\$15,819,487.00
33	Signs	\$348,159.00
183	New Single Family Homes	\$46,630,848.00
169	Residential Repairs And Renovations	\$3,426,599.00
89	New Apartment Units	\$4,855,484.00
0	New Duplex Residences	\$0.00
614	Total Building Permits Issued	\$148,898,936.00

614	Total Issued for FY 2017	\$148,898,936.00
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JEFF KAPPELMAN
Building Official

Attachment: Building Permit Reports - July, 2017 (2378 : Building Permit Reports - July, 2017)



City Council
204 South 7Th Street
Opelika, AL

SCHEDULED

Meeting: 08/15/17 07:00 PM
Department: Purchasing and Revenue
Category: Business & Alcohol License
Prepared By: Martha Wright

Initiator: Lillie Finley

Sponsors:

GENERAL BUSINESS (ID # 2377)

DOC ID: 2377

RYU Investment LLC (280 Marathon) Request Off-Premise Beer and Wine License



City Council
204 South 7Th Street
Opelika, AL

SCHEDULED

Meeting: 08/15/17 07:00 PM
Department: Purchasing and Revenue
Category: Business & Alcohol License
Prepared By: Martha Wright

Initiator: Lillie Finley

Sponsors:

GENERAL BUSINESS (ID # 2376)

DOC ID: 2376

Momma Goldberg's Deli Request On-Premise Beer License



City Council
204 South 7Th Street
Opelika, AL

SCHEDULED

GENERAL BUSINESS (ID # 2373)

Meeting: 08/15/17 07:00 PM
Department: Purchasing and Revenue
Category: Public Hearing
Prepared By: Jerry Bush
Initiator: Lillie Finley
Sponsors:

DOC ID: 2373

Public Hearing, Weed Abatement Assessment - 105 Vaughan Ave

WEED ABATEMENT INVOICE

Date: 08/04/2017

**To: State of Alabama
PO Box 327210
Montgomery Al. 36132**

**Property Address:
105 Vaughn Ave
Opelika Al. 36801
Parcel # 10-04-18-1-001-077.000**

On June 26, 2017 in accordance with Opelika City Ordinance 110-12, a notice was sent informing the owner that of a weed violation at the above listed property address. After failing to correct the violation within the time specified in the notice, the City of Opelika abated the violation.

The following is a list of charges that City of Opelika incurred for the abatement:

Cost of Abatement:	<u>192.50</u>
Certified mail:	<u>12.98</u>
Misc.	<u> </u>
Total	<u>205.48</u>

Attachment: WEED INVOICE 105 Vaughan Ave (2373 : Notice of Public Hearing Weed Abatement Assessment - 105 Vaughan Ave)

To: **State of Alabama**
PO Box 327210
Montgomery Al. 36132

**NOTICE OF PUBLIC HEARING ON COST OF
 ABATEMENT OF WEED NUISANCE LOCATED AT
 105 Vaughan Ave Parcel# 10-04-18-1-001-077.000**

=====

NOTICE IS HEREBY GIVEN that the weed nuisance growing upon or in front of the property located at 105 Vaughan Ave, Parcel No. 077.000 in the City of Opelika has been abated by the removal of the noxious or dangerous weeds, and the Mayor has therefore submitted to the City Council an itemized report (attached) in writing showing the cost of removing said nuisance. The total cost of abating such nuisance in front of or upon the above described property is \$205.48.

Notice is also given that the City Council of the City of Opelika will meet to hear and to determine any objections or defenses that may be raised by any of the property owners liable to be assessed of the work of abating such nuisance at 7:00 p.m. in the Council Chambers of the Municipal Building, 204 South 7th Street, Opelika, Alabama, on the 15th day August, 2017.

You are further notified that the cost of abating such nuisance, if confirmed by the City Council, shall constitute a weed lien on said property and shall be turned over to the Revenue Commissioner of Lee County, Alabama to add the amount of such weed lien to the next regular bill of taxes levied against said property.

Dated this the 4th day of August, 2017.

 Jerry Bush
 Code Compliance Officer

Cc: Joey Motley – City Administrator
 Guy Gunter – City Attorney
 Lillie Finley – Revenue Manager



City Council
204 South 7Th Street
Opelika, AL

SCHEDULED

Meeting: 08/15/17 07:00 PM
Department: Purchasing and Revenue
Category: Public Hearing
Prepared By: Martha Wright
Initiator: Lillie Finley
Sponsors:

GENERAL BUSINESS (ID # 2381)

DOC ID: 2381

Notice of Public Hearing Weed Abatement Assessment- 308 Brannon Avenue

To: State of Alabama
 PO Box 327210
 Montgomery Al. 36132

**NOTICE OF PUBLIC HEARING ON COST OF
 ABATEMENT OF WEED NUISANCE LOCATED AT
 308 Brannon Ave, Parcel 43-10-03-08-2-001-072.000**

=====

NOTICE IS HEREBY GIVEN that the weed nuisance growing upon or in front of the property located at 308 Brannon Ave, Parcel No. 072.000 in the City of Opelika has been abated by the removal of the noxious or dangerous weeds, and the Mayor has therefore submitted to the City Council an itemized report (attached) in writing showing the cost of removing said nuisance. The total cost of abating such nuisance in front of or upon the above described property is \$234.23.

Notice is also given that the City Council of the City of Opelika will meet to hear and to determine any objections or defenses that may be raised by any of the property owners liable to be assessed of the work of abating such nuisance at 7:00 p.m. in the Council Chambers of the Municipal Building, 204 South 7th Street, Opelika, Alabama, on the 15th day of August, 2017.

You are further notified that the cost of abating such nuisance, if confirmed by the City Council, shall constitute a weed lien on said property and shall be turned over to the Revenue Commissioner of Lee County, Alabama to add the amount of such weed lien to the next regular bill of taxes levied against said property.

Dated this the 8th day of August, 2017.

 Liz Wright
 Code Compliance Officer

Cc: Joey Motley – City Administrator
 Lillie Finley – Purchasing-Revenue Manager
 Guy. F. Gunter, III – City Attorney

WEED ABATEMENT INVOICE**Date: 07/21/2017****To: State of Alabama
PO Box 327210
Montgomery Al. 36132****Property Address:
308 Brannon Ave
Opelika Al. 36801
Parcel # 10-03-08-2-001-072.000**

On July 06, 2017 in accordance with Opelika City Ordinance 110-12, a notice was sent informing the owner that of a weed violation at the above listed property address. After failing to correct the violation within the time specified in the notice, the City of Opelika abated the violation.

The following is a list of charges that City of Opelika incurred for the abatement:

Cost of Abatement:	<u>221.25</u>
Certified mail:	<u>12.98</u>
Misc.	<u> </u>
Total	<u>234.23</u>



City Council

204 South 7th Street
Opelika, AL

SCHEDULED

GENERAL BUSINESS (ID # 2320)

Meeting: 08/15/17 07:00 PM

Department: Planning

Category: Public Hearing

Prepared By: Marty Ogren

Initiator: Charles Mosley

Sponsors:

DOC ID: 2320

Public Hearing, Amend Zoning Ord & Map: 73A Jeanette/221 Veterans Parkway, R-5M to C-3

NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that the City Council of the City of Opelika will hold a Public Hearing on Tuesday, August 15, 2017, at 7:00 p.m. in the City Council Chambers of the Municipal Building, 204 S. 7th Street, Opelika, Lee County, Alabama.

PURPOSE

The purpose of said Public Hearing will be to consider the adoption of an ordinance to amend Ordinance Number 124-91 (entitled “Zoning Ordinance of the City of Opelika”) adopted on September 17, 1991. At said Public Hearing all who desire to be heard shall have the opportunity to speak for or in opposition to the adoption of the following ordinance:

ORDINANCE NO. _____

AN ORDINANCE TO AMEND THE ZONING ORDINANCE AND ZONING MAP OF THE CITY OF OPELIKA

BE IT ORDAINED by the City Council (the “City Council”) of the City of Opelika, Alabama (the “City”) as follows:

Section 1. That Ordinance 124-91 entitled “Zoning Ordinance City of Opelika, Alabama”, adopted on September 17, 1991, and the Zoning Map of the City of Opelika provided for and referred to therein, as previously amended and/or modified, be and the same is hereby amended by rezoning or redistricting the parcel of land hereinafter in this section described, so as to change such parcel from one class of district to another class of district as follows, to-wit:

From a R-5M District (High-Density Residential District) to a C-3 District (General Commercial District), the parcel of land hereinafter described:

For a point of reference, commence at the Southwest corner of Section 15, Township 19 North, Range 26 East, Lee County, Alabama; run thence North 00°30' East for a distance of 2679 feet to a point; run thence South 89°31' East for a distance of 1278 feet to a point; run thence North 00°30' East for a distance of 1475.20 feet to the POINT OF BEGINNING of the property herein described and conveyed; from said point of beginning, continue to run thence North 00°30' East for a distance of 960 feet to a point; run thence North 89°30' West for a distance of 662 feet to a point; run thence South 00°30' West for a distance of 960 feet to a point on the Northerly margin of Hazel Street; thence along the Northerly margin of said Hazel Street, run thence South 89°30' East for a distance of 662 feet to the POINT OF BEGINNING.

The above-described property contains 12.2 acres, more or less, and is located at 73 A Jeanette Street/221 Veterans Parkway and is located on the east side of Veterans Parkway.

Section 2. Any ordinance or part thereof in conflict with provisions of this Ordinance be and the same are hereby repealed.

Section 3. This Ordinance shall be published in a newspaper of general circulation in the City of Opelika, Lee County, Alabama.

WITNESS my hand this the ____ day of _____, 2017.

CITY CLERK OF THE CITY OF OPELIKA, ALABAMA

TO: PUBLISHER

Opelika, Alabama 36801

Please publish the foregoing Notice one (1) time in the July ____, 2017 issue of your paper.

CITY CLERK

The applicant is requesting rezoning 12.2 acres at 221 Veterans Parkway from an R-5M (residential) zoning district to a C-3 (general commercial) zoning district. The rezoning property

was a mobile home park about 10 years ago. The nature of Veterans Parkway now supports a commercial zoning designation. The Planning Commission report and map are attached. At the June 27th meeting, the Planning Commission voted 5 to 0 (one abstain) to send a positive recommendation to CC to rezone the property. At the July 5th CC WS, the City Council reviewed the rezoning request and approved advertising for a CC PH.

City of Opelika

Planning Commission Report

Action Requested: Rezoning 12.2 acres

Location of Property: 73A Jeanette Street/ 221 Veterans Parkway

Property Owner(s): Four D's Real Estate, LLC.
Helen McConnaughey, Pinnacle Design Group, LLC (authorized applicant)

Current Zoning: R-5M

Request: Amendment to the Future Land Use Map and Rezoning -
from Medium Density Residential to General Commercial land use category,
Rezoning - from R-5M to C-3

Existing Land Use: Vacant former mobile home park

Surrounding Zoning Districts And Land Uses:

North	R-5M	Vacant mobile home park
South	R-5M	Mobile Home Park
East	R-5M	Vacant mobile home park
West	C-2	Single-family (across Veterans Parkway)

Staff Comment

The applicant is requesting rezoning 12.2 acre property located on the east side of Veterans Parkway from an R-5M zone to a C-3 (general commercial) zoning district. The subject property is surrounded by both on active and vacant mobile home parks. The nature of Veterans Parkway does support a more commercial zoning designation. Currently, the nearest C-3 property is located about a quarter of a mile away on Pepperell Parkway. There is C-2 property located both close to the north and across the street from this property. The C-2 zoning district would be consistent with the area, but does not encompass some of the outdoor uses, the applicant is proposing.

There are various criteria that are examined when determining whether there is a reasonable basis for a zoning change. Generally, the most important criteria is the relationship between the proposed zoning requested and the City's stated policies and plans. The area along Veterans Parkway has a wide variety of existing uses including commercial, single-family detached housing, and higher density mobile home housing. Much of the land nearer Birmingham Highway/ US 280 is currently vacant and has been so since the road was built. The Planning

Commission changed the future land use of this property from Mobile Home Use to General Commercial. The property has not been used for a mobile home park for some time. The 2030 plan notes the City's goal of removing unused mobile home park zoning and land use designation. The "General Commercial" land use designation is as follows *"This category is for those commercial areas providing a broad line of products and/or services. These areas are usually located on arterial or major collector streets with high traffic volumes. In contrast to the light commercial category, this category provides shopping for people from several residential neighborhoods."* While there is surrounding C-2/Light Commercial designated properties around this area that would also be appropriate, Veterans Parkway is classified as Major Collector street in the 2040 Long Range Transportation Plan. In 2010, this street carried over 10,000 daily trips due to its location between to Principal Arterial streets – Birmingham Highway and Pepperell Parkway. The continued growth of The Estates and similar neighborhoods in Auburn have also contributed to this increased traffic. The nearest General Commercial land use designation is located near Pepperell Parkway approximately 1,500 feet away.

The 2030 Comprehensive Plan denotes a goal of removing the current zoning classification of R-5M and replacing areas likely to continue as mobile home parks with a different designation. This property ceased to be a mobile home park over 10 years ago and seems unlikely to be used in this manner again. The commercial nature and high traffic of the street suggest that this property should transition to a commercial zone either C-2 or C-3. While C-2 is located in the area, the definitions of the two zones suggest that C-3 would be compliant with the 2030 Comprehensive Plan due to the volume of traffic and likely customer service area this property and others on the street would pull from.

At the June 27th meeting, the Planning Commission voted 5 to 0 (and one abstain) to send a positive recommendation to the City Council to rezone 12.2 acres at 221 Veterans Parkway from R-5M to C-3. This is a request to advertise for a City Council public hearing.





City Council

204 South 7th Street
Opelika, AL

SCHEDULED

GENERAL BUSINESS (ID # 2318)

Meeting: 08/15/17 07:00 PM

Department: Planning

Category: Public Hearing

Prepared By: Marty Ogren

Initiator: Charles Mosley

Sponsors:

DOC ID: 2318

Public Hearing, Amend Zoning Ord & Map: 2712 South Uniroyal Road, R-4M to M-1

NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that the City Council of the City of Opelika will hold a Public Hearing on Tuesday, August 15, 2017, at 7:00 p.m. in the City Council Chambers of the Municipal Building, 204 S. 7th Street, Opelika, Lee County, Alabama.

PURPOSE

The purpose of said Public Hearing will be to consider the adoption of an ordinance to amend Ordinance Number 124-91 (entitled “Zoning Ordinance of the City of Opelika”) adopted on September 17, 1991. At said Public Hearing all who desire to be heard shall have the opportunity to speak for or in opposition to the adoption of the following ordinance:

ORDINANCE NO. _____

AN ORDINANCE TO AMEND THE ZONING ORDINANCE AND ZONING MAP OF THE CITY OF OPELIKA

BE IT ORDAINED by the City Council (the “City Council”) of the City of Opelika, Alabama (the “City”) as follows:

Section 1. That Ordinance 124-91 entitled “Zoning Ordinance City of Opelika, Alabama”, adopted on September 17, 1991, and the Zoning Map of the City of Opelika provided for and referred to therein, as previously amended and/or modified, be and the same is hereby amended by rezoning or redistricting the parcel of land hereinafter in this section described, so as to change such parcel from one class of district to another class of district as follows, to-wit:

From a R-4M District (Medium-Density Residential District) to a M-1 District (Industrial District), the parcel of land hereinafter described:

All that lot, tract or parcel of land situated, lying and being in Opelika, Lee County, Alabama, containing 29.46 acres, more or less, and being shown and described as PARCEL "A" on that certain map or plat entitled "Plat of Boundary Survey for Springdale Development Co., LLC, Southeast Quarter of Section 21, Township 19 North, Range 27 East, Opelika, Lee County, Alabama, dated August 14, 2006, prepared by Barrett-Simpson, Inc., recorded in Plat Book 28, at Page 198, in the Office of the Judge of Probate of Lee County, Alabama.

LESS AND EXCEPT:

That portion of the above-described property previously conveyed to The Trustees of Chewacla Baptist Church as reflected in Quit Claim Deed filed for record on 04/06/11 in Deed Book 2377, at Page 806, in the Office of the Judge of Probate of Lee County, Alabama.

The above-described property contains 28.8 acres, more or less, and is located at 2712 South Uniroyal Road, Opelika, Alabama, 36801.

Section 2. Any ordinance or part thereof in conflict with provisions of this Ordinance be and the same are hereby repealed.

Section 3. This Ordinance shall be published in a newspaper of general circulation in the City of Opelika, Lee County, Alabama.

WITNESS my hand this the ____ day of _____, 2017.

CITY CLERK OF THE CITY OF OPELIKA, ALABAMA

TO: PUBLISHER

Opelika, Alabama 36801

Please publish the foregoing Notice one (1) time in the July ____, 2017 issue of your paper.

CITY CLERK

Thompson Carriers Inc. is requesting rezoning 28.8 acres accessed at 2712 South Uniroyal Road from an R-4M (residential) zoning district to a M-1 (manufacturing) zoning district. On the west and east side of the rezoning area the adjacent properties are zoned M-1. See Planning Commission report and map attached. At the June 27th meeting, the Planning Commission voted 5 to 0 (one abstain) to send a positive recommendation to CC to rezone the property. At the July 5th CC WS, the City Council reviewed the rezoning request and approved advertising for a CC PH.

City of Opelika

Planning Commission Report

Action Requested: Rezoning - 28.8 acres at from R-4M to M-1

Location of Property: 2712 South Uniroyal Road

Property Owner(s): Thompson Carriers Inc.

Current Zoning: R-4M (high density residential)

Zoning Request: M-1 (manufacturing)

Existing Land Use: Undeveloped

**Surrounding Zoning Districts
And Land Uses:**

North	R-4M	Single-family homes (SFH)
South	R-4M	Single Family homes
East	R-4M & M-1	SFH and Billing Freight Systems & McKenzie Tank Lines
West	M-1	Thompson Carriers, Inc.

Rezoning

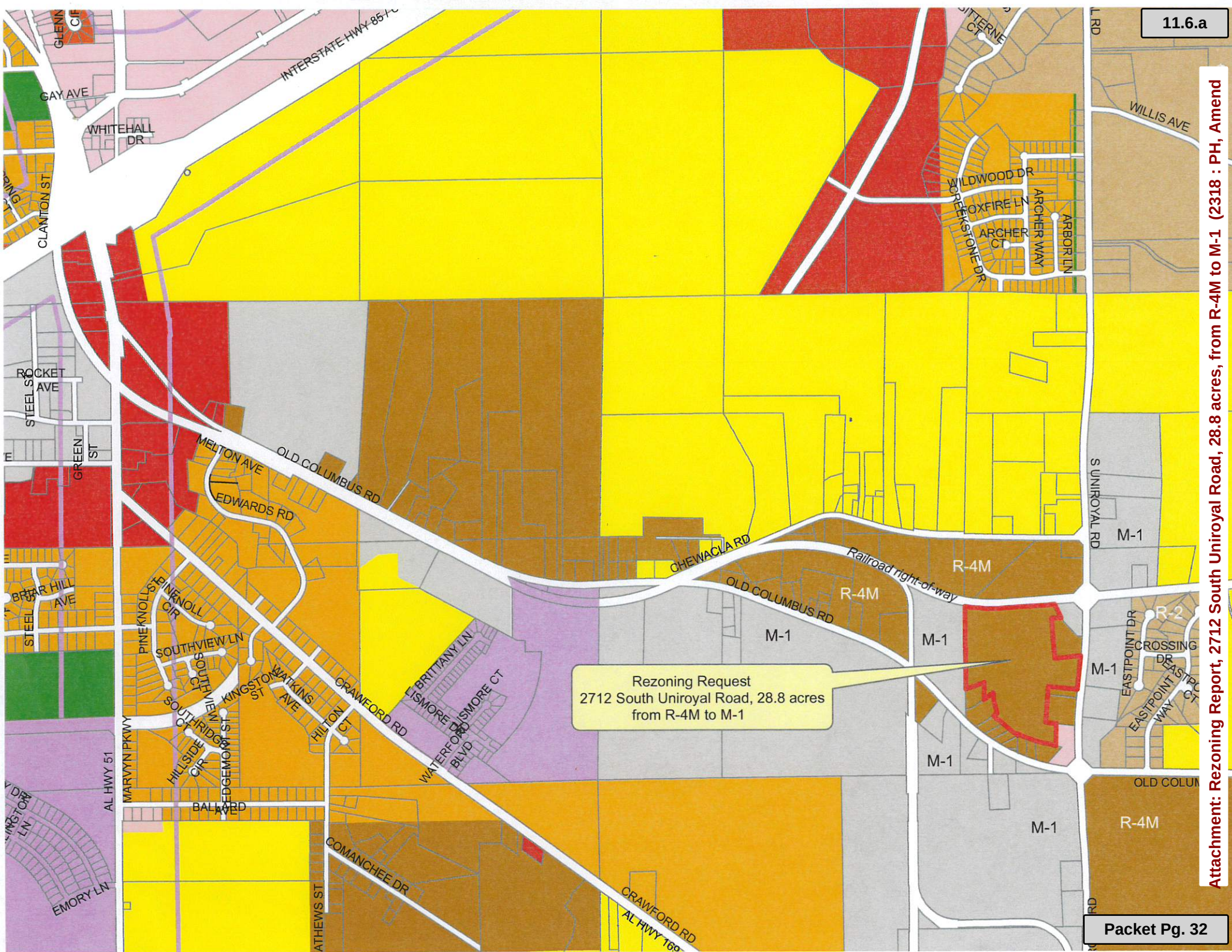
Thompson Carriers Inc. is requesting rezoning 28.8 acres from an R-4M (residential) zoning district to a M-1 (manufacturing) zoning district. Since 1997 Thompson Carriers' office and truck yard has located on a 13 acre parcel adjacent to the rezoning property; the 13 acres is zoned M-1. Thompson Carriers has recently purchased the adjacent 28.8 acre parcel and is requesting rezoning from R-4M to M-1. (Thompson Carriers has 100 employees.) An M-1 zone also exists on four properties (15 acres total) along the east side on South Uniroyal Road.

Staff Recommendation

Planning Staff believes that the rezoning request for the 28.8 acres from R-4M to M-1 is appropriate. The undeveloped 28.8 acre parcel is owned by Thompson Carriers and Thompson owns the adjacent 13 acre property that is zoned M-1. On the east side of South Uniroyal Road near the rezoning parcel six properties (total of 15 acres) are zoned M-1.

Staff recommends Planning Commission send a positive recommendation to the City Council to rezone the property from R-4M to M-1

At the June 27th meeting, the Planning Commission voted 5 to 0 (and one abstain) to send a positive recommendation to the City Council to rezone 28.8 acres at 2712 South Uniroyal Road from R-4M to M-1. This is a request to advertise for a City Council public hearing.



Rezoning Request
2712 South Uniroyal Road, 28.8 acres
from R-4M to M-1

RESOLUTION NO. 167-17

Expense reports from various departments.**RESOLUTION NO. _____**

BE IT RESOLVED, by the City Council of the City of Opelika, Alabama, as follows:

-) That the following employees were required by the City of Opelika to travel on City business and/or attend a training session, meeting or conference.

Employee	Department	\$ Amount
-----	-----	
Tyler Chaffee	Economic Development	437.11
Elizabeth Wright	Revenue	177.62
Robert Parsons	Fire	92.47
Lori Huguley	Economic Development	469.61

-) That attached is an expense report(s) prepared, dated and signed by the City employee or official covering the various expenses incurred on said trip and reviewed/approved by the City's accounting department and City official.
- 3) That the Opelika City Council hereby approves the attached expense reports for reimbursement to said City employee or official.
- 4) That the Mayor and/or appropriate City official is hereby directed and authorized to take the necessary steps so a check can be prepared covering the attached expense reports.
- 5) That the City Treasurer is authorized to sign said check so it can be delivered to the appropriate City employee or official.

ADOPTED and APPROVED this the ____ day of _____, 2017.

C. E. “Eddie” Smith, Jr.
President of the City Council
City of Opelika, Alabama

ATTEST:

Robert G. Shuman, CMC
City Clerk - City Treasurer

Name

Department

Expense Report

Tyler Chaffee

ECONOMIC DEVELOPMENT

Period Ending _____

ITEMIZE ALL REIMBURSABLE EXPENSE IN APPROPRIATE BLANKS - ITEMIZE ANY NON-REIMBURSABLE EXPENSES ON REVERSE OF LAST COPY

[illegible]

ITEMIZED ENTERTAINMENT AND BUSINESS MEAL

DATE	NAME AND PERSON(S) ENTERTAINED; COMPANY, TITLE	TIME & PLACE	NATURE & PURPOSE OF ENTERTAINMENT	AMOUNT	%OR \$ ALLOCATED TO BUSINESS
					100%
					100%
					100%
					100%
					100%

ITEMIZED AUTOMOBILE EXPENSES

DATE	PARKING, REPAIRS, TEC.	AMOUNT
6/3/2017	City Hall to Industrial Park	
6/7/2017	City Hall to Sportsplex	
6/7/2017	City Hall to Industrial Park	
6/12/2017	City Hall to Industrial Park	
6/16/2017	City Hall to Industrial Park	
6/17-21/2017	City Hall to Atlanta	
6/23/2017	City Hall to Industrial Park	
6/26/2017	City Hall to Industrial Park	
7/6/2017	City Hall/Hanwha	
7/13/2017	City Hall to Industrial Park	
7/23-26/2017	City Hall to Point Clear, AL	
8/3/2017	City Hall to Industrial Park/Around City	

ITEMIZED MISCELLANEOUS EXPENSES

DATE	ITEMS	AMOUNT
Agreed To P.O.		
Ests Verified		
Pricing Verified		
Inv. Price Blo Price		
Ox To Pay		
A/C # Verified		

NUMBER OF DAYS AWAY FROM HOME

NUMBER OF DAYS AWAY ON PERSONAL AFFAIRS

0

% OF TOTAL DAYS AWAY FROM PERSONAL AFFAIRS

NATURE OR PURPOSE OF TRAVEL

personal vehicle travel

METHOD OF REIMBURSEMENT

DEDUCT FROM M' OR

SIGNATURE

APPROVED BY

EXPENSE REPORT

PERIOD ENDING

NAME

Martha Elizabeth Wright

DEPARTMENT

Revenue

DAY	CITY AND STATE	LODGING	TRANSPORTATION				BUSINESS MEALS Itemize Below			ENTERTAIN- MENT Itemize Below	MSC. EXPENSES Itemize Below	DAILY TOTAL
			AIR RAIL, ETC	RENTAL CAR LIMO ETC.	LOCAL TAXI, TOLLS & PUB- LIC TRANSIT	AUTO EXPENSES Itemize Below	BREAKFAST	LUNCH	DINNER			
SUN												0.00
MON												0.00
TUE 4/11	Opelika, AL-Tuscaloosa, AL					166x .535 =\$88.81						88.81
WED												0.00
THU												0.00
FRI 4/14	Tuscaloosa, AL-Opelika, AL					166x.535=\$ 88.81						88.81
SAT												0.00
WEEKLY CATEGORY TOTALS \$		0.00	0.00	0.00	0.00	177.62	0.00	0.00	0.00	0.00	0.00	177.62

WEEKLY TOTAL EXPENSES

DATE	NAME OF PERSON(S) ENTERTAINED, COMPANY, TITLE	TIME & PLACE	NATURE & PURPOSE OF ENTERTAINMENT	AMOUNT	% OR \$ ALLOCATED TO BUSINESS
			Approved To P.O.		
			Not Verified		
			Not Verified		
			Price Below		
			Not To Pay		
			AC# Verified		

NUMBER OF DAYS AWAY FROM HOME

4

NUMBER OF DAYS AWAY ON PERSONAL AFFAIRS

0

% OF TOTAL DAYS AWAY FOR PERSONAL AFFAIRS

4%

NATURE OR PURPOSE OF TRAVEL

Certified Revenue Officers Training

METHOD OF REIMBURSEMENT

☐ DEDUCT FROM
MY ADVANCE

☒ MAIL TO

ITEMIZED AUTOMOBILE EXPENSES		
DATE	MILEAGE, GAS, PARKING REPAIRS, ETC	AMOUNT

ITEMIZED MISCELLANEOUS EXPENSES		
DATE	ITEMS	AMOUNT

SIGNATURE

APPROVED BY

EXPENSE REPORT

PERIOD ENDING

NAME

Name

Robert Parsons

DEPARTMENT

Department

OPALICA FIRE DEPARTMENT

DAY	CITY AND STATE	LODGING	TRANSPORTATION				BUSINESS MEALS Itemize Below			ENTERTAIN- MENT Itemize Below	MISC. EXPENSES Itemize Below	DAILY TOTAL
			AIR RAIL, ETC	RENTAL CAR LIMO ETC.	LOCAL TAXI, TOLLS & PUB- LIC TRANSIT	AUTO EXPENSES Itemize Below	BREAKFAST	LUNCH	DINNER			
SUN							7.85					0.00
MON	PRATTVILLE AL						7.85	7.85				7.85
TUE	PRATTVILLE AL						5.25	16.95				22.20
WED	PRATTVILLE AL						5.25	14.09				19.34
THU	PRATTVILLE AL						2.62	17.06				19.68
FRI	PRATTVILLE AL						2.62	20.78				23.40
SAT												0.00
WEEKLY CATEGORY TOTALS \$		0.00	0.00	0.00	0.00	0.00	15.74	76.73	0.00	0.00	0.00	92.47

WEEKLY TOTAL EXPENSES

DATE	NAME OF PERSON(S) ENTERTAINED: COMPANY TITLE	TIME & PLACE	NATURE & PUPOSE OF ENTERTAINMENT	AMOUNT	% OR \$ ALLOCATED TO BUSINESS

NUMBER OF DAYS AWAY FROM HOME

NUMBER OF DAYS AWAY ON PERSONAL AFFAIRS

% OF TOTAL DAYS AWAY FOR PERSONAL AFFAIRS

NATURE OR PURPOSE OF TRAVEL

Reimbursement for meals
while attending classes
in Prattville, AL

METHOD OF REIMBURSEMENT

☐ DEDUCT FROM
MY ADVANCE☒ MAIL TO

ITEMIZED AUTOMOBILE EXPENSES

DATE	MILEAGE, GAS, PARKING REPAIRS, ETC.	AMOUNT

ITEMIZED MISCELLANEOUS EXPENSES

DATE	ITEMS	AMOUNT
7-24-17	Reimbursement for meals while attending classes in Prattville, AL	
		\$92.47

SIGNATURE

APPROVED BY

Department

Expense Report

13.1.b

Lori Huguley

Economic Development

Period Ending

ITEMIZE ALL REIMBURSABLE EXPENSE IN APPROPRIATE BLANKS - ITEMIZE ANY NON-REIMBURSABLE EXPENSES ON REVERSE OF LAST COPY

[illegible]

WEEKLY CATEGORY TOTALS\$

WEEKLY TOTAL OF EXPENSES

[illegible][illegible]

SIGNATUR

APPROVED BY

RESOLUTION NO. 168-17

Weed Abatement Assessment - 105 Vaughan Ave

RESOLUTION NO. _____

**RESOLUTION FIXING AMOUNT OF ASSESSMENT
FOR WEED LIEN AGAINST PROPERTY LOCATED AT
105 Vaughan Ave, Parcel No. 077.000**

=====

WHEREAS, the weed nuisance growing upon or in front of the property located at 105 Vaughan Ave, parcel no. 077.000 has been removed as provided for and required by law: and

WHEREAS, the enforcing official has prepared and submitted to the City Council an itemized statement of the actual expenses incurred by the City for the abatement of the weed nuisance located at 105 Vaughan Avenue, a copy of said itemized statement being attached hereto as Exhibit "A"; and

WHEREAS, the 15 day of August, 2017 at 7:00 p.m. in the City Council Chambers in the Municipal Building of Opelika, Alabama was the date, time and place heretofore established by the City Council to hear and determine any objections or defenses which may be raised by any of the property owners liable to be assessed for the work of abating said weed nuisance; and

WHEREAS, a copy of the itemized statement of expenses, together with the notice of the time when said statement shall be submitted to the City Council for confirmation, was sent to the property owner by certified mail at least five (5) days in advance of the time fixed by the City Council to consider the assessment of the cost against the property; and

WHEREAS, the Council met at the designated time and place for the purpose of receiving and

considering said statement of expenses and to pass upon all such objections to and protest against the proposed assessment for the work of abating said nuisance; and

WHEREAS, the President of the City Council presided over said public hearing and opened the

floor for comments from the public and any persons interested in said assessment or the amount thereof;

and

WHEREAS, the City Council has considered all evidence and other matters in relation to the

proposed assessment and the members of the Council are of the opinion that the amount to be assessed

against the property shall be in accordance with the amount shown on the statement of expenses heretofore delivered by the enforcing official to the City Council.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Opelika as

follows:

1. The itemized statement of expenses submitted by the enforcing official to the City Council is hereby affirmed.
2. The cost for abating such weed nuisance, in the amount of \$205.48 is hereby assessed against the parcel of land mentioned in said itemized statement, to wit: 105 Vaughan Ave., Parcel no. 077.000 Opelika, Alabama. The cost stated in this Resolution shall constitute a lien on the above referenced property.
3. The tax identification number for said parcel(s) of land is 43-10-04-18-1-001-077.000 according to the records of the Revenue Commissioner of Lee County Alabama.
4. The Purchasing-Revenue Manager shall cause a certified copy of this Resolution assessing the cost of abatement to be filed for recording in the Office of the Judge of Probate of Lee County, Alabama, and shall forward a copy to the Lee County Revenue Commissioner. Upon filing, the Lee County Revenue Commissioner

shall add the amount of the lien to the ad valorem tax bill on the property and shall collect the amount as if it were a tax, using all methods available for collecting ad valorem tax, and remit the amount to the City.

This Resolution and the weed lien assessed herein are adopted pursuant to Act No. 2012-366 of the 2012 Regular Session of the Legislature of Alabama and Article III of Chapter 18 of the Code of Ordinances of the City of Opelika, Alabama.

ADOPTED AND APPROVED this the _____ day of _____, 2017.

C. E. "Eddie" Smith Jr.

President of the City Council

City of Opelika, Alabama

Attest:

R. G. "Bob" Shuman, CMC

City Clerk - City Treasurer

WEED ABATEMENT INVOICE**Date: 07/20/2016****To: State of Alabama
PO Box 327210
Montgomery Al. 36132****Property Address:
105 Vaughn Ave
Opelika Al. 36801
Parcel # 10-04-18-1-001-077.000**

On June 26, 2017 in accordance with Opelika City Ordinance 110-12, a notice was sent informing the owner that of a weed violation at the above listed property address. After failing to correct the violation within the time specified in the notice, the City of Opelika abated the violation.

The following is a list of charges that City of Opelika incurred for the abatement:

Cost of Abatement:	<u>192.50</u>
Certified mail:	<u>12.98</u>
Misc.	<u> </u>
Total	<u>205.48</u>

Attachment: WEED INVOICE 105 Vaughn Ave (168-17 : Weed Abatement Assessment - 105 Vaughn Ave)

RESOLUTION NO. 169-17

Weed Abatement Assessment-308 Brannon Avenue

RESOLUTION NO. _____

**RESOLUTION FIXING AMOUNT OF ASSESSMENT
FOR WEED LIEN AGAINST PROPERTY LOCATED AT
308 Brannon Ave, Parcel No. 072.000**

=====

WHEREAS, the weed nuisance growing upon or in front of the property located at 308 Brannon Ave, parcel no. 072.000 has been removed as provided for and required by law: and

WHEREAS, the enforcing official has prepared and submitted to the City Council an itemized statement of the actual expenses incurred by the City for the abatement of the weed nuisance located at 308 Brannon Ave, a copy of said itemized statement being attached hereto as Exhibit "A"; and

WHEREAS, the 15th day of August, 2017 at 7:00 p.m. in the City Council Chambers in the Municipal Building of Opelika, Alabama was the date, time and place heretofore established by the City Council to hear and determine any objections or defenses which may be raised by any of the property owners liable to be assessed for the work of abating said weed nuisance; and

WHEREAS, a copy of the itemized statement of expenses, together with the notice of the time when said statement shall be submitted to the City Council for confirmation, was sent to the property owner by certified mail at least five (5) days in advance of the time fixed by the City Council to consider the assessment of the cost against the property; and

WHEREAS, the Council met at the designated time and place for the purpose of receiving and considering said statement of expenses and to pass upon all such objections to and protest against

the proposed assessment for the work of abating said nuisance; and

WHEREAS, the President of the City Council presided over said public hearing and opened the floor for comments from the public and any persons interested in said assessment or the amount thereof; and

WHEREAS, the City Council has considered all evidence and other matters in relation to the proposed assessment and the members of the Council are of the opinion that the amount to be assessed against the property shall be in accordance with the amount shown on the statement of expenses heretofore delivered by the enforcing official to the City Council.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Opelika as follows:

1. The itemized statement of expenses submitted by the enforcing official to the City Council is hereby affirmed.
2. The cost for abating such weed nuisance, in the amount of \$234.23 is hereby assessed against the parcel of land mentioned in said itemized statement, to wit: 308 Brannon Ave, Parcel no. 072 .000 Opelika, Alabama. The cost stated in this Resolution shall constitute a lien on the above referenced property.
3. The tax identification number for said parcel(s) of land is 43-10-03-08-2-001-072.000 according to the records of the Revenue Commissioner of Lee County Alabama.
4. The Purchasing-Revenue Manager shall cause a certified copy of this Resolution assessing the cost of abatement to be filed for recording in the Office of the Judge of Probate of Lee County, Alabama, and shall forward a copy to the Lee County Revenue Commissioner. Upon filing, the Lee County Revenue Commissioner shall add the amount of the lien to the ad valorem tax bill on the property and shall collect the amount as if it were a tax, using all methods available for collecting ad valorem tax, and remit the amount to the City.

This Resolution and the weed lien assessed herein are adopted pursuant to Act No. 2012-366 of the 2012 Regular Session of the Legislature of Alabama and Article III of Chapter 18 of the Code of Ordinances of the City of Opelika, Alabama.

ADOPTED AND APPROVED this the _____ day of _____,
2017.

President of the City Council
City of Opelika, Alabama

Attest:

R. G. "Bob" Shuman, CMC
City Clerk - Treasurer

WEED ABATEMENT INVOICE**Date: 07/21/2017****To: State of Alabama
PO Box 327210
Montgomery Al. 36132****Property Address:
308 Brannon Ave
Opelika Al. 36801
Parcel # 10-03-08-2-001-072.000**

On July 06, 2017 in accordance with Opelika City Ordinance 110-12, a notice was sent informing the owner that of a weed violation at the above listed property address. After failing to correct the violation within the time specified in the notice, the City of Opelika abated the violation.

The following is a list of charges that City of Opelika incurred for the abatement:

Cost of Abatement:	<u>221.25</u>
Certified mail:	<u>12.98</u>
Misc.	<u> </u>
Total	<u>234.23</u>

Attachment: 308 Brannon Weed Invoice (169-17 : Weed Abatement Assessment-308 Brannon Avenue)

RESOLUTION NO. 170-17

Travel Advancement for Advanced Linemen Training (OPS)

RESOLUTION NO. _____

WHEREAS, Journey Linemen, Zack Hester and Shane Childs, is requesting a travel advance from the City Treasury for the purpose of attending the Advanced Linemen Training in Adel, Georgia from August 29, 2017 through August 31, 2017.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Opelika, Alabama, a Municipal Corporation, as follows:

- 1) That the Opelika Power Services Director is hereby authorized to process the appropriate paperwork to the Accounting Department so two checks for One Hundred and Fifty dollars (\$150.00) each can be prepared payable to Zack Hester and Shane Childs
- 2) That the City Treasurer is hereby authorized and directed to sign said two advanced checks for \$150.00 each payable to Zack Hester and Shane Childs for travel expenses while attending the Advanced Linemen Training. That said Journey Linemen shall present an itemized expense report immediately upon their return to the City.

APPROVED and ADOPTED this the _____ day of _____, 2017.

C.E. "Eddie" Smith, Jr.

President City Council

Opelika, Alabama

ATTEST:

Robert G. Shuman, CMC

City Clerk - Treasurer

Fact Sheet

Subject:

Travel Advance

Facts:

Journey Linemen, Zack Hester and Shane Childs is attending the Advanced Lineman Training, offered by in Adel Georgia, which begins on August 29, 2017. Zack and Shane is requesting 10 meals each and fuel for a City vehicle with an estimated cost of \$150.00 apiece.

Zack Hester

10 Meals ~ \$100.00

Fuel for City vehicle while in Montgomery~ \$50.00

Shane Childs

10 Meals ~ \$100.00

Fuel for City vehicle while in Montgomery~ \$50.00

Recommendations:

The Council to approve the travel advance for Zack Hester and Shane Childs during the August 15, 2017 Council Meeting.

RESOLUTION NO. 171-17

Purchase - Cisco LED Street Lights - IT**RESOLUTION NO. _____**

WHEREAS, the City of Opelika has begun building a digital (smart) city, LED Street lights with sensors are being installed to significantly reduce the power used by the city for street lights; and

WHEREAS, CDW Government is a vendor for the LED street lights on State Contract T637, Contract #4013346; and

WHEREAS, the funds are budgeted from Capital Outlay;

NOW, THEREFORE, BE IT RESOLVED by the City Council of Opelika, Alabama, as follows:

- 1) That the Purchasing-Revenue Manager is hereby authorized to issue a purchase order to CDW Government in the amount of \$15,974.93.
- 2) This purchase authorizes the following expenditure:

	Per Unit	Total
· 41 x Cisco Direct ISLC-3100-C NEMA Based light ctrl	\$152.10	\$6,236.10
· 41 x Cisco ISLC-GPS GPS Sensor	\$10.35	\$424.35
· 41 x Cisco ISLC-IO Sensor i/p o/p	\$6.30	\$258.30
· 41 x Cisco ISLC-W5 % yr Warranty	\$10.50	\$430.50
· 41 x Cisco Direct LG-SAAS-ACTIV CMS Activation	\$3.75	\$153.75
· 41 x Cisco Direct LG-1YR-SAAS Light CTRL API	\$9.00	\$369.00
· 41 x Cisco Direct SC-CIM-LT-TAAS CDP Lighting service	\$6.75	\$276.75
· 41 x Cisco Direct SmartNET CON-SSPTS-SCLTTAAS	\$4.88	\$200.08
· 2 x Cisco 1240 Router - 802.11b/g/n CGR1240/K9	\$1,900.00	\$3,800.00
· 2 x Cisco SmartNet CON-SNT-CGR1240K	\$538.05	\$1,076.10
· 2 x Cisco CGM-WPAN-FSK-NA Connected Grid Module	\$400.00	\$800.00

· 2 x Cisco Connect Sec Lic SL-CGR1K-SEC-K9	\$400.00	\$800.00
· 2 x Cisco IOS IP Base Software SL-CGR1K-IPB-K9	\$250.00	\$500.00
· 2 x Cisco Power Cable 33ft CGR-PWCORD-NA	\$150.00	\$300.00
· 2 x Cisco CGR-N-CONN-S	\$175.00	\$350.00

TOTAL \$15,974.93

3) That the Mayor is hereby authorized to sign all documents pertaining to this purchase.

4) That the Controller be authorized to adjust the budget as necessary for this purchase.

ADOPTED AND APPROVED this the _____ day of _____, 2017

C. E. "Eddie" Smith, Jr.
President of the City Council
City of Opelika, Alabama

Attest:

Robert G. Shuman, CMC
City Clerk - Treasurer

QUOTE CONFIRMATION



DEAR STEPHEN DAWE,

Thank you for considering CDW•G for your computing needs. The details of your quote are below. [Click here](#) to convert your quote to an order.

QUOTE #	QUOTE DATE	QUOTE REFERENCE	CUSTOMER #	GRAND TOTAL
JDNH327	8/9/2017	CISCO	0936449	\$15,974.93

IMPORTANT - PLEASE READ

Special Instructions: TAX: MULTIPLE TAX JURISDICTIONS APPLY
TAX: CONTACT CDW FOR TAX DETAILS

QUOTE DETAILS				
ITEM	QTY	CDW#	UNIT PRICE	EXT. PRICE
<u>CISCO DIRECT ISLC-3100-C</u> Mfg. Part#: ISLC-3100-C TAX: OPELIKA, AL .0000% \$.00 Contract: National IPA Technology Solutions (130733)	41	4749825	\$152.10	\$6,236.10
<u>CISCO DIRECT ISLC-GPS</u> Mfg. Part#: ISLC-GPS TAX: OPELIKA, AL .0000% \$.00 Contract: National IPA Technology Solutions (130733)	41	4749829	\$10.35	\$424.35
<u>CISCO DIRECT ISLC-IO</u> Mfg. Part#: ISLC-IO TAX: OPELIKA, AL .0000% \$.00 Contract: National IPA Technology Solutions (130733)	41	4749833	\$6.30	\$258.30
<u>CISCO DIRECT ISLC-W5</u> Mfg. Part#: ISLC-W5 TAX: OPELIKA, AL .0000% \$.00 Contract: National IPA Technology Solutions (130733)	41	4749849	\$10.50	\$430.50
<u>CISCO DIRECT LG-SAAS-ACTIV</u> Mfg. Part#: LG-SAAS-ACTIV TAX: OPELIKA, AL .0000% \$.00 Contract: National IPA Technology Solutions (130733)	41	4749857	\$3.75	\$153.75
<u>CISCO DIRECT LG-1YR-SAAS</u> Mfg. Part#: LG-1YR-SAAS Electronic distribution - NO MEDIA TAX: OPELIKA, AL .0000% \$.00 Contract: National IPA Technology Solutions (130733)	41	4749891	\$9.00	\$369.00
<u>CISCO DIRECT SC-CIM-LT-TAAS</u> Mfg. Part#: SC-CIM-LT-TAAS TAX: OPELIKA, AL .0000% \$.00 Contract: National IPA Technology Solutions (130733)	41	4749898	\$6.75	\$276.75
<u>CISCO DIRECT CON-SSPTS-SCLTTAAS</u>	41	4749905	\$4.88	\$200.08

QUOTE DETAILS (CONT.)				
Mfg. Part#: CON-SSPTS-SCLTTAAS				
TAX: OPELIKA, AL .0000% \$.00				
Contract: National IPA Technology Solutions (130733)				
Cisco 1240 - router - 802.11b/g/n - pole-mountable	2	2809498	\$1,900.00	\$3,800.00
Mfg. Part#: CGR1240/K9				
UNSPSC: 43222609				
TAX: OPELIKA, AL .0000% \$.00				
Contract: National IPA Technology Solutions (130733)				
Cisco SMARTnet extended service agreement	2	3656097	\$538.05	\$1,076.10
Mfg. Part#: CON-SNT-CGR1240K				
UNSPSC: 81111812				
Electronic distribution - NO MEDIA				
TAX: OPELIKA, AL .0000% \$.00				
Contract: National IPA Technology Solutions (130733)				
Cisco Connected Grid WPAN Module - network adapter	2	3870217	\$400.00	\$800.00
Mfg. Part#: CGM-WPAN-FSK-NA				
UNSPSC: 43201409				
TAX: OPELIKA, AL .0000% \$.00				
Contract: MARKET				
Cisco Connected Grid Security - license	2	3377403	\$400.00	\$800.00
Mfg. Part#: SL-CGR1K-SEC-K9				
UNSPSC: 43233204				
TAX: OPELIKA, AL .0000% \$.00				
Contract: National IPA Technology Solutions (130733)				
Cisco IOS IP Base - license	2	3439247	\$250.00	\$500.00
Mfg. Part#: SL-CGR1K-IPB-K9				
UNSPSC: 43233004				
TAX: OPELIKA, AL .0000% \$.00				
Contract: National IPA Technology Solutions (130733)				
Cisco power cable - 33 ft	2	2806167	\$150.00	\$300.00
Mfg. Part#: CGR-PWRCORD-NA				
UNSPSC: 26121636				
TAX: OPELIKA, AL .0000% \$.00				
Contract: National IPA Technology Solutions (130733)				
CISCO DIRECT CGR-N-CONN-S	2	4750437	\$175.00	\$350.00
Mfg. Part#: CGR-N-CONN-S				
TAX: OPELIKA, AL .0000% \$.00				
Contract: National IPA Technology Solutions (130733)				

PURCHASER BILLING INFO		SUBTOTAL	\$15,974.93
Billing Address: CITY OF OPELIKA ACCOUNTS PAYABLE PO BOX 390 OPELIKA, AL 36803-0390 Phone: (334) 705-5120 Payment Terms: Net 30 Days-Govt State/Local		SHIPPING	\$0.00
		GRAND TOTAL	\$15,974.93
		Please remit payments to: CDW Government 75 Remittance Drive Suite 1515 Chicago, IL 60675-1515	
DELIVER TO			
Shipping Address: CITY OF OPELIKA STEPHEN DAWE 204 S 7TH ST OPELIKA, AL 36801 Shipping Method: DROP SHIP-GROUND			

Need Assistance? CDW•G SALES CONTACT INFORMATION



Griffin Curcio

(877) 635-6656

grifcur@cdwg.com

This quote is subject to CDW's Terms and Conditions of Sales and Service Projects at
<http://www.cdwg.com/content/terms-conditions/product-sales.aspx>
For more information, contact a CDW account manager

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State of Alabama
Department of Finance
Division of Purchasing
Master Agreement
Modification

13.5.a

CONTRACT INFORMATION

MASTER AGREEMENT NUMBER: MA 999 T6374013346

NOT TO EXCEED AMOUNT:

Begin Date: 09/01/2015

Procurement Folder: 165311

Expiration Date: 08/31/2018

Procurement Type: Master Agreement

Solicitation Number:

Replaces Award Document:

Award Date:

Replaced by Award Document:

Modification Date: 07/26/17

Version Number: 4

CONTACT INFORMATION

REQUESTOR:

Jennifer Loretz

334-242-7370

jennifer.loretz@purchasing.alabama.gov

ISSUER:

Jennifer Loretz

334-242-7370

jennifer.loretz@purchasing.alabama.gov

BUYER:

Jennifer Loretz

334-242-7370

jennifer.loretz@purchasing.alabama.gov

CONTRACT DESCRIPTION

Ship To:

Bill To:

REASON FOR MODIFICATION

Contract Renewed.

VENDOR INFORMATION

Name /Address:

VC000004220: CDW GOVERNMENT INC

75 REMITTANCE DR

SUITE 1515

CHICAGO IL 60675-1515

Contact:

Brittany Logan

877-742-3146 EXT: 1421

britlog@cdwg.com

COMMODITY / SERVICE INFORMATION

13.5.a

Line	Quantity	UOM	Unit Price	Service Amount	Service From	Service To	Line Sub Total	Line Total
1	0		\$0.000000	\$0.00			\$0.00	\$0.00

20540066697CNV - DO NOT USE: To be inactivated.

NETWORKING: CISCO PRODUCTS CATALOG PERCENT OFF

NETWORKING: CISCO PRODUCTS CATALOG PERCENT OFF: 1. SECURITY PRODUCTS: 40.5% (FIREWALLS AND SECURITY DEVICES)
 2. NETWORKING PRODUCTS: 40.5% (ROUTERS, SWITCHES, ACCESS POINTS, VARIOUS NETWORK SUPPORT DEVICES) 3.
 SMARTNET SERVICES: 14% 4. MISCELLANEOUS CATALOG: 40.5% (CABLES, CONNECTORS, GBICS)

Line	Quantity	UOM	Unit Price	Service Amount	Service From	Service To	Line Sub Total	Line Total
3	0		\$0.000000	\$0.00			\$0.00	\$0.00

72555071934CNV - DO NOT USE: Inactivated 3-24-17.

USE LINE 5

TELEPHONY: CISCO PRODUCTS CATALOG PERCENT OFF 1. COLLABORATION & VOICE PRODUCTS: 40.5% (E.G. PHONES, VIDEO
 ENDPOINTS, VOICE GATEWAYS) 2. SOFTWARE & LICENSED PRODUCTS: 40.5% (E.G. LICENSING FOR VARIOUS VOICE PRODUCT
 LINES, UCC, UCM, UNITY, AND OTHER SUPPORT OPTIONS) 3. SMARTNET SERVICES: 14% 4. MISCELLANEOUS PARTS: 40.5%

Line	Quantity	UOM	Unit Price	Service Amount	Service From	Service To	Line Sub Total	Line Total
4	0		\$0.000000	\$0.00			\$0.00	\$0.00

83900 - TELEPHONE EQUIPMENT, ACCESSORIES AND SUPPLIES

USE LINE 1

NETWORKING: CISCO PRODUCTS CATALOG PERCENT OFF: 1. SECURITY PRODUCTS: 40.5% (FIREWALLS AND SECURITY DEVICES)
 2. NETWORKING PRODUCTS: 40.5% (ROUTERS, SWITCHES, ACCESS POINTS, VARIOUS NETWORK SUPPORT DEVICES) 3.
 SMARTNET SERVICES: 14% 4. MISCELLANEOUS CATALOG: 40.5% (CABLES, CONNECTORS, GBICS)

Line	Quantity	UOM	Unit Price	Service Amount	Service From	Service To	Line Sub Total	Line Total
5	0		\$0.000000	\$0.00			\$0.00	\$0.00

83900 - TELEPHONE EQUIPMENT, ACCESSORIES AND SUPPLIES

TELEPHONY: CISCO PRODUCTS CATALOG PERCENT OFF

TELEPHONY: CISCO PRODUCTS CATALOG PERCENT OFF 1. COLLABORATION & VOICE PRODUCTS: 40.5% (E.G. PHONES, VIDEO
 ENDPOINTS, VOICE GATEWAYS) 2. SOFTWARE & LICENSED PRODUCTS: 40.5% (E.G. LICENSING FOR VARIOUS VOICE PRODUCT
 LINES, UCC, UCM, UNITY, AND OTHER SUPPORT OPTIONS) 3. SMARTNET SERVICES: 14% 4. MISCELLANEOUS PARTS: 40.5%

All terms, conditions, and any amendments to solicitation are part of this contract as if fully reproduced herein .

Approved:



Purchasing Director

APPROVALS

Date	Status Before	Status After	Approver

T6374013346	Document Phase Final	Document Description	Page 3 of 3
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Purpose:

Establish a contract from the items listed for all state agencies. Contract prices are available to all local governmental agencies and schools.

Default:

When a vendor defaults on a contract/purchase order, the State can procure the goods or services from other sources and hold the vendor responsible for any excess in price/handling. The vendor may be barred from bidding for an indeterminate period per the Code of Administrative Procedure.

Freight:

Bid is F.O.B. destination. Any freight charges must be included in the bid prices. Do not include freight as separate line item.

If expedited shipping is requested, those charges may be passed on to the end user. Any expedited rate charges must be substantiated with written documentation from the courier or USPS.

Contract period:

Establish a 12 month contract with an option to extend for a second, third, fourth, and fifth 12 month period with the same pricing, terms and conditions. The second, third, fourth, or fifth 12 month period, if agreed by both parties, would begin the day after the first, second, third, or fourth 12 month period expires. Any successive extension must have written approval of both the state and vendor no later than 30 days prior to expiration of the previous 12 month period.

Biddable Situation:

Bids may be solicited for any product included in this contract where an immediate/emergency need exists, including large quantities. The decision of the Purchasing Director as to what constitutes a biddable situation shall be final and shall not be construed as a breach of contract.

The State reserves the right to bid the financing of a project associated with a purchase made from this contract.

Quote Requirement:

All quotes to end users shall include the catalog price as well as the discounted price. An awarded vendor may offer volume discounts for large quantity purchases.

Administrative fee:

Awarded bidder(s) are to pay the State an administrative fee for all sales made under this contract. This fee will be One (1)% (0.01) of the total dollar amount for all sales. The fee is to be paid each month before the 20th and will represent a single, one-time payment for all sales made in the prior month and as adjusted for errors associated with earlier months. This fee is not to be listed as a separate cost on invoices. The awarded bidder(s) will be required to provide a summary report each month before the 20th listing sales made during the prior calendar month. This report is to include the report contract number, purchasing entity, sales amount, and fee amount. A report is due even when there is no activity. This report is to be sent electronically to telecom.admin@isd.alabama.gov. A copy of the summary report is to also accompany the payment. The remittance is to be identified with the reporting month and contract number.

Remittance is to be payable to the "State of Alabama Department of Finance" and be sent to:

Alabama Department of Finance
Division of Accounting and Administration
PO Box 300658
Montgomery, Alabama 36130-0658

RESOLUTION NO. 172-17

Purchase - Cisco Wireless Sensors - IT**RESOLUTION NO.** _____

WHEREAS, the City of Opelika has begun building a digital (smart) city, wireless sensors must be placed through the city requiring low power wireless technology (LoRAWAN) for low bandwidth communication across the entire city; and

WHEREAS, CDW Government is a vendor for the wireless sensors on State Contract T637, Contract #4013346; and

WHEREAS, this is a budgeted purchase;

NOW, THEREFORE, BE IT RESOLVED by the City Council of Opelika, Alabama, as follows:

- 1) That the Purchasing-Revenue Manager is hereby authorized to issue a purchase order to CDW Government in the amount of \$45,301.00.
- 2) This purchase authorizes the following expenditure:

	Per Unit	Total
· 4 x Cisco Direct IXM-LPMA-900-16-K9 low power AP	\$1,000.00	\$4,000.00
· 4 x Cisco Smartnet agreement CON-SNT-IXMLPWA9	\$104.00	\$416.00
· 4 x Cisco PoE surge protector ACC-SP-POE-GE	\$150.00	\$600.00
· 4 x Cisco mounting kit AIR-ACC1530-PMK1	\$49.50	\$198.00
· 4 x Cisco GPS Antenna ANT-GPS-OUT-TNC	\$75.00	\$300.00
· 4 x Cisco AP Antenna ANT-LPWA-DB-O-N	\$225.00	\$900.00
· 4 x Cisco IoT Field Director LIC-IOTFND-LORAWAN	\$275.00	\$1,100.00
· 4 x Cisco 1Yr SmartNET CON-ECMU-LICIOTFW	\$55.00	\$220.00

· 4 x Cisco Sw License LoRAWAN SW-IXM-LPWA-K9	\$750.00	\$3,000.00
· 4 x Cisco V2 Lore I/f Ant Light Arres ACC-LA-H-NM-NF	\$250.00	\$1,000.00
· 4 x Cisco GPS Antenna Light Arres ACC-LA-G-TM-TF	\$75.00	\$300.00
· 1 x Cisco DataCollector L-ACT-POC-EXT1	\$9,000.00	\$9,000.00
· 1 x Cisco Database Server L-ACT-POC-3MO	\$15,000.00	\$15,000.00
· 2 x Cisco low loss Antenna Cable AIR-CAB010LL-N=	\$69.50	\$139.00
· 4 x Cisco 829 Wireless Router IR829-2LTE-EA-BK9	\$1,747.50	\$6,990.00
· 4 x Cisco SmartNet-NBD CON-SU1-IR8292LB	\$314.50	\$1,258.00
· 4 x Cisco Power Supply 125W IR829-PWR125W-AC	\$70.00	\$280.00
· 4 x Cisco PoE Module - Network Adapter IR800-IL-POE	\$150.00	\$600.00

TOTAL \$45,301.00

3) That the Mayor is hereby authorized to sign all documents pertaining to this purchase.

4) That the Controller be authorized to adjust the budget as necessary for this purchase.

ADOPTED AND APPROVED this the _____ day of _____, 2017.

C. E. "Eddie" Smith, Jr.
President of the City Council
City of Opelika, Alabama

Attest:

Robert G. Shuman, CMC

City Clerk - Treasurer

QUOTE CONFIRMATION



DEAR STEPHEN DAWE,

Thank you for considering CDW•G for your computing needs. The details of your quote are below. [Click here](#) to convert your quote to an order.

QUOTE #	QUOTE DATE	QUOTE REFERENCE	CUSTOMER #	GRAND TOTAL
JDBF889	7/28/2017	JDBF889	0936449	\$45,301.00

IMPORTANT - PLEASE READ

Special Instructions: TAX: MULTIPLE TAX JURISDICTIONS APPLY
TAX: CONTACT CDW FOR TAX DETAILS

QUOTE DETAILS				
ITEM	QTY	CDW#	UNIT PRICE	EXT. PRICE
<u>CISCO DIRECT IXM-LPWA-900-16-K9</u> Mfg. Part#: IXM-LPWA-900-16-K9 TAX: OPELIKA, AL .0000% \$.00 Contract: MARKET	4	4736079	\$1,000.00	\$4,000.00
<u>CIS DIR 1YR SNET 8X5XNBD</u> Mfg. Part#: CON-SNT-IXMLPWA9 Electronic distribution - NO MEDIA TAX: OPELIKA, AL .0000% \$.00 Contract: MARKET	4	4736065	\$104.00	\$416.00
<u>CISCO DIRECT ACC-SP-POE-GE</u> Mfg. Part#: ACC-SP-POE-GE TAX: OPELIKA, AL .0000% \$.00 Contract: MARKET	4	4737555	\$150.00	\$600.00
<u>Cisco network device mounting kit</u> Mfg. Part#: AIR-ACC1530-PMK1 UNSPSC: 31162313 TAX: OPELIKA, AL .0000% \$.00 Contract: State of Alabama Networking-T637 (T637-4013346)	4	3228397	\$49.50	\$198.00
<u>CISCO DIRECT ANT-GPS-OUT-TNC</u> Mfg. Part#: ANT-GPS-OUT-TNC TAX: OPELIKA, AL .0000% \$.00 Contract: MARKET	4	4736067	\$75.00	\$300.00
<u>CISCO DIRECT ANT-LPWA-DB-O-N</u> Mfg. Part#: ANT-LPWA-DB-O-N TAX: OPELIKA, AL .0000% \$.00 Contract: MARKET	4	4736076	\$225.00	\$900.00
<u>CISCO DIRECT LIC-IOTFND-LORAWAN</u> Mfg. Part#: LIC-IOTFND-LORAWAN Electronic distribution - NO MEDIA TAX: OPELIKA, AL .0000% \$.00 Contract: MARKET	4	4737565	\$275.00	\$1,100.00

Attachment: 8-15-17 - PURCHASE - CISCO WIRELESS SENSORS - CNCL PKT (172-17 : Purchase - Cisco Wireless Sensors - IT)

QUOTE DETAILS (CONT.)				
<u>CIS DIR 1YR SNET ESS SW SUPP UPR</u>	4	4737797	\$55.00	\$220.00
Mfg. Part#: CON-ECMU-LICIOTFW Electronic distribution - NO MEDIA TAX: OPELIKA, AL .0000% \$.00 Contract: MARKET				
<u>CISCO DIRECT SW-IXM-LPWA-K9</u>	4	4737569	\$750.00	\$3,000.00
Mfg. Part#: SW-IXM-LPWA-K9 Electronic distribution - NO MEDIA TAX: OPELIKA, AL .0000% \$.00 Contract: MARKET				
<u>CISCO DIRECT ACC-LA-H-NM-NF</u>	4	4737571	\$250.00	\$1,000.00
Mfg. Part#: ACC-LA-H-NM-NF TAX: OPELIKA, AL .0000% \$.00 Contract: MARKET				
<u>CISCO DIRECT ACC-LA-G-TM-TF</u>	4	4737777	\$75.00	\$300.00
Mfg. Part#: ACC-LA-G-TM-TF TAX: OPELIKA, AL .0000% \$.00 Contract: MARKET				
<u>CISCO DIRECT L-ACT-POC-EXT1</u>	1	4737781	\$9,000.00	\$9,000.00
Mfg. Part#: L-ACT-POC-EXT1 Electronic distribution - NO MEDIA TAX: OPELIKA, AL .0000% \$.00 Contract: MARKET				
<u>CISCO DIRECT L-ACT-POC-3MO</u>	1	4737788	\$15,000.00	\$15,000.00
Mfg. Part#: L-ACT-POC-3MO Electronic distribution - NO MEDIA TAX: OPELIKA, AL .0000% \$.00 Contract: MARKET				
<u>Cisco Low-Loss - antenna cable - 10 ft</u>	2	1519539	\$69.50	\$139.00
Mfg. Part#: AIR-CAB010LL-N= UNSPSC: 26121623 TAX: OPELIKA, AL .0000% \$.00 Contract: State of Alabama Networking-T637 (T637-4013346)				
<u>Cisco Industrial Router 829 - wireless router - WWAN - 802.11a/b/g/n - desk</u>	4	4580012	\$1,747.50	\$6,990.00
Mfg. Part#: IR829-2LTE-EA-BK9 UNSPSC: 43222609 TAX: OPELIKA, AL .0000% \$.00 Contract: MARKET				
<u>CIS DIR 1YR SNET IPS AR NBD</u>	4	4737919	\$314.50	\$1,258.00
Mfg. Part#: CON-SU1-IR8292LB Electronic distribution - NO MEDIA TAX: OPELIKA, AL .0000% \$.00 Contract: MARKET				
<u>Cisco - power supply - 40 Watt</u>	4	4284732	\$70.00	\$280.00
Mfg. Part#: IR829-PWR125W-AC UNSPSC: 39121004 TAX: OPELIKA, AL .0000% \$.00 Contract: State of Alabama Networking-T637 (T637-4013346)				
<u>Cisco POE module - network adapter</u>	4	3907103	\$150.00	\$600.00
Mfg. Part#: IR800-IL-POE UNSPSC: 43201404 TAX: OPELIKA, AL .0000% \$.00 Contract: MARKET				

Attachment: 8-15-17 - PURCHASE - CISCO WIRELESS SENSORS - CNCL PKT (172-17 : Purchase - Cisco Wireless Sensors - IT)

PURCHASER BILLING INFO	SUBTOTAL	\$45,301.00
Billing Address: CITY OF OPELIKA ACCOUNTS PAYABLE PO BOX 390 OPELIKA, AL 36803-0390 Phone: (334) 705-5120 Payment Terms: Net 30 Days-Govt. State/Local	SHIPPING	\$0.00
	GRAND TOTAL	\$45,301.00
DELIVER TO	Please remit payments to: CDW Government 75 Remittance Drive Suite 1515 Chicago, IL 60675-1515	
Shipping Address: CITY OF OPELIKA STEPHEN DAWE 204 S 7TH ST OPELIKA, AL 36801 Shipping Method: DROP SHIP-GROUND		

Need Assistance? CDW•G SALES CONTACT INFORMATION



Griffin Curcio

(877) 635-6656

grifcur@cdwg.com

This quote is subject to CDW's Terms and Conditions of Sales and Service Projects at
<http://www.cdwg.com/content/terms-conditions/product-sales.aspx>
 For more information, contact a CDW account manager

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STATE OF ALABAMA
DEPARTMENT OF FINANCE
DIVISION OF PURCHASING
CONTRACT NOTICE OF AWARD

NETWRKING/TEL PROD&SVS-CISCO
CONTRACT

T-NUMBER..... : T637
USAGE..... : STATEWIDE CONTRACT
PERIOD..... : SEPTEMBER 1, 2015 TO AUGUST 31, 2017
SOLICITATION NO : 2273610

CONTRACT BUYER..... : JENNIFER LORETZ

BUYER PHONE.. : (334) 242-7370 PURCHASING NUMBER..... : (334) 242-7250
FAX NUMBER... : (334) 242-4419
DATE PRINTED. : 08/26/16

DIVISION OF PURCHASING
CONTRACT NOTICE OF AWARD

TERMS AND CONDITIONS

FAMILIARIZE YOURSELF WITH THIS CONTRACT AND THE TERMS AND CONDITIONS
REGARDING THE RESPONSIBILITIES OF THE STATE AND THE VENDORS.

* * * * *

* IT IS THE RESPONSIBILITY OF THE ORDERING AGENCY TO MAKE SURE THAT *

* ALL OF THE INFORMATION SUBMITTED ON THEIR REQUISITION IS CORRECT. *

* ALWAYS BE SURE TO RECHECK YOUR COMMODITY NUMBERS. AS SOON AS YOUR *

* PURCHASE ORDER ARRIVES, CHECK IT FOR ACCURACY. IF THERE ARE ANY *

* DISCREPANCIES, PLEASE NOTIFY THE VENDOR FIRST, THEN CONTACT THE *

* BUYER LISTED ON THE FRONT OF THIS CONTRACT AS SOON AS POSSIBLE. *

* IN MOST INSTANCES, PROBLEMS CAN BE CORRECTED. *

* COMPLAINTS MUST BE DOCUMENTED & SUBMITTED TO THE BUYER IN WRITING. *

* * * * *

SOLICITATION NUMBER : 2273610

PURPOSE:
ESTABLISH A CONTRACT FROM THE ITEMS LISTED FOR ALL STATE AGENCIES.
CONTRACT PRICES ARE AVAILABLE TO ALL LOCAL GOVERNMENTAL AGENCIES AND
SCHOOLS.

NOTE THAT THIS CONTRACT IS FOR CISCO, INC. NETWORK AND TELEPHONY
PRODUCTS AND SERVICES ONLY. ITEMS SUCH AS SERVERS AND ANY OTHER
NON-CORE NETWORK, TELEPHONY OR ENDPOINT DEVICES ARE NOT AVAILABLE.

DIVISION OF PURCHASING
CONTRACT NOTICE OF AWARD

TERMS AND CONDITIONS

DEFAULT:
WHEN A VENDOR DEFAULTS ON A CONTRACT/PURCHASE ORDER, THE STATE CAN
PROCURE THE GOODS OR SERVICES FROM OTHER SOURCES AND HOLD THE VENDOR
RESPONSIBLE FOR ANY EXCESS IN PRICE/HANDLING. THE VENDOR MAY BE
BARRED FROM BIDDING FOR AN INDETERMINATE PERIOD PER THE CODE OF
ADMINISTRATIVE PROCEDURE.

FREIGHT:
BID IS F.O.B. DESTINATION. ANY FREIGHT CHARGES MUST BE INCLUDED IN
THE BID PRICES.

Attachment: 8-15-17 - PURCHASE - CISCO WIRELESS SENSORS - CNCL PKT (172-17 : Purchase - Cisco Wireless Sensors - IT)

IF EXPEDITED SHIPPING IS REQUESTED, THOSE CHARGES MAY BE PASSED ON TO THE AGENCY. ANY EXPEDITED RATE CHARGES MUST BE SUBSTANTIATED WITH WRITTEN DOCUMENTATION FROM THE COURIER OR USPS.

CONTRACT PERIOD:

ESTABLISH A 12 MONTH CONTRACT WITH AN OPTION TO EXTEND FOR A SECOND, THIRD, FOURTH, AND FIFTH 12 MONTH PERIOD WITH THE SAME PRICING, TERMS AND CONDITIONS. THE SECOND, THIRD, FOURTH, OR FIFTH 12 MONTH PERIOD, IF AGREED BY BOTH PARTIES, WOULD BEGIN THE DAY AFTER THE FIRST, SECOND, THIRD, OR FOURTH 12 MONTH PERIOD EXPIRES. ANY SUCCESSIVE EXTENSION MUST HAVE WRITTEN APPROVAL OF BOTH THE STATE AND VENDOR NO LATER THAN 30 DAYS PRIOR TO EXPIRATION OF THE PREVIOUS 12 MONTH PERIOD.

BIDDABLE SITUATION:

BIDS MAY BE SOLICITED FOR ANY PRODUCT INCLUDED IN THIS CONTRACT WHERE AN IMMEDIATE/EMERGENCY NEED EXISTS, INCLUDING LARGE QUANTITIES. THE DECISION OF THE PURCHASING DIRECTOR AS TO WHAT CONSTITUTES A BIDDABLE SITUATION SHALL BE FINAL AND SHALL NOT BE CONSTRUED AS A

DIVISION OF PURCHASING
CONTRACT NOTICE OF AWARD

TERMS AND CONDITIONS

BREACH OF CONTRACT.

THE STATE RESERVES THE RIGHT TO BID THE FINANCING OF A PROJECT ASSOCIATED WITH A PURCHASE MADE FROM THIS CONTRACT.

QUOTE REQUIREMENT:

ALL QUOTES TO CONTRACT USERS SHALL INCLUDE THE CATALOG PRICE AS WELL AS THE DISCOUNTED PRICE.

AN AWARDED BIDDER MAY OFFER VOLUME DISCOUNTS FOR LARGE QUANTITY PURCHASES.

DIVISION OF PURCHASING
CONTRACT NOTICE OF AWARD

CONTRACT VENDORS

CONTRACT NUMBER	VENDOR NUMBER NAME AND ADDRESS	CONTACT PERSON PHONE NUMBERS/FAX	TERMS AND DELIVERY
4013345	200089494-02 LEE INVESTMENT CONSULTANTS LLC 5296 OLD US HWY 278 EAST HOKES BLUFF AL 35903	SCOTT LEE 256-494-9080 800-494-9080 256-492-9109	NET AS SPECIFI □□□□□□□□
<u>4013346</u>	<u>364230110-01</u> <u>CDW GOVERNMENT LLC</u> 230 N. MILWAUKEE AVE VERNON HILLS IL 60061	AMANDA EWERTOWSKI 847-371-5800 800-808-4239 847-465-6800	NET 2-10 DAYS
4013348	462359490-02 NET-FIT SOLUTIONS, INC. 5308 S BROKEN BOW DR BIRMINGHAM AL 35242	FREDERIC THERRIEN 205-423-5962 205-423-5120	NET AS SPECIFI
4013349	621543977-00 DIGITAL CONNECTIONS INC DIGITAL CONNECTIONS INC 805 TEAL DRIVE GALLATIN TN 37066	TERRY WILLIAMS 800-264-6564 800-264-6564 877-687-2115	NET 15-30 DAYS
4013350	631200720-00 INFORMATION TRANSPORT	STEVEN MEANY 334-567-1993	NET 30 DAYS ARO

2. NETWORKING PRODUCTS: 46.5%
(ROUTERS, SWITCHES, ACCESS POINTS,
VARIOUS NETWORK SUPPORT DEVICES)
3. SMARTNET SERVICES: 10%
4. MISCELLANEOUS CATALOG: 46.5%
(CABLES, CONNECTORS, GBICS)

4013346 00001 205-40-066697 .00 % 364230110-01 NET
EA CDW GOVERNMENT LLC

NETWORKING: CISCO PRODUCTS CATALOG
PERCENT OFF

1. SECURITY PRODUCTS: 40.5%
(FIREWALLS AND SECURITY DEVICES)
2. NETWORKING PRODUCTS: 40.5%
(ROUTERS, SWITCHES, ACCESS POINTS,
VARIOUS NETWORK SUPPORT DEVICES)
3. SMARTNET SERVICES: 14%
4. MISCELLANEOUS CATALOG: 40.5%
(CABLES, CONNECTORS, GBICS)

4013348 00001 205-40-066697 .00 % 462359490-02 NET
EA NET-FIT SOLUTIONS, INC.

DIVISION OF PURCHASING
CONTRACT NOTICE OF AWARD

COMMODITY LISTING

CONTRACT NUMBER/LINE #	COMMODITY NUMBER COMMODITY DESCRIPTION	UNIT PRICE MEASURE	VENDOR # NAME	TERM
---------------------------	---	-----------------------	------------------	------

NETWORKING: CISCO PRODUCTS CATALOG
PERCENT OFF

1. SECURITY PRODUCTS: 43%
(FIREWALLS AND SECURITY DEVICES)
2. NETWORKING PRODUCTS: 43%
(ROUTERS, SWITCHES, ACCESS POINTS,
VARIOUS NETWORK SUPPORT DEVICES)
3. SMARTNET SERVICES: 20%
4. MISCELLANEOUS CATALOG: 15%
(CABLES, CONNECTORS, GBICS)

4013349 00001 205-40-066697 .00 % 621543977-00 NET
EA DIGITAL CONNECTIONS INC
DIGITAL CONNECTIONS INC

NETWORKING: CISCO PRODUCTS CATALOG
PERCENT OFF

1. SECURITY PRODUCTS: 45.8 %
(FIREWALLS AND SECURITY DEVICES)
2. NETWORKING PRODUCTS: 45.8 %
(ROUTERS, SWITCHES, ACCESS POINTS,
VARIOUS NETWORK SUPPORT DEVICES)
3. SMARTNET SERVICES: 11 %
4. MISCELLANEOUS CATALOG: 0 %
(CABLES, CONNECTORS, GBICS)

4013350 00001 205-40-066697 .00 % 631200720-00 NET
EA INFORMATION TRANSPORT

DIVISION OF PURCHASING
CONTRACT NOTICE OF AWARD

COMMODITY LISTING

Attachment: 8-15-17 - PURCHASE - CISCO WIRELESS SENSORS - CNCL PKT (172-17 : Purchase - Cisco Wireless Sensors - IT)

PERCENT OFF

23 % DISCOUNT

4013345 00003 725-55-071934 .00 % 200089494-02 NET
 EA LEE INVESTMENT CONSULTANTS LLC
 TELEPHONY: CISCO PRODUCTS CATALOG
 PERCENT OFF

DIVISION OF PURCHASING
 CONTRACT NOTICE OF AWARD

COMMODITY LISTING

CONTRACT NUMBER/LINE #	COMMODITY NUMBER COMMODITY DESCRIPTION	UNIT PRICE MEASURE	VENDOR # NAME	TERM
	1. COLLABORATION & VOICE PRODUCTS: 46.5% (E.G., PHONES, VIDEO ENDPOINTS, VOICE GATEWAYS)			
	2. SOFTWARE & LICENSED PRODUCTS: 46.5% (E.G., LICENSING FOR VARIOUS VOICE PRODUCT LINES, UCC, UCM, UNITY, AND OTHER SUPPORT OPTIONS)			
	3. SMARTNET SERVICES: 10%			
	4. MISCELLANEOUS PARTS: 46.5%			

4013346 00003 725-55-071934 .00 % 364230110-01 NET
 EA CDW GOVERNMENT LLC
 TELEPHONY: CISCO PRODUCTS CATALOG
 PERCENT OFF

1. COLLABORATION & VOICE PRODUCTS: 40.5%
(E.G., PHONES, VIDEO ENDPOINTS, VOICE GATEWAYS)
2. SOFTWARE & LICENSED PRODUCTS: 40.5%
(E.G., LICENSING FOR VARIOUS VOICE PRODUCT LINES, UCC, UCM, UNITY, AND OTHER SUPPORT OPTIONS)
3. SMARTNET SERVICES: 14%
4. MISCELLANEOUS PARTS: 40.5%

4013349 00003 725-55-071934 .00 % 621543977-00 NET
 EA DIGITAL CONNECTIONS INC

DIVISION OF PURCHASING
 CONTRACT NOTICE OF AWARD

COMMODITY LISTING

CONTRACT NUMBER/LINE #	COMMODITY NUMBER COMMODITY DESCRIPTION	UNIT PRICE MEASURE	VENDOR # NAME	TERM
	TELEPHONY: CISCO PRODUCTS CATALOG PERCENT OFF		DIGITAL CONNECTIONS INC	
	1. COLLABORATION & VOICE PRODUCTS: 45.8% (E.G., PHONES, VIDEO ENDPOINTS, VOICE GATEWAYS)			
	2. SOFTWARE & LICENSED PRODUCTS: 45.8% (E.G., LICENSING FOR VARIOUS VOICE PRODUCT LINES, UCC, UCM, UNITY, AND OTHER SUPPORT OPTIONS)			
	3. SMARTNET SERVICES: 11 %			
	4. MISCELLANEOUS PARTS: 0 %			

Attachment: 8-15-17 - PURCHASE - CISCO WIRELESS SENSORS - CNCL PKT (172-17 : Purchase - Cisco Wireless Sensors - IT)

RESOLUTION NO. 173-17

2017 Byrne JAG Grant - OPD.

RESOLUTION NO: _____

WHEREAS, The City of Opelika participates each year in the application of a BYRNE JUSTICE ASSISTANCE GRANT; and

WHEREAS, Each year the Administrator of this Grant changes between the City of Opelika, City of Auburn, and Lee County Sheriff's Department; and

WHEREAS, This year the Lee County Sheriff's Department is the Administrator of this Grant; and

WHEREAS, The total amount of the Grant Application is \$26,826.00 with each entity receiving the following amount: City of Opelika - \$8,942.00, City of Auburn - \$8,942.00, and Lee County Sheriff's Department - \$8,942.00; and

WHEREAS, The Mayor's signature is required for this Grant Application.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Opelika, Alabama, a municipal corporation, as follows:

1. The mayor of the City of Opelika is authorized to sign all documents pertaining to this grant application and/or the receiving of these grant funds.

APPROVED and ADOPTED this the _____ day of _____ 2017.

C.E. "Eddie" Smith, Jr.

President of the City Council

City of Opelika, Alabama

ATTEST:

Robert G. Shuman

City Clerk - Treasurer

Special Services Division

**Opelika Police
Department**

Memo

To: Lt. Jason Black, Lee County Sheriff's Department
 From: Cpt. Bobby J. Kilgore
 Date: 08/08/2017
 Re: Opelika Police Department's Project Strategy for the 2017 Edward Byrne Memorial JAG Grant

- **Item to be purchased:**

- 1) Trafficalm 12" Portable Driver Feedback Value Sign (\$2,450 per unit, X 4 units = \$9,800).

- **Statement of problem:**

- 1) **Driver Feedback Signs:** The City of Opelika owns (maintains) 230.4 miles of paved roadways and 3.8 miles of unpaved roadways. This includes Interstate 85 which runs completely through Opelika, as well as other Federal and State highways. Opelika has a current population of approximately 30,000 people. Everyday many more people travel into and through Opelika either on business, shopping, or personal trips. This number of roadways and number of people combines to produce a very high number of traffic related complaints. This includes traffic crashes of varying severity. Many of these accidents result in serious injuries or fatalities. A large portion of these accidents, and their severity, can be directly attributed to the speed of the vehicles involved. The Driver Feedback Signs can be used to inform drivers of their speed and cause them to slow down if they are speeding. The overall goal is to reduce the number of speeding related complaints and accidents through public awareness.

- **Project implementation:**

- 1) **Driver Feedback Signs:** Driver Feedback Signs will be purchased and installed on existing traffic control signs throughout the City. These Driver Feedback Signs are portable and can be moved easily to new areas, as new complaints are received. These signs will inform the motorist, in real time, of their speed. If speeding, it will allow the motorist an opportunity to slow down.

- **Performance evaluation:**
 - 1) **Driver Feedback Signs:** As a measurement tool, documentation of all traffic complaints (regarding speeding in specified areas) will be kept. These totals will be reported quarterly through Performance Measurement Tools.
- **Project timeline:**
 - 1) **Driver Feedback Signs:** The purchase process for all equipment will begin immediately after the beginning of the new fiscal year (10/01/17). Driver Feedback Signs will be distributed and installed as soon as possible after the Opelika Police Department receive them.

Respectfully,

Cpt. Bobby J. Kilgore
Division Commander
Special Services Division
Opelika Police Department

GMS APPLICATION NUMBER 2017-H2491-AL-DJ

THE STATE OF ALABAMA

COUNTY OF LEE

KNOW ALL BY THESE PRESENT

**INTERLOCAL AGREEMENT
BETWEEN THE CITY OF AUBURN, CITY OF OPELIKA, AND COUNTY OF LEE, AL
EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT (JAG) PROGRAM**

This Agreement is made and entered into this 15th day of August 2017, by and between The County of Lee, acting by and through its governing body, the Lee County Commission, hereinafter referred to as COUNTY, the City of Auburn and the City of Opelika, hereinafter referred to as CITIES acting by and through its governing body, the City Council, both of Lee County, State of Alabama, witnesseth:

WHEREAS, this Agreement is made under the authority of Section 11-102-1 of the Code of Alabama (1975): and

WHEREAS, each governing body, in performing governmental functions or in paying for the performance of governmental functions hereunder, shall make that performance or those payments from current revenues legally available to that party: and

WHEREAS, each governing body finds that the performance of this Agreement is in the best interests of all parties, that the undertaking will benefit the public, and that the division of costs fairly compensates the performing part for the services or functions under this Agreement: and

WHEREAS, the total amount of the grant application is \$26,826.00, the CITIES and COUNTY agrees to equally share grant funds.

WHEREAS, the City of Auburn, City of Opelika, and Lee County believe it to be in their best interests to reallocate JAG funds.

NOW, THEREFORE, the CITY OF AUBURN, the CITY OF OPELIKA, and COUNTY agree as follows:

Section 1.

Lee County agrees to pay the City of Auburn a total of \$8,942.00 and agrees to pay the City of Opelika a total of \$8,942.00 for purchases allowed within grant purposed areas.

Section 2.

Lee County agrees to advertise the application and make available to the governing body and for citizens comments, for a 30-day period prior to submission to the U. S. Department of Justice, Bureau of Justice Assistance.

Section 3.

Each party in this Agreement will be responsible for its own actions in providing services under this agreement and shall not be liable for any civil liability that may arise from the furnishing of the services by the other party.

Section 4.

The parties to this Agreement do not intend for any third party to obtain a right by virtue of this Agreement.

GMS APPLICATION NUMBER 2017-H2491-AL-DJ

Section 5.

The parties of the Agreement will adhere to all applicable Special Conditions of this Award, to include, but not limited to timely submission of all financial and programmatic information requests by the Awarding Agency.

Section 6.

By entering into this Agreement, the parties do not intend to create any obligations express or implied other than those set out herein; further, this Agreement shall not create any rights in any party not a signatory hereto.

CITY OF AUBURN	CITY OF OPELIKA	LEE COUNTY COMMISSION
_____	_____	_____
Mayor	Mayor	Chairman
ATTEST:	ATTEST:	ATTEST:
_____	_____	_____
City Manager	City Clerk	Administrator
 STATE OF ALABAMA	 STATE OF ALABAMA	 STATE OF ALABAMA
 COUNTY OF LEE	 COUNTY OF LEE	 COUNTY OF LEE
Sworn before me this ____day of _____, 2017.	Sworn before me this ____day of _____, 2017.	Sworn before me this ____day of _____, 2017.
_____	_____	_____
Notary Public	Notary Public	Notary Public
My commission expires:	My commission expires:	My commission expires:
_____	_____	_____

Attachment: 2017 JAG MOU- (173-17 : 2017 Byrne JAG Grant)

RESOLUTION NO. 174-17

Special appropriation to the P&R department - Health Fair.**RESOLUTION NO. _____**

WHEREAS, the Opelika City Council fully supports the Opelika Park & Recreation department in providing a Health Fair in 2017 in conjunction with the AU School of Nursing at the Opelika Sportsplex; and

WHEREAS, the Park and Recreation department will be hosting said event and is in need of additional funds in covering the expenses involved in providing a Health Fair to the citizens of Opelika; and

WHEREAS, all five Council members have agreed to contribute \$600.00 from their respective discretionary current year account or reserve fund.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Opelika, Alabama, a municipal corporation, as follows:

1. That the City Council approves said request to provide a total of \$3,000.00 to the Park and Recreation department to assist in covering the various expenses in hosting a Health Fair for the Opelika citizens.
2. That City Council members wish to provide \$600.00 each from their discretionary funds as detailed below with said funds to be used as explained in No. 1 above:

Patricia Jones	Ward 1	Current year.	\$600.00
Tiffany Pitts	Ward 2	Current year.	\$600.00
Dozier Smith T	Ward 3	Current year.	\$600.00
Eddie Smith	Ward 4	Reserve fund.	\$600.00
David Canon	Ward 5	Current year.	\$600.00

3. That the City Council hereby declares and determines that the expenditure of these public funds will serve a public purpose for the City of Opelika.
4. The Mayor and the Controller is hereby authorized and directed to make a budget adjustment(s) to move a total of \$3,000.00 from the specific fund or account as designated in No. 2 above to the appropriate account in the Park & Recreation

current year budget.

5. The Opelika Park & Recreations Director will insure that these funds are made available to the appropriate person(s) and spent as designated above by the Opelika City Council.

ADOPTED and **APPROVED** this the _____ day of _____, 2017.

C. E. "Eddie" Smith, Jr.

President of the City Council

City of Opelika, Alabama

Attest:

Robert G. Shuman, CMC

City Clerk - Treasurer

RESOLUTION NO. 175-17

One-Time Lump Sum Addition to the Retirement Benefits of Certain City Retirees & Beneficiaries of Deceased Retirees.

RESOLUTION NO. _____

RESOLUTION APPROVING ONE-TIME LUMP SUM ADDITION TO THE RETIREMENT BENEFITS OF CERTAIN CITY RETIREES AND BENEFICIARIES OF DECEASED RETIREES**BE IT RESOLVED** by the City Council of the City of Opelika, Alabama, as follows:

1. That the City of Opelika, through its governing authority, elects to come under the provisions of Section 2 of Act 367 of the Regular Session of the 2017 Legislature.
2. That the City of Opelika agrees to provide all funds necessary to the Employees' Retirement System to cover the cost of the one-time lump sum payment as provided for by Act No. 2017-367 for those eligible retirees and beneficiaries of deceased retirees of the City of Opelika with the aforementioned lump sum payment being paid in October 2017.
3. That all funds necessary to cover the cost of said one-time lump sum payment shall be paid from the unassigned fund balance of the general fund. The estimated amount of the aforesaid lump sum payment is \$144,364.00.
4. That the Mayor and the officers of the City are hereby authorized to take such actions as may be necessary or advisable to implement this Resolution.
5. That this Resolution shall take effect immediately upon its passage and adoption by the City Council.

ADOPTED AND APPROVED this the ____ day of _____, 2017.

PRESIDENT OF THE CITY COUNCIL
OF THE CITY OF OPELIKA

ATTEST:

CITY CLERK

CERTIFICATION

I, Robert G. Shuman, City Clerk of the City of Opelika, hereby certify that the foregoing is a true and correct copy of Resolution No. _____ passed by the City Council of the City of Opelika at a regular meeting held on the the _____ day of _____, 2017, which meeting was attended by a quorum of the City Council and said Resolution was duly adopted and is still in full force and effect.

GIVEN under my hand and seal of the City on this the ____ day of _____, 2017.

ROBERT G. SHUMAN
CITY CLERK

RESOLUTION NO. 176-17

Agreement with Robins & Morton Group - new Police HQ.

RESOLUTION NO. _____

**RESOLUTION APPROVING AN AGREEMENT BETWEEN THE CITY
OF OPELIKA AND ROBINS & MORTON GROUP AS CONSTRUCTION MANAGER**

WHEREAS, the City of Opelika, Alabama, (the “City”) intends to design and build a new Police Department facility (the “Project”); and

WHEREAS, the City desires to retain the Robins & Morton Group (“Robins & Morton”) to provide certain project management and construction consulting services in connection with the Project; and

WHEREAS, Robins & Morton possesses the required skills and project management expertise that would be of benefit to the City; and

WHEREAS, a proposed Project Management Services Agreement (the “Agreement”) to be entered into between the City, as Owner, and Robins & Morton, as Construction Manager, has been prepared and submitted to the City Council for approval, and the City Council has determined that it is now in the best interest of the City and its citizens to approve said Agreement.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Opelika, Alabama, as follows:

1. That the proposed Project Management Services Agreement to be entered into between the City and Robins & Morton, a copy of which is attached hereto and marked Exhibit

“A”, be and the same is hereby approved, authorized, ratified and confirmed in the form substantially submitted to the City Council with such changes thereto (by addition, deletion or substitution) as the Mayor shall approve which approval shall be conclusively evidenced by execution and delivery of said Agreement.

2. That the Mayor is hereby authorized and directed to execute and deliver said Agreement in the name and on behalf of the City.

3. That Robins & Morton shall be compensated for its services as Construction Manager in accordance with the provisions of Article 11 of the Agreement. The funds for said services shall be paid from the Unassigned Fund Balance of the General Fund.

4. That the Mayor and the Controller are hereby authorized and directed to make the necessary and appropriate accounting entries to carry into effect the intent of this Resolution.

5. That the officers of the City and any person or persons designated and authorized by any officers of the City to act in the name and on behalf of the City, or any one or more of them, are authorized to do or cause to be done or performed in the name and on behalf of the City such other acts and to execute and deliver or cause to be executed and delivered in the name and on behalf of the City such other notices, certificates, assurances or other instruments or other communications under the seal of the City or otherwise, as they or any of them deem necessary or advisable or appropriate in order to carry into effect the intent of the provisions of this Resolution and the attached Agreement.

6. That this Resolution shall take effect upon its passage and adoption by the City Council.

ADOPTED AND APPROVED this the _____ day of _____, 2017.

PRESIDENT OF THE CITY COUNCIL
OF THE CITY OF OPELIKA

ATTEST:

CITY CLERK



Document C132™ – 2009

Standard Form of Agreement Between Owner and Construction Manager as Adviser

AGREEMENT made as of the Twenty-seventh day of July in the year Two Thousand Seventeen

(In words, indicate day, month and year.)

BETWEEN the Owner:

(Name, legal status, address and other information)

City of Opelika
204 South 7th Street
Opelika, Alabama 36803

and the Construction Manager:

(Name, legal status, address and other information)

The Robins & Morton Group
400 Shades Creek Parkway
Birmingham, AL 35209

for the following Project:

(Name, location and detailed description)

Opelika Police Department
501 South Tenth Street
Opelika, Alabama 36803

The Architect:

(Name, legal status, address and other information)

TBD

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

This document is intended to be used in conjunction with AIA Documents A132™–2009, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition; A232™–2009, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition; and B132™–2009, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition.

AIA Document A232™–2009 is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

The Owner and Construction Manager agree as follows.

Attachment: C132-2009 (176-17 : Agreement with Robins & Morton Group - new Police HQ.)

Init.

~~TABLE OF ARTICLES~~ **TABLE OF ARTICLES**

- 1 INITIAL INFORMATION
- 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES
- 3 SCOPE OF CONSTRUCTION MANAGER'S BASIC SERVICES
- 4 ADDITIONAL SERVICES
- 5 OWNER'S RESPONSIBILITIES
- 6 COST OF THE WORK
- 7 COPYRIGHTS AND LICENSES
- 8 CLAIMS AND DISPUTES
- 9 TERMINATION OR SUSPENSION
- 10 MISCELLANEOUS PROVISIONS
- 11 COMPENSATION
- 12 SPECIAL TERMS AND CONDITIONS
- 13 SCOPE OF THE AGREEMENT

ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.

(Note the disposition for the following items by inserting the requested information or a statement such as "not applicable," "unknown at time of execution" or "to be determined later by mutual agreement.")

§ 1.1.1 The Owner's program for the Project:

(Identify documentation or state the manner in which the program will be developed.)

The program will be developed by the City of Opelika and the Architect (TBD).

§ 1.1.2 The Project's physical characteristics:

(Identify or describe, if appropriate, size, location, dimensions, or other pertinent information, such as geotechnical reports; site, boundary and topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site; etc.)

New Police Department facility to be constructed on the existing site. Demolition of the old building.

§ 1.1.3 The Owner's budget for the Cost of the Work, as defined in Section 6.1:

(Provide total and, if known, a line item breakdown.)

TBD

§ 1.1.4 The Owner's anticipated design and construction schedule:

.1 Design phase milestone dates, if any:

TBD

.2 Commencement of construction:

Init.

TBD

- .3 Substantial Completion date or milestone dates:

TBD

- .4 Other:

§ 1.1.5 The Owner intends the following procurement method for the Project:
(Identify method such as competitive bid, negotiated Contract or multiple Prime Contracts.)

Multiple Prime Contracts

§ 1.1.6 The Owner's requirements for accelerated or fast-track scheduling, multiple bid packages, or phased construction are set forth below:
(List number and type of bid/procurement packages.)

TBD

§ 1.1.7 Other Project information:
(Identify special characteristics or needs of the Project not provided elsewhere, such as environmentally responsible design or historic preservation requirements.)

N/A

§ 1.1.8 The Owner identifies the following representative in accordance with Section 5.5:
(List name, address and other information.)

Mayor Gary Fuller
City of Opelika
204 South 7th Street
Opelika, Alabama 36803

§ 1.1.9 The persons or entities, in addition to the Owner's representative, who are required to review the Construction Manager's submittals to the Owner are as follows:
(List name, address and other information.)

N/A

§ 1.1.10 Unless provided by the Construction Manager, the Owner will retain the following consultants and contractors:
(List name, legal status, address and other information.)

- .1 Land Surveyor:

TBD

- .2 Geotechnical Engineer:

TBD

Init.

.3 Civil Engineer:

TBD

.4 Other:

(List any other consultants retained by the Owner, such as a Project or Program Manager, or construction contractor.)

TBD

§ 1.1.11 The Construction Manager identifies the following representative in accordance with Section 2.4:
(List name, address and other information.)

Phil Yance
The Robins & Morton Group
400 Shades Creek Parkway
Birmingham, Alabama 35209
Email: pyance@robinsmorton.com
Phone: (205) 870-1000

§ 1.1.12 The Construction Manager's staffing plan as required under Section 3.3.2 shall include:
(List any specific requirements and personnel to be included in the staffing plan, if known.)

Richard Nelson, Senior Project Manager
List of additional staff shall be determined and provided at a later date.

§ 1.1.13 The Construction Manager's consultants retained under Basic Services, if any:

.1 Cost Estimator:
(List name, legal status, address and other information.)

N/A

.2 Other consultants:

TBD

§ 1.1.14 The Construction Manager's consultants retained under Additional Services:

ADA Consultant (if required) – TBD
Exterior Skin/Moisture (included in the Cost of Work) - TBD

§ 1.1.15 Other Initial Information on which the Agreement is based:

Init.

Attachment "A" – Outline of Robins & Morton Management Activities dated July 26, 2017.

§ 1.2 The Owner and Construction Manager may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Construction Manager shall appropriately adjust the schedules, the Construction Manager's services and the Construction Manager's compensation.

ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

§ 2.1 The Construction Manager shall provide the services as set forth in this Agreement.

§ 2.2 The Construction Manager shall perform its services consistent with the skill and care ordinarily provided by construction managers practicing in the same or similar locality under the same or similar circumstances. The Construction Manager shall perform its services as expeditiously as is consistent with such skill and care and the orderly progress of the Project.

§ 2.3 The Construction Manager shall provide its services in conjunction with the services of an Architect as described in AIA Document B132™–2009, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition. The Construction Manager shall not be responsible for actions taken by the Architect.

§ 2.4 The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

§ 2.5 Except with the Owner's knowledge and consent, the Construction Manager shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Construction Manager's judgment with respect to this Project.

§ 2.6 The Construction Manager shall maintain the following insurance for the duration of this Agreement. If any of the requirements set forth below exceed the types and limits the Construction Manager normally maintains, the Owner shall reimburse the Construction Manager for any additional cost.

§ 2.6.1 Comprehensive General Liability with policy limits of not less than One Million Dollars (\$ 1,000,000) for each occurrence and Two Million Dollars (\$2,000,000) in the aggregate for bodily injury and property damage.

§ 2.6.2 Automobile Liability covering owned and rented vehicles operated by the Construction Manager with policy limits of not less than One Million Dollars (\$ 1,000,000) combined single limit and aggregate for bodily injury and property damage.

§ 2.6.3 The Construction Manager may use umbrella or excess liability insurance to achieve the required coverage for Comprehensive General Liability and Automobile Liability, provided that such umbrella or excess insurance results in the same type of coverage as required for the individual policies.

§ 2.6.4 Workers' Compensation at statutory limits and Employers Liability with a policy limit of not less than One Million Dollars (\$ 1,000,000).

§ 2.6.5 Professional Liability covering the Construction Manager's negligent acts, errors and omissions in its performance of services with policy limits of not less than Two Million Dollars (\$ 2,000,000) per claim and in the aggregate.

§ 2.6.6 The Construction Manager shall provide to the Owner certificates of insurance evidencing compliance with the requirements in this Section 2.6. The certificates will show the Owner as an additional insured on the Comprehensive General Liability, Automobile Liability, umbrella or excess policies.

Attachment: C132-2009 (176-17 : Agreement with Robins & Morton Group - new Police HQ.)

Init.

ARTICLE 3 SCOPE OF CONSTRUCTION MANAGER'S BASIC SERVICES

§ 3.1 Definition

The Construction Manager's Basic Services consist of those described in Sections 3.2 and 3.3 and include usual and customary construction coordination and scheduling, constructability review, cost estimating, and allocation of construction activities among the Multiple Prime Contractors.

§ 3.2 Preconstruction Phase

§ 3.2.1 The Construction Manager shall review the program furnished by the Owner and any evaluation of the Owner's program provided by the Architect, to ascertain the requirements of the Project and shall arrive at a mutual understanding of such requirements with the Owner and Architect.

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

§ 3.2.3 The Construction Manager shall prepare, and deliver to the Owner, a written Construction Management Plan that includes, at a minimum, the following: (1) preliminary evaluations required in Section 3.2.2, (2) a Project schedule, (3) cost estimates, (4) recommendations for Project delivery method, and (5) Contractors' scopes of Work, if multiple Contractors or fast-track construction will be used. The Construction Manager shall periodically update the Construction Management Plan over the course of the Project.

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

§ 3.2.5 The Construction Manager shall expeditiously review design documents during their development and advise the Owner and Architect on proposed site use and improvements, selection of materials, and building systems and equipment. The Construction Manager shall also provide recommendations to the Owner and Architect on constructability, availability of materials and labor, sequencing for phased construction, time requirements for procurement, installation and construction, and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

§ 3.2.6 The Construction Manager shall prepare and periodically update the Project schedule included in the Construction Management Plan for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities and highlight items that could affect the Project's timely completion.

§ 3.2.7 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, estimates of the Cost of the Work of increasing detail and refinement. The Construction Manager shall include appropriate contingencies for design, bidding or negotiating, price escalation, and market conditions in the estimates of the Cost of the Work. Such estimates shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall advise the Owner and Architect if it appears that the Cost of the Work may exceed the Owner's budget and make recommendations for corrective action.

§ 3.2.8 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall consult with the Owner and Architect and make recommendations whenever the Construction Manager determines that design details adversely affect constructability, cost or schedules.

§ 3.2.9 The Construction Manager shall provide recommendations and information to the Owner and Architect regarding the assignment of responsibilities for temporary Project facilities and equipment, materials and services

Init.

for common use of the Contractors. The Construction Manager shall verify that such requirements and assignment of responsibilities are included in the proposed Contract Documents.

§ 3.2.10 The Construction Manager shall provide recommendations and information to the Owner regarding the allocation of responsibilities for safety programs among the Contractors.

§ 3.2.11 The Construction Manager shall provide recommendations to the Owner on the division of the Project into individual Contracts for the construction of various categories of Work, including the method to be used for selecting Contractors and awarding Contracts. If multiple Contracts are to be awarded, the Construction Manager shall review the Drawings and Specifications and make recommendations as required to provide that (1) the Work of the Contractors is coordinated, (2) all requirements for the Project are assigned to the appropriate Contract, (3) the likelihood of jurisdictional disputes is minimized, and (4) proper coordination is provided for phased construction.

§ 3.2.12 The Construction Manager shall update the Project schedule to include the components of the Work, including phasing of construction, times of commencement and completion required of each Contractor, ordering and delivery of products, including those that must be ordered well in advance of construction, and the occupancy requirements of the Owner.

§ 3.2.13 The Construction Manager shall expedite and coordinate the ordering and delivery of ~~materials, materials~~ required by the Prime Contractor, including those that must be ordered well in advance of construction.

§ 3.2.14 The Construction Manager shall assist the Owner in selecting, retaining and coordinating the professional services of surveyors, special consultants and testing laboratories required for the Project.

§ 3.2.15 The Construction Manager shall provide an analysis of the types and quantities of labor required for the Project and review the availability of appropriate categories of labor required for critical phases. The Construction Manager shall make recommendations for actions designed to minimize adverse effects of labor shortages.

§ 3.2.16 The Construction Manager shall assist the Owner in obtaining information regarding applicable requirements for equal employment opportunity programs, and other programs as may be required by governmental and for quasi governmental authorities for inclusion in the Contract Documents.

§ 3.2.17 Following the Owner's approval of the Drawings and Specifications, the Construction Manager shall update and submit the latest estimate of the Cost of the Work and the Project schedule for the Architect's review and the Owner's approval.

§ 3.2.18 The Construction Manager shall submit the list of prospective bidders for the Architect's review and the Owner's approval.

§ 3.2.19 The Construction Manager shall develop bidders' interest in the Project and establish bidding schedules. The Construction Manager, with the assistance of the Architect, shall issue bidding documents to bidders and conduct pre-bid conferences with prospective bidders. The Construction Manager shall issue the current Project schedule with each set of bidding documents. The Construction Manager shall assist the Architect with regard to questions from bidders and with the issuance of addenda.

§ 3.2.20 The Construction Manager shall receive bids, prepare bid analyses and make recommendations to the Owner for the Owner's award of Contracts or rejection of bids.

§ 3.2.21 The Construction Manager shall assist the Owner in preparing Construction Contracts and advise the Owner on the acceptability of Subcontractors and material suppliers proposed by Multiple Prime Contractors.

§ 3.2.22 The Construction Manager shall assist the Owner in obtaining building permits and special permits for permanent improvements, except for permits required to be obtained directly by the various Multiple Prime Contractors. The Construction Manager shall verify that the Owner has paid applicable fees and assessments. The Construction Manager shall assist the Owner and Architect in connection with the Owner's responsibility for filing documents required for the approvals of governmental authorities having jurisdiction over the Project.

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§ 3.3 Construction Phase Administration of the Construction Contract

§ 3.3.1 Subject to Section 4.3, the Construction Manager's responsibility to provide Construction Phase Services commences with the award of the initial Contract for Construction and terminates on the date the Architect issues the final Certificate for Payment.

§ 3.3.2 The Construction Manager shall provide a staffing plan to include one or more representatives who shall be in attendance at the Project site whenever the Work is being performed.

§ 3.3.3 The Construction Manager shall provide on-site administration of the Contracts for Construction in cooperation with the Architect as set forth below and in AIA Document A232™-2009, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition. If the Owner and Contractor modify AIA Document A232-2009, those modifications shall not affect the Construction Manager's services under this Agreement unless the Owner and the Construction Manager amend this Agreement.

§ 3.3.4 The Construction Manager shall provide administrative, management and related services to coordinate scheduled activities and responsibilities of the Multiple Prime Contractors with each other and with those of the Construction Manager, the Owner and the Architect. The Construction Manager shall coordinate the activities of the Multiple Prime Contractors in accordance with the latest approved Project schedule and the Contract Documents.

§ 3.3.5 Utilizing the construction schedules provided by the Multiple Prime Contractors, the Construction Manager shall update the Project schedule, incorporating the activities of the Owner, Architect, and Multiple Prime Contractors on the Project, including activity sequences and durations, allocation of labor and materials, processing of Shop Drawings, Product Data and Samples, and delivery and procurement of products, including those that must be ordered well in advance of construction. The Project schedule shall include the Owner's occupancy requirements showing portions of the Project having occupancy priority. The Construction Manager shall update and reissue the Project schedule as required to show current conditions. If an update indicates that the previously approved Project schedule may not be met, the Construction Manager shall recommend corrective action, if any, to the Owner and Architect.

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

§ 3.3.7 Utilizing information from the Multiple Prime Contractors, the Construction Manager shall schedule and coordinate the sequence of construction and assignment of space in areas where the Multiple Prime Contractors are performing Work, in accordance with the Contract Documents and the latest approved Project schedule.

§ 3.3.8 The Construction Manager shall schedule all tests and inspections required by the Contract Documents or governmental authorities, and arrange for the delivery of test and inspection reports to the Owner and Architect.

§ 3.3.9 The Construction Manager shall endeavor to obtain satisfactory performance from each of the Multiple Prime Contractors. The Construction Manager shall recommend courses of action to the Owner when requirements of a Contract are not being fulfilled.

§ 3.3.10 The Construction Manager shall monitor and evaluate actual costs for activities in progress and estimates for uncompleted tasks and advise the Owner and Architect as to variances between actual and budgeted or estimated costs. If the Contractor is required to submit a Control Estimate, the Construction Manager shall meet with the Owner and Contractor to review the Control Estimate. The Construction Manager shall promptly notify the Contractor if there are any inconsistencies or inaccuracies in the information presented. The Construction Manager shall also report the Contractor's cost control information to the Owner.

§ 3.3.11 The Construction Manager shall develop cash flow reports and forecasts for the Project.

§ 3.3.12 The Construction Manager shall maintain accounting records on authorized Work performed under unit costs, additional Work performed on the basis of actual costs of labor and materials, and other Work requiring accounting records.

§ 3.3.12.1 The Construction Manager shall develop and implement procedures for the review and processing of Applications for Payment by Multiple Prime Contractors for progress and final payments.

§ 3.3.12.2 Not more frequently than monthly, the Construction Manager shall review and certify the amounts due the respective Contractors as follows:

- .1 Where there is only one Contractor responsible for performing the Work, the Construction Manager shall, within seven days after the Construction Manager receives the Contractor's Application for Payment, review the Application, certify the amount the Construction Manager determines is due the Contractor, and forward the Contractor's Application and Certificate for Payment to the Architect.
- .2 Where there are Multiple Prime Contractors responsible for performing different portions of the Project, the Construction Manager shall, within seven days after the Construction Manager receives each Contractor's Application for Payment: (1) review the Applications and certify the amount the Construction Manager determines is due each Contractor, (2) prepare a Summary of Contractors' Applications for Payment by summarizing information from each Contractor's Application for Payment, (3) prepare a Project Application and Certificate for Payment, (4) certify the total amount the Construction Manager determines is due all Multiple Prime Contractors collectively, and (5) forward the Summary of Contractors' Applications for Payment and Project Application and Certificate for Payment to the Architect.

§ 3.3.12.3 The Construction Manager's certification for payment shall constitute a representation to the Owner, based on the Construction Manager's evaluations of the Work and on the data comprising the Contractors' Applications for Payment, that, to the best of the Construction Manager's knowledge, information and belief, the Work has progressed to the point indicated and the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Construction Manager. The issuance of a Certificate for Payment shall further constitute a recommendation to the Architect and Owner that the Contractor be paid the amount certified.

§ 3.3.12.4 The certification of an Application for Payment or a Project Application for Payment by the Construction Manager shall not be a representation that the Construction Manager has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences for the Contractor's own Work, or procedures; (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 3.3.13 The Construction Manager shall review the safety programs developed by each of the Multiple Prime Contractors solely and exclusively for purposes of coordinating the safety programs with those of the other Contractors and for making recommendations to the Owner for any safety programs not included in the Work of the Multiple Prime Contractors. The Construction Manager's responsibilities for coordination of safety programs shall not extend to direct control over or charge of the acts or omissions of the Contractor, Multiple Prime Contractors, Subcontractors, agents or employees of the Contractors or Multiple Prime Contractors or Subcontractors, or any other persons performing portions of the Work and not directly employed by the Construction Manager.

§ 3.3.14 The Construction Manager shall determine in general that the Work of each Contractor is being performed in accordance with the requirements of the Contract Documents and notify the Owner, Contractor and Architect of defects and deficiencies in the Work. The Construction Manager shall have the authority to reject Work that does not conform to the Contract Documents and shall notify the Architect about the rejection. The failure of the Construction Manager to reject Work shall not constitute the acceptance of the Work. The Construction Manager shall record any rejection of Work in its daily log and include information regarding the rejected Work in its progress reports to the Architect and Owner pursuant to Section 3.3.20.1. Upon written authorization from the Owner, the Construction Manager may require and make arrangements for additional inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed, and the Construction Manager shall give timely notice to the Architect of when and where the tests and inspections are to be made so that the Architect may be present for such procedures.

§ 3.3.15 The Construction Manager shall advise and consult with the Owner and Architect during the performance of its Construction Phase Services. The Construction Manager shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Construction Manager shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work of each of the Contractors, since these are solely the Contractor's rights and responsibilities under the Contract Documents. The Construction Manager shall not be responsible for a Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Construction Manager shall be responsible for the Construction Manager's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or Multiple Prime Contractors, Subcontractors, or their agents or employees, or any other persons or any other persons or entities performing portions of the Work.

§ 3.3.16 The Construction Manager shall transmit to the Architect requests for interpretations and requests for information of the meaning and intent of the Drawings and Specifications with its written recommendation, and assist in the resolution of questions that may arise.

§ 3.3.17 The Construction Manager shall review requests for changes, assist in negotiating Contractors' proposals, submit recommendations to the Architect and Owner, and, if they are accepted, prepare Change Orders and Construction Change Directives that incorporate the Architect's modifications to the Contract Documents.

§ 3.3.18 The Construction Manager shall assist the Initial Decision Maker in the review, evaluation and documentation of Claims, subject to Section 4.3.1.7.

§ 3.3.19 Utilizing the submittal schedules provided by each Contractor, the Construction Manager shall prepare, and revise as necessary, a Project submittal schedule incorporating information from the Owner, Owner's consultants, Owner's separate contractors and vendors, governmental agencies, and all other participants in the Project under the management of the Construction Manager. The Project submittal schedule and any revisions shall be submitted to the Architect for approval. The Construction Manager shall promptly review all Shop Drawings, Product Data, Samples and other submittals from the Multiple Prime Contractors for compliance with the submittal requirements of the Contract, coordinate submittals with information contained in related documents, and transmit to the Architect those that the Construction Manager recommends for approval. The Construction Manager's actions shall be taken in accordance with the Project submittal schedule approved by the Architect, or in the absence of an approved Project submittal schedule, with such reasonable promptness as to cause no delay in the Work or in the activities of the Contractor, other Multiple Prime Contractors, the Owner, or the Architect.

§ 3.3.20 The Construction Manager shall keep a daily log containing a record of weather, each Contractor's Work on the site, number of workers, identification of equipment, Work accomplished, problems encountered, and other similar relevant data as the Owner may require.

§ 3.3.20.1 The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information identified below:

- .1 Work completed for the period;
- .2 Project schedule status;
- .3 Submittal schedule and status report, including a summary of remaining and outstanding ~~submittals~~ Submittals;
- .4 Request for information, Change Order, and Construction Change Directive status reports;
- .5 Tests and inspection reports;
- .6 Status report of nonconforming and rejected Work;
- .7 Daily logs;
- .8 Summary of all Multiple Prime Contractors' Applications for Payment;
- .9 Cumulative total of the Cost of the Work to date including the Construction Manager's compensation and reimbursable expenses at the job site, if any;
- .10 Cash-flow and forecast reports; and
- .11 Any other items the Owner may require;

§ 3.3.20.2 In addition, for Projects constructed on the basis of the Cost of the Work, the Construction Manager shall include the following additional information in its progress reports:

- .1 Contractor's work force report;
- .2 Equipment utilization report;
- .3 Cost summary, comparing actual costs to updated cost estimates; and
- .4 Any other items as the Owner may require:

§ 3.3.21 Utilizing the documents provided by the Contractor, the Construction Manager shall maintain at the site one copy of all Contracts, Drawings, Specifications, addenda, Change Orders and other Modifications, in good order and marked currently to record all changes and selections made during construction, and in addition, approved Shop Drawings, Product Data, Samples and similar required submittals. The Construction Manager shall maintain records, in duplicate, of principal building layout lines, elevations of the bottom of footings, floor levels and key site elevations certified by a qualified surveyor or professional engineer. The Construction Manager shall make all such records available to the Architect and the Contractor, and upon completion of the Project, shall deliver them to the Owner.

§ 3.3.22 The Construction Manager shall arrange for the delivery, storage, protection and security of Owner-purchased materials, systems and equipment that are a part of the Project until such items are incorporated into the Work.

§ 3.3.23 With the Architect and the Owner's maintenance personnel, the Construction Manager shall observe the Contractor's or Multiple Prime Contractors' final testing and start-up of utilities, operational systems and equipment and observe any commissioning as the Contract Documents may require.

§ 3.3.24 When the Construction Manager considers each Contractor's Work or a designated portion thereof is substantially complete, the Construction Manager shall, jointly with the Contractor, prepare for the Architect a list of incomplete or unsatisfactory items and a schedule for their completion. The Construction Manager shall assist the Architect in conducting inspections to determine whether the Work or designated portion thereof is substantially complete.

§ 3.3.25 When the Work or designated portion thereof is substantially complete, the Construction Manager shall prepare, and the Construction Manager and Architect shall execute, a Certificate of Substantial Completion. The Construction Manager shall submit the executed Certificate to the Owner and Contractor. The Construction Manager shall coordinate the correction and completion of the Work. Following issuance of a Certificate of Substantial Completion of the Work or a designated portion thereof, the Construction Manager shall evaluate the completion of the Work of the Contractor or Multiple Prime Contractors and make recommendations to the Architect when Work is ready for final inspection. The Construction Manager shall assist the Architect in conducting final inspections.

§ 3.3.26 The Construction Manager shall forward to the Owner, with a copy to the Architect, the following information received from the Contractor or Multiple Prime Contractors: (1) certificates of insurance received from the Contractor or Multiple Prime Contractors; (2) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (3) affidavits, receipts, releases and waivers of liens or bonds indemnifying the Owner against liens; and (4) any other documentation required of the Contractor under the Contract Documents, including warranties and similar submittals.

§ 3.3.27 The Construction Manager shall deliver all keys, manuals, record drawings and maintenance stocks to the Owner. The Construction Manager shall forward to the Architect a final Project Application for Payment and Project Certificate for Payment or final Application for Payment and final Certificate for Payment upon the Contractor's compliance with the requirements of the Contract Documents.

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

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§ 3.3.29 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Construction Manager shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance.

ARTICLE 4 ADDITIONAL SERVICES

§ 4.1 Additional Services listed below are not included in Basic Services but may be required for the Project. The Construction Manager shall provide the listed Additional Services only if specifically designated in the table below as the Construction Manager's responsibility, and the Owner shall compensate the Construction Manager as provided in Section 11.2.

(Designate the Additional Services the Construction Manager shall provide in the second column of the table below. In the third column indicate whether the service description is located in Section 4.2 or in an attached exhibit. If in an exhibit, identify the exhibit.)

Services	Responsibility (Construction Manager, Owner or Not Provided)	Location of Service Description (Section 4.2 below or in an exhibit attached to this document and identified below)
§ 4.1.1 Measured drawings	<u>Owner/Architect</u>	<u>Not Provided</u>
§ 4.1.2 Architectural interior design (B252™-2007)	<u>Owner/Architect</u>	<u>Not Provided</u>
§ 4.1.3 Tenant-related services	<u>Not Provided</u>	<u>Not Provided</u>
§ 4.1.4 Commissioning (B211™-2007)	<u>Not Provided</u>	<u>Not Provided</u>
§ 4.1.5 LEED® certification (B214™-2012) (B214™-2007)	<u>Not Provided</u>	<u>Not Provided</u>
§ 4.1.6 Furniture, furnishings, and equipment design (B253™-2007)	<u>Owner</u>	<u>Not Provided</u>

§ 4.2 Insert a description of each Additional Service designated in Section 4.1, if not further described in an exhibit attached to this document.

§ 4.3 Additional Services may be provided after execution of this Agreement, without invalidating this Agreement. Except for services required due to the fault of the Construction Manager, any Additional Services provided in accordance with this Section 4.3 shall entitle the Construction Manager to compensation pursuant to Section 11.3.

§ 4.3.1 Upon recognizing the need to perform the following Additional Services, the Construction Manager shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Construction Manager shall not proceed to provide the following services until the Construction Manager receives the Owner's written authorization:

- .1 Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including, but not limited to, size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method, or bid packages in addition to those listed in Section 1.1.6;
- .2 Services necessitated by the enactment or revision of codes, laws or regulations or official interpretations after the date of this Agreement;
- .3 Preparation of documentation for alternate bid or proposal requests proposed by the Owner;
- .4 Preparation for, and attendance at, a public presentation, meeting or hearing;
- .5 Preparation for, and attendance at a dispute resolution proceeding or legal proceeding, except where the Construction Manager is party thereto;
- .6 Providing consultation concerning replacement of Work resulting from fire or other cause during construction and furnishing services required in connection with the replacement of such Work;
- .7 Assistance to the Initial Decision Maker, if other than the Architect; or
- .8 Service as the Initial Decision Maker.

§ 4.3.2 To avoid delay in the Construction Phase, the Construction Manager shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If the Owner subsequently determines that all or parts of those services are not required, the Owner shall give prompt written notice to the Construction Manager, and the Owner shall have no further obligation to compensate the Construction Manager for those services:

- .1 Services in evaluating an extensive number of Claims submitted by a Contractor or others in connection with the Work when the Architect is serving as the Initial Decision Maker.
- .2 To the extent the Construction Manager's Basic Services are affected, providing Construction Phase Services 60 days after (1) the date of Substantial Completion of the Work or (2) the anticipated date of Substantial Completion, identified in Initial Information, whichever is earlier.
- .3 Services required in an emergency to coordinate the activities of a Contractor or Multiple Prime Contractors in the event of risk of personal injury or serious property damage, consistent with Section 3.3.13.

§ 4.3.3 If the services covered by this Agreement have not been completed within () months of the date of this Agreement, through no fault of the Construction Manager, extension of the Construction Manager's services beyond that time shall be compensated as Additional Services.

ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including the Owner's program, other objectives, schedule, constraints and criteria, special equipment, systems, and site requirements. Within 15 days after receipt of a written request from the Construction Manager, the Owner shall furnish the requested information as necessary and relevant for the Construction Manager to evaluate, give notice of, or enforce any lien rights, if any.

§ 5.2 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the budget for the Cost of the Work or in the Project's scope and quality.

§ 5.3 The Owner acknowledges that accelerated, phased or fast-track scheduling provides a benefit, but also carries with it the risk of additional costs. If the Owner selects accelerated, phased or fast-track scheduling, the Owner agrees to include in the budget for the Project sufficient contingencies to cover such costs.

§ 5.4 The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B132-2009, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition. The Owner shall provide the Construction Manager a copy of the executed agreement between the Owner and Architect, and any further modifications to the agreement.

§ 5.5 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions pertaining to documents the Construction Manager submits in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Construction Manager's services.

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

§ 5.7 Unless provided by the Construction Manager, the Owner shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation

tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 5.8 The Owner shall coordinate the services of its own consultants with those services provided by the Construction Manager. Upon the Construction Manager's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated in this Agreement, or authorize the Construction Manager to furnish them as an Additional Service, when the Construction Manager requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants maintain professional liability insurance and other liability insurance as appropriate to the services provided.

§ 5.9 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

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

§ 5.11 The Owner shall provide prompt written notice to the Construction Manager and Architect if the Owner becomes aware of any fault or defect in Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service or any fault or defect in the Construction Manager's services.

§ 5.12 The Owner reserves the right to perform construction and operations related to the Project with the Owner's own forces, and to award contracts in connection with the Project which are not part of the Construction Manager's responsibilities under this Agreement. The Construction Manager shall notify the Owner if any such independent action will interfere with the Construction Manager's ability to perform the Construction Manager's responsibilities under this Agreement. When performing construction or operations related to the Project, the Owner agrees to be subject to the same obligations and to have the same rights as the Contractors.

§ 5.13 Except as otherwise provided in this Agreement, or when direct communications have been specially authorized, the Owner shall endeavor to communicate with the Contractor and the Construction Manager's consultants through the Construction Manager about matters arising out of or relating to the Contract Documents. The Owner shall promptly notify the Construction Manager of any direct communications that may affect the Construction Manager's services.

§ 5.14 Before executing the Contract for Construction, the Owner shall coordinate the Construction Manager's duties and responsibilities set forth in the Contract for Construction with the Construction Manager's services set forth in this Agreement. The Owner shall provide the Construction Manager a copy of the executed agreements between the Owner and Contractors, including the General Conditions of the Contracts for Construction.

§ 5.15 The Owner shall provide the Construction Manager access to the Project site prior to commencement of the Work and shall obligate the Contractor to provide the Construction Manager access to the Work wherever it is in preparation or progress.

§ 5.16 If requested by the Construction Manager, the Owner shall furnish evidence that financial arrangements have been made to fulfill the Owner's obligations under this Agreement.

§ 5.17 The Owner shall furnish the Construction Manager with a sufficient quantity of Construction Documents.

ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include the contractors' general conditions costs, overhead and profit. The Cost of the Work includes the compensation of the Construction Manager and Construction Manager's Consultants during the Construction Phase only, including compensation for reimbursable expenses at the job site, if any. The Cost of the Work does not include the compensation of the Architect, the costs of the land, rights-of-way, financing, contingencies for changes in the Work or other costs that are the responsibility of the Owner.

Attachment: C132-2009 (176-17 : Agreement with Robins & Morton Group - new Police HQ.)

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and may be adjusted throughout the Project as required under Sections 5.2 and 6.4. Evaluations of the Owner's budget, preliminary estimates for the Cost of the Work and detailed estimates of the Cost of the Work prepared by the Construction Manager represent the Construction Manager's judgment as a person or entity familiar with the construction industry. It is recognized, however, that neither the Construction Manager nor the Owner has control over the cost of labor, materials or equipment, over Contractors' methods of determining bid prices, or over competitive bidding, market or negotiating conditions. Accordingly, the Construction Manager cannot and does not warrant or represent that bids or negotiated prices will not vary from the budget proposed, established or approved by the Owner, or from any cost estimate or evaluation prepared by the Construction Manager.

§ 6.3 If the Architect is providing detailed cost estimating services as an Additional Service, and a discrepancy exists between the Construction Manager's cost estimates and the Architect's cost estimates, the Architect and the Construction Manager shall work cooperatively to conform the cost estimates to one another.

§ 6.4 If, prior to the conclusion of the Design Development Phase, the Construction Manager's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Construction Manager, in consultation with the Architect, shall make appropriate recommendations to the Owner to adjust the Project's size, quality or budget, and the Owner shall cooperate with the Construction Manager and Architect in making such adjustments.

§ 6.5 If the estimate of the Cost of the Work at the conclusion of the Design Development Phase exceeds the Owner's budget for the Cost of the Work, the Owner shall

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 in consultation with the Construction Manager and Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or
- .3 implement any other mutually acceptable alternative.

ARTICLE 7 COPYRIGHTS AND LICENSES

The Construction Manager and the Construction Manager's consultants, if any, shall not own or claim a copyright in the Instruments of Service. The Construction Manager, the Construction Manager's consultants, if any, and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project. If the Owner and Construction Manager intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions.

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 General

§ 8.1.1 The Owner and Construction Manager shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement in accordance with the requirements of the method of binding dispute resolution selected in this Agreement within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Construction Manager waive all claims and causes of action not commenced in accordance with this Section 8.1.1.

§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Construction Manager waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A232-2009, General Conditions of the Contract for Construction. The Owner or the Construction Manager, as appropriate, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.

§ 8.1.3 The Construction Manager shall indemnify and hold the Owner and the Owner's officers and employees harmless from and against damages, losses and judgments arising from claims by third parties, including reasonable attorneys' fees and expenses recoverable under applicable law, but only to the extent they are caused by the negligent acts or omissions of the Construction Manager, its employees and its consultants in the performance of professional services under this Agreement. The Construction Manager's duty to indemnify the Owner under this provision shall be limited to the available proceeds of insurance coverage.

§ 8.1.4 The Construction Manager and Owner waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 9.7.

§ 8.2 Mediation

§ 8.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Construction Manager's services, the Construction Manager may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.

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

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

§ 8.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:

(Check the appropriate box. If the Owner and Construction Manager do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.)

☒ [X] Arbitration pursuant to Section 8.3 of this Agreement

☐ [] Litigation in a court of competent jurisdiction

☐ [] Other: *(Specify)*

§ 8.3 Arbitration

§ 8.3.1 If the parties have selected arbitration as the method for binding dispute resolution in this Agreement any claim, dispute or other matter in question arising out of or related to this Agreement subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration.

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

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

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

§ 8.3.4 Consolidation or Joinder

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

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

§ 8.3.4.3 The Owner and Construction Manager grant to any person or entity made a party to an arbitration conducted under this Section 8.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Construction Manager under this Agreement.

ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments to the Construction Manager in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Construction Manager's option, cause for suspension of performance of services under this Agreement. If the Construction Manager elects to suspend services, the Construction Manager shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Construction Manager shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Construction Manager shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Construction Manager's services. The Construction Manager's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.2 If the Owner suspends the Project, the Construction Manager shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Construction Manager shall be compensated for expenses incurred in the interruption and resumption of the Construction Manager's services. The Construction Manager's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Construction Manager, the Construction Manager may terminate this Agreement by giving not less than seven days' written notice.

§ 9.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 9.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause.

§ 9.6 In the event of termination not the fault of the Construction Manager, the Construction Manager shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses as defined in Section 9.7.

§ 9.7 Termination Expenses are in addition to compensation for the Construction Manager's services and include expenses directly attributable to termination for which the Construction Manager is not otherwise compensated, plus

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an amount for the Construction Manager's anticipated profit on the value of the services not performed by the Construction Manager, as set forth below.

§ 9.7.1 In the event of termination for the Owner's convenience prior to commencement of construction, the Construction Manager shall be entitled to receive payment for services performed, costs incurred by reason of such termination and reasonable overhead and profit on Preconstruction services not completed during the Preconstruction Phase.

§ 9.7.2 In the event of termination for the Owner's convenience after commencement of construction, the Construction Manager shall be entitled to receive payment for services performed and costs incurred by reason of such termination, along with reasonable overhead and profit on services not completed during the Construction Phase.

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located, except that if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 8.3.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A232-2009, General Conditions of the Contract for Construction, except for purposes of this Agreement, the term "Work" shall include the work of all Contractors under the administration of the Construction Manager.

§ 10.3 The Owner and Construction Manager, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Construction Manager shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement.

§ 10.4 If the Owner requests the Construction Manager to execute certificates, the proposed language of such certificates shall be submitted to the Construction Manager for review at least 14 days prior to the requested dates of execution. If the Owner requests the Construction Manager to execute consents reasonably required to facilitate assignment to a lender, the Construction Manager shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Construction Manager for review at least 14 days prior to execution. The Construction Manager shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of this Agreement.

§ 10.5 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Construction Manager.

§ 10.6 Unless otherwise required in this Agreement, the Construction Manager shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

§ 10.7 The Construction Manager shall have the right to include photographic or artistic representations of the design of the Project among the Construction Manager's promotional and professional materials. The Construction Manager shall be given reasonable access to the completed Project to make such representations. However, the Construction Manager's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Construction Manager in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Construction Manager in the Owner's promotional materials for the Project.

§ 10.8 If the Construction Manager or Owner receives information specifically designated by the other party as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except to (1) its employees, (2) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, or (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information.

ARTICLE 11 COMPENSATION

§ 11.1 For the Construction Manager's Basic Services described under Article 3, the Owner shall compensate the Construction Manager as follows:

§ 11.1.1 For Preconstruction Phase Services in Section 3.2:

(Insert amount of, or basis for, compensation, including stipulated sums, multiples or percentages.)

Compensation includes hourly rates expended for services and actual costs incurred, including but not limited to, travel costs, general overhead, office supplies, printing, consultant and/or Subcontractor fees, etc.

The Preconstruction Services Fee is capped at \$70,000 based on preconstruction meetings being held in Opelika, Alabama, provided the design schedule does not exceed eight (8) months.

§ 11.1.2 For Construction Phase Services in Section 3.3:

(Insert amount of, or basis for, compensation, including stipulated sums, multiples or percentages.)

Reimbursable Expenses, as described in Article 11.6 and as outlined in Attachment "B", plus Direct Personnel Expenses, plus three point two five percent (3.25%) of the total of the following: Construction Cost, Design Costs, Consultant Costs, Reimbursable Expenses and Direct Personnel Expense.

§ 11.2 For Additional Services designated in Section 4.1, the Owner shall compensate the Construction Manager as follows:

(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)

For Additional Services, the Construction Manager shall be paid Reimbursable Expenses, as described in Section 11.6 and Direct Personnel Expenses. At the Owner's option, and in lieu of Owner providing, Construction Manager can purchase and maintain builder's risk insurance for the Project at a rate of point zero one seven five percent (0.0175%) of the Cost of the Work each month. If the Owner purchases such property insurance, Construction Manager shall receive a copy of such policy. In the event the builder's risk insurance provided by the Owner does not provide all the coverages required, Construction Manager may then effect difference-in-coverage insurance necessary to protect the interests of the Construction Manager, Contractors, Subcontractors and Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to the Owner.

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.3, the Owner shall compensate the Construction Manager as follows:

(Insert amount of, or basis for, compensation.)

For Additional Services, the Construction Manager shall be paid Reimbursable Expenses, as described in Section 11.6 and Direct Personnel Expenses.

§ 11.4 Compensation for Additional Services of the Construction Manager's consultants when not included in Sections 11.2 or 11.3, shall be the amount invoiced to the Construction Manager plus ~~percent (—%)~~, three point two five percent (3.25%), or as otherwise stated below:

§ 11.5 The hourly billing rates for services of the Construction Manager and the Construction Manager's consultants, if any, are set forth below. The rates shall be adjusted in accordance with the Construction Manager's and Construction Manager's consultants' normal review practices.

(If applicable, attach an exhibit of hourly billing rates or insert them below.)

As defined in Attachment "B"

Employee or Category

Rate (\$0.00)

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§ 11.6 Compensation for Reimbursable Expenses

§ 11.6.1 Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by the Construction Manager and the Construction Manager's consultants directly related to the Project, as follows:

- .1 Transportation and authorized out-of-town travel and subsistence;
- .2 Long distance services, dedicated data and communication services, teleconferences, Project Web sites, and extranets;
- .3 Fees paid for securing approval of authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, standard form documents;
- .5 Postage, handling and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 Professional photography, and presentation materials requested by the Owner;
- .8 Construction Manager's consultant's expense of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits if the Owner requests such insurance in excess of that normally carried by the Construction Manager's consultants;
- .9 All taxes levied on professional services and on reimbursable expenses;
- .10 Site office expenses; and
- .11 Other similar Project-related expenditures.

§ 11.6.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Construction Manager and the Construction Manager's consultants plus ~~percent (—%)~~ three point two five percent (3.25%) of the expenses incurred.

§ 11.7 Payments to the Construction Manager

§ 11.7.1 An initial payment of Zero Dollars (\$ 0.00) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

§ 11.7.2 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid Fifteen (15) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager.
(Insert rate of monthly or annual interest agreed upon.)

%—Prevailing National Bank Prime Rate at the location of the Project.

§ 11.7.3 The Owner shall not withhold amounts from the Construction Manager's compensation to impose a penalty or liquidated damages on the Construction Manager, or to offset sums requested by or paid to Contractors for the cost of changes in the Work unless the Construction Manager agrees or has been found liable for the amounts in a binding dispute resolution proceeding.

§ 11.7.4 Records of Reimbursable Expenses, expenses pertaining to Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:

ARTICLE 13 SCOPE OF THE AGREEMENT

§ 13.1 This Agreement represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Construction Manager.

§ 13.2 This Agreement is comprised of the following documents listed below:

- .1 AIA Document C132™–2009, Standard Form Agreement Between Owner and Construction Manager as Adviser

- .2 AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed, or the following:
- .3 AIA Document E202™–2008, Building Information Modeling Protocol Exhibit, if completed, or the following:
- .4 Other documents:
(List other documents, if any, including additional scopes of service forming part of the Agreement.)

This Agreement is entered into as of the day and year first written above.

OWNER (Signature)

City of Opelika
Gary Fuller, Mayor
(Printed name and title)

CONSTRUCTION MANAGER (Signature)

The Robins & Morton Group
Phil Yance, Vice President
(Printed name and title)

RV
7-31-17

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Attachment: C132-2009 (176-17 : Agreement with Robins & Morton Group - new Police HQ.)

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“ATTACHMENT A”
Opelika Police Department
Construction Management Services
Replacement Police Department Facility
Outline of Robins & Morton Management Activities
Categories; Safety, Quality, Schedule, Budget and Jobsite Personnel Responsibilities
Opelika, Alabama

CONSTRUCTION MANAGEMENT SERVICES:

Preconstruction Phase

- Assist in architect selection process.
- Evaluate program and project budget.
- Prepare preliminary program budget.
- Provide alternates on materials and systems.
- Advise on economic site use, materials, building systems.
- Advise on feasibility of construction methods.
- Advise of availability of labor and materials.
- Provide and update project schedule showing CM services, architectural services and Owner responsibility.
- Prepare detailed schematic estimate.
- Coordinate contract documents between Owner's design team.
- Advise on phasing at the project and coordinate various phases.
- Provide overall project schedule for each phase showing start, finish and milestone dates.
- Provide Owner Furnished Equipment schedule and coordinate all deliveries with appropriate phase.
- Provide analysis on the types, quantities, and availability of required labor.
- Advise on measures to avoid adverse affects of labor shortages.
- Verify applicable requirements for MBE programs for inclusion in the contract documents.
- Pre-qualify bidders.
- Develop bidders list.
- Establish bid schedules and assist in distribution of bid documents.
- Conduct pre-bid conferences, obtain answers to contractor questions and aid in issuing addenda.
- Receive bids, prepare bid analysis, and recommend contract awards.
- Conduct pre-award conferences.
- Assist Owner in contract preparation.
- Qualify subcontractors and material suppliers.

Construction Phase

- Administer all contracts.

Attachment: C132-2009 (176-17 : Agreement with Robins & Morton Group - new Police HQ.)

- Provide administrative, management, and related services to coordinate Contractor, the Construction Manager, Architect, and Owner.
- Schedule and conduct pre-construction, construction, and progress meetings.
- Prepare and distribute minutes of meetings.
- Provide detailed overall project schedule showing contractor durations, labor and material at locations, shop drawings, material deliveries, and Owner occupancy.
- Manage contractor performance and recommend actions for noncompliance of contracts.
- Revise approved estimate of construction costs.
- Incorporate and implement approved changes.
- Develop and update cash flow reports.
- Maintain cost accounting records.
- Develop and implement a system for processing change orders.
- Develop and implement a procedure for processing progress payments.
- Assist in obtaining all necessary permits.
- Verify the Owner has met all permit obligations.
- Assist the Owner in selection of consultants, testing, labor, etc. – Coordinate their services.
- Determine in general work is being performed in accordance with contract documents.
- Coordinate resolution of contractor questions with the architect and Owner.
- Receive and forward certificates of insurance to the Owner and architect.
- Establish and implement a system for approval of submittals.
- Maintain and submit a detailed progress report to the Owner and architect.
- Keep a detailed log of site conditions.
- Maintain current copies of as-builts, contracts, and submittals on site.
- Arrange for delivery, storage, protection, and security for Owner Purchased items.
- Observe contractor checkout of utilities, operation systems, and equipment for readiness and assist in start up.
- Assist architect in determining substantial completion of the work.
- Evaluate completion of the work after the architects substantial completion has been issued.
- Schedule final inspections and assist in the inspections.
- Secure and transmit all closeout material to the Owner.
- Advise and assist the Owner in realizing all available economics.

SAFETY:

Preconstruction

- Weekly field safety meetings.
- Pre-installation meetings for major activities.
- Weekly Supervisor meetings.
- Safety orientation for new trades, test given.

During Construction

- Weekly inspections by Robins & Morton.
- Monthly corporate inspections by Robins & Morton.
- Field memos and notices given to contractors where applicable.

Post Construction

- Daily diaries by all contractors.

QUALITY:**Preconstruction**

- Preconstruction meetings to outline expectations.
- Meetings to coordinate rough-in and to avoid above ceiling conflicts, etc.
- Weekly coordination meetings.
- Waterproofing meetings; separated by below grade, building skin, and roofing.
- Mock up review meetings.
- Meetings with Opelika Police Department vendors both onsite and offsite to ensure compatibility.
- Visits to manufacturing facilities to inspect material if required.

During Construction

- Water testing.
- Inspections with Opelika Police Department.
- Inspections by Robins & Morton, various notifications to contractors.
- MCI (Moisture Control Inspections).
- Anchor bolt log per Robins & Morton policy.
- Concrete placement log per Robins & Morton policy.
- Fire damper log per Robins & Morton policy.
- In-wall inspections/punch list.
- Above ceiling inspections/punch list.
- Fire alarm inspections/punch list.
- Log of Opelika Police Department consultant's inspections with responses back to consultants.

Post Construction

- Follow up/sign off of punch list.

SCHEDULE:**OPS/CPM Development Meeting**

- Data gathering meeting.
- Logic session meeting.
- OFE Meetings.
- Owner move in dates and responsibilities.

Weekly Coordination Meetings

- Review scheduled activities from last week.
- Schedule activities for the next few days.
- Schedule activities for next week.

Bi-Weekly Schedule/Near Term Meetings

- Eight (8) week look ahead.
- Bi-weekly report.
- Bi-weekly trend chart tied back to most current OPS.
- Schedule Action Items Report.
- Schedule with contractors who fall behind schedule based on items noted above.
- Letters/notices sent to contractors who fall behind schedule based on items noted above.

BUDGET:

- Contract status reports generated for each prime.
- Analysis of Owner purchased material, shown on log.
- Thorough review, approval and rejection of COR's and formal recommendation to Opelika Police Department.
- Involvement of Robins & Morton estimating staff to review COR's where applicable.
- Robins & Morton requested involvement/review of COR's by relevant design consultant.
- CO/CCD log.

ITEMS AVAILABLE FOR REVIEW ONSITE:

- Robins & Morton Opelika Police Department Quality Control Policy.
- Safety binders with all documentation.
- Correspondence binders.

- Meeting Minute binders with agendas and sign-in sheets.
- Photo documentation
- Cost Management binders.

JOBSITE PERSONNEL RESPONSIBILITIES:

We have included a full time staff for the duration of the project including a Superintendent, Assistant Superintendent, Project Manager, Project Engineer, and Secretary. The information below is presented as a guideline to help explain roles and responsibilities of the Robins & Morton personnel responsible for the successful delivery of the Opelika Police Department project.

Senior Project Manager/Operations Manager

- Participate in kick-off meeting, design review meetings, site visits, as required.
- Lead efforts related to construction scheduling/phasing/logistics/constructability.
- Provide input to the project team/design team on alternate approaches to minimize work, as applicable.
- Provide input to project/design team regarding construction traffic routing to minimize impact.
- Assist with development of preliminary bid package strategy/approach.
- Assist with review of project design documents and provision of constructability review comments.
- Assist with solicitation & prequalification of contractors & vendors.
- Assist with check set review and comments.
- Assist with preparation of bid packages and bid forms.
- Assist with solicitation of bidders for project.
- Assist with management of bid process, assist with pre-bid conference.
- Assist with receipt and evaluation of bids and recommendations of award of bid packages.
- Assist Project Manager in writing contracts and expedite procurement of contractors for approval by Opelika Police Department.
- Regularly attend design progress meetings, scheduling meeting, OAC meetings.
- Jobsite walk thru to ensure project is being constructed and managed according to the contract documents and Robins & Morton's (R&M) policies and procedures.
- Develop and maintain Owner, designer and client relationships.
- Ensure R&M project team is in regular contact with the architect and keeping the design team updated with all aspects of project status.
- Provide senior level judgment necessary to achieve schedule, quality, and customer satisfaction objectives.
- Manage all long term risk on projects.
- Assist with the selection and evaluation with any Opelika Police Department consultants where applicable.
- Manage pre-construction services on projects.
- Review and approve final estimates and budgets for projects.

- Ensure change orders are effectively being managed with owner, contractors, and subcontractors.
- Ensure effective management of all material procurement for projects.
- Assist Opelika Police Department and the design teams in the development of any sustainability measures to be included in the project.
- Aid the Superintendent in developing and managing the scheduling process.
- Effectively evaluate and interpret all contract documents.
- Assist Superintendent as needed in maintaining project quality control.
- Assist in effectively managing the closeout of assigned projects.
- Project and communicate R&M's ideals and culture to all employees.

Senior Estimator

- Perform review of project's program, budget, and schedule in order to develop plan for performing preconstruction services.
- Participate in kick-off meeting, design review meetings, site visits, estimate presentations.
- Prepare meeting agendas, meeting minutes, update action lists.
- Develop and monitor preconstruction/design phase schedule.
- Prepare DD and Final Estimates for project.
- Assist with/provide input for construction scheduling/phasing/logistics study.
- Develop preliminary bid package strategy/approach.
- Review long lead item procurement.
- Perform interim cost studies and options evaluations; coordinate with project's cost estimate.
- Review project design documents and provide constructability review comments.
- Provide ongoing update and tracking of project's cost, based on design development and team input.
- Solicit and prequalify Prime Contractors and subcontractors.
- Provide check-set review comments.
- Coordinate scope of work and bid packaging; prepare bid package(s) and bid form(s).
- Provide front-end specification review and coordinate to match project approach.
- Coordinate Advertisement for Bids with Opelika Police Department and newspapers.
- Solicit prime contractors and subcontractors to bid projects; distribute documents electronically.
- Manage bid process; lead pre-bid conference; coordinate/distribute RFT's and addenda.
- Assist with setting of stipulated budget for project.
- Assist with receipt of bids; perform bid evaluations and provide recommendations for award of bid package(s).
- Provide/update cash flow analysis/billing projection, as needed.

Superintendent

- Provide jobsite leadership and direction.
- Manage all R&M jobsite field management personnel to effectively perform their job requirements.
- Manage job activities in accordance with R&M's policies and procedures and priorities within the bounds of the project contract.

- Maintain client and design team relations.
- Plan and set up an efficient jobsite layout.
- Plan and establish the flow of the work activities on the project. Coordinate all field activities.
- Direct the development of an overall project schedule.
- Implement and lead interim scheduling meetings and address job problems arising from the meetings. Take measures to assure the project is progressing in accordance with the overall project schedule and contract time requirements.
- Arrange for and schedule inspections by Opelika Police Department and consultants.
- Manage all field operations of contractors to effectively install their portion of the work.
- Maintain a working relationship with project contractors.
- Assist project team with all sustainability goals of the project.
- Ascertain and assure the quality of the work is in accordance with plans and specifications.
- Maintain and enforce jobsite security and parking policies.
- Maintain a clean, orderly jobsite.
- Enforce Drug, Alcohol and Harassment policies.
- Enforce jobsite safety to comply with all OSHA regulations.
- Maintain daily logs to document all jobsite activities and events.
- Implement and maintain quality control and life safety checkout procedures.
- Manage the site utilization plan.

Project Manager

- Assist in the registration and prequalification process.
- Assist in the development of bid packages, insure bonds and insurance certificates are per university standards, and generate a site utilization plan.
- Develop and maintain owner, designer, and client relationships.
- Manage job activities in accordance with R&M's policies and procedures, specifically those required of a Project Manager and within the bounds of the project contract.
- With the aid of the senior or executive management, manage long-term risk on projects; recognize significant risk issues, timely and review with executive management.
- Develop contractor/vendor agreements or bid packages for approval by the Operations Manager, Project Director, lead estimator and Opelika Police Department. Effectively negotiate agreements with contractors/vendors in a timely manner.
- Manage all key risk management documents including contractor bonds and insurance. Insure all documents are accurate and approved by Opelika Police Department prior to bid day.
- Effectively manage the correspondence and communication process for assigned projects utilizing memos, pending items, logs and other management tools as necessary.
- Effectively manage all material procurement for projects including managing the submittal logs.
- Effectively evaluate and interpret all contract documents.
- Aid the Superintendent in developing and managing the scheduling process.
- Assist project team in achieving all sustainability goals.
- Manage contractors to effectively complete their contractual obligations.

- Effectively manage the change order process so that change orders to the owner and subcontractor are processed timely and accurately.
- Establish billing procedures and effectively manage the contractors and owner billing process.
- Assist Superintendent in maintaining project quality control.
- Effectively manage the closeout of assigned projects.

Assistant Superintendent

- Support the Superintendent in providing jobsite leadership and direction.
- Contribute to the management of job activities in accordance with R&M's policies and procedures and within the bounds of the project contract.
- Assist as needed in maintaining client and designer relations.
- Assist in planning and setting up an efficient jobsite layout.
- Arrange for and schedule inspections by Opelika Police Department and consultants.
- As required, manage all field operations of contractors to effectively install their portion of the work.
- Assist project team in achieving all sustainability goals.
- Maintain a working relationship with project contractors.
- Ascertain and assure the quality of the work is in accordance with plans and specifications.
- Maintain a clean, orderly jobsite.
- Enforce Drug, Alcohol and Harassment policies.
- Enforce jobsite safety procedures to comply with all OSHA regulations.
- Maintain daily logs to document all jobsite activities and events such as daily diaries from contractors and R&M.
- Assist with implementation and maintenance of quality control programs such as anchor bolt placement checks, concrete placement logs, above ceiling inspections, underground and in-wall inspections and life safety checkout procedures.
- Check contractor layout.

Project Engineer / Field Engineer

- Assist in the registration and prequalification process.
- Support the Superintendent and Project Manager in providing leadership for assigned areas of responsibility.
- Assist in the development of bid packages, insure bonds and insurance certificates are per Opelika Police Department standards, and generate a site utilization plan.
- Contribute to the management of job activities in accordance with R&M's policies and procedures and within the bounds of the project contract.
- As required, manage all field operations of contractors to effectively install their portion of the work.
- Maintain a working relationship with project contractors.
- Ascertain and assure the quality of the work is in accordance with plans and specifications.
- Assist project team in achieving all sustainability goals.
- Maintain a clean, orderly jobsite.
- Enforce the Drug, Alcohol and Harassment policies in areas of assigned responsibility.

- Enforce jobsite safety procedures to comply with all OSHA regulations.
- As required, maintain daily logs to document all jobsite activities and events.
- Assist with implementation and maintenance of quality control programs and life safety checkout procedures.
- In conjunction with the Assistant Superintendent; responsible for the verification of layout of the building structure, partitions and other portions of the work.
- Assist in submittal and shop drawing review as assigned.
- Assist PM with Owner Furnished Equipment tracking and procurement.
- Assist PM with Contractor change orders.
- Assist PM with document routing to/from Contractors (RFI, ASI's, CCD's, etc).
- Assist PM with Closeout Documentation.
- Develop or manage project as-built drawings.
- Coordinate with contractors to ensure execution of waterproofing consultant's details.

Secretary

- Type correspondence, invoice summaries, owner change orders, monthly reports, etc.
- Properly utilize various types of forms used in the construction industry.
- Handle telephone calls from Clients and Vendors. Communicate messages received in an effective manner.
- Maintain project filing system and keep filing up to date.
- Process and distribute all incoming & outgoing mail activities, including sending UPS and FedEx.
- Make copies of correspondence or other printed matter.
- Fax correspondence or other printed matter.
- Schedule appointments.
- Order appropriate supplies as needed.
- Arrange Business Meetings.
- Maintain and balance checkbook for petty cash account.
- Assist with processing pay applications, CCD's, etc.
- Process paperwork for safety records, moisture control documentation, etc.
- Organize progress photos.
- Monitor jobsite radio and provide assistance to field personnel.
- Maintain first aid cabinet to make sure it is properly stocked at all times.

"ATTACHMENT B"
Opelika Police Department
Replacement Police Department Facility
Reimbursable Expenses and Direct Personnel Expenses
Opelika, Alabama

REIMBURSABLE EXPENSES:

Robins and Morton shall be reimbursed, in accordance with company policies and procedures, for all expenses incurred on the project, including but not limited to:

- Travel
- Moving
- Living
- Job office with utilities
- Phone & internet
- Radios and cells
- Storage trailer
- Signage
- Safety
- Drug testing
- Layout equipment
- Office furniture/shelving
- Truck allowance
- Copy machine/printing
- Computers
- Office supplies
- Drawings
- Progress photos
- Closeout/as-built
- Materials
- Trailer delivery/set-up/take down
- Postage/shipping
- Estimating

DIRECT PERSONNEL EXPENSES:

Direct personnel expenses shall be billed using the hourly rates listed below. Hourly rates include wages, taxes, insurance, and benefits.

<u>Position</u>	<u>Hourly Rate</u>
Vice President/Operations Manager	\$180.00/ hour
General Superintendent/Senior Superintendent	\$170.00/ hour
Preconstruction Manager	\$145.00/ hour
Senior Project Manager	\$140.00/ hour
Superintendent	\$130.00/ hour
Senior Estimator/MEP Estimator	\$130.00/ hour
Scheduler	\$130.00/ hour
Project Manager	\$115.00/ hour
Estimator	\$110.00/ hour
Assistant Superintendent	\$95.00/ hour
Assistant Project Manager	\$90.00/ hour
Project Engineer / Field Engineer	\$85.00/ hour
Assistant Estimator	\$85.00/ hour
Administrative Assistant/Secretary	\$45.00/ hour



Document A232™ – 2009

General Conditions of the Contract for Construction, Construction Manager as Adviser Edition

for the following PROJECT:

(Name, and location or address)

Opelika Police Department
501 South Tenth Street
Opelika, Alabama 36803

THE CONSTRUCTION MANAGER:

(Name, legal status and address)

The Robins & Morton Group
400 Shades Creek Parkway
Birmingham, Alabama 35209

THE OWNER:

(Name, legal status and address)

City of Opelika
204 South 7th Street
Opelika, Alabama 36803

THE ARCHITECT:

(Name, legal status and address)

TABLE OF ARTICLES

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

This document is intended to be used in conjunction with AIA Documents A132™–2009, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition; B132™–2009, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition; and C132™–2009, Standard Form of Agreement Between Owner and Construction Manager as Adviser.

Attachment: A232-2009 PART 1 OF 2 (176-17 : Agreement with Robins & Morton Group - new Police HQ.)

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

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

§ 1.1.2 The Contract. The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and the Construction Manager or the Construction Manager's consultants, (3) between the Owner and the Architect or the Architect's consultants, (4) between the Contractor and the Construction Manager or the Construction Manager's consultants, (5) between the Owner and a Subcontractor or Sub-subcontractor (6) between the Construction Manager and the Architect, or (7) between any persons or entities other than the Owner and Contractor. The Construction Manager and Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of their duties.

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

§ 1.1.4 The Project. The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by other Multiple Prime Contractors and by the Owner's own forces, including persons or entities under separate contracts not administered by the Construction Manager.

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

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

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

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

§ 1.2 Correlation and Intent of the Contract Documents

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

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

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

§ 1.3 Capitalization

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

§ 1.4 Interpretation

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

§ 1.5 Ownership and Use of Drawings, Specifications and Other Instruments of Service

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

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

§ 1.6 Transmission of Data in Digital Form

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

ARTICLE 2 OWNER

§ 2.1 General

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Article 4, the Construction Manager and the Architect do not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

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

§ 2.2 Information and Services Required of the Owner

§ 2.2.1 Prior to commencement of the Work, the Contractor may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Contractor may only request such evidence if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or

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the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

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

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

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

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

§ 2.2.6 The Owner shall endeavor to forward all communications to the Contractor through the Construction Manager and shall contemporaneously provide the same communications to the Architect about matters arising out of or relating to the Contract Documents.

§ 2.3 Owner's Right to Stop the Work

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

§ 2.4 Owner's Right to Carry Out the Work

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

ARTICLE 3 CONTRACTOR

§ 3.1 General

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

§ 3.1.2 The plural term "Multiple Prime Contractors" refers to persons or entities who perform construction under contracts with the Owner that are administered by the Construction Manager. The term does not include the Owner's own forces, including persons or entities under separate contracts not administered by the Construction Manager.

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

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

§ 3.2 Review of Contract Documents and Field Conditions by Contractor

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

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

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

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

§ 3.3 Supervision and Construction Procedures

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

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

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

§ 3.4 Labor and Materials

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

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

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

§ 3.5 Warranty

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

§ 3.6 Taxes

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

§ 3.7 Permits, Fees, Notices, and Compliance with Laws

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

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

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

§ 3.7.4 **Concealed or Unknown Conditions.** If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner, Construction Manager, and the Architect before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect and

Construction Manager will promptly investigate such conditions and, if the Architect, in consultation with the Construction Manager, determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect, in consultation with the Construction Manager, determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner, Construction Manager, and Contractor in writing, stating the reasons. If the Owner or Contractor disputes the Architect's determination or recommendation, either party may proceed as provided in Article 15.

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

§ 3.8 Allowances

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

§ 3.8.2 Unless otherwise provided in the Contract Documents:

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

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable ~~promptness~~ promptness and in sufficient time to avoid delay in the Work.

§ 3.9 Superintendent

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

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner and Architect through the Construction Manager, the name and qualifications of a proposed superintendent. The Construction Manager may reply within 14 days to the Contractor in writing stating (1) whether the Owner, the Construction Manager, or the Architect has reasonable objection to the proposed superintendent or (2) that any of them require additional time to review. Failure of the Construction Manager to reply within the 14 day period shall constitute notice of no reasonable objection.

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

§ 3.10 Contractor's Construction Schedules

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information and the Construction Manager's approval a Contractor's construction schedule for the

Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project schedule to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work. The Contractor shall cooperate with the Construction Manager in scheduling and performing the Contractor's Work to avoid conflict with, and as to cause no delay in, the work or activities of other Multiple Prime Contractors or the construction or operations of the Owner's own forces.

§ 3.10.2 The Contractor shall prepare a submittal schedule, promptly after being awarded the Contract and thereafter update it as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Construction Manager's and Architect's approval. The Architect and Construction Manager's approval shall not unreasonably be delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Construction Manager and Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor shall participate with other Contractors, the Construction Manager and Owner in reviewing and coordinating all schedules for incorporation into the Project schedule that is prepared by the Construction Manager. The Contractor shall make revisions to the construction schedule and submittal schedule as deemed necessary by the Construction Manager to conform to the Project schedule.

§ 3.10.4 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner, Construction Manager and Architect and incorporated into the approved Project schedule.

§ 3.11 Documents and Samples at the Site

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

§ 3.12 Shop Drawings, Product Data and Samples

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

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

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

§ 3.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. Their purpose is to demonstrate the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect and Construction Manager is subject to the limitations of Sections 4.2.9 through 4.2.11. Informational submittals upon which the Construction Manager and Architect are not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Construction Manager or Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Construction Manager Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in accordance with the Project submittal schedule approved by the Construction Manager and Architect, or in the absence of an approved Project submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of other Multiple Prime Contractors or the Owner's own forces. The Contractor shall cooperate with the Construction Manager in the coordination of the Contractor's Shop Drawings, Product Data, Samples and similar submittals with related documents submitted by other Multiple Prime Contractors.

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

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

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

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

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

§ 3.13 Use of Site

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

§ 3.13.2 The Contractor shall coordinate the Contractor's operations with, and secure the approval of, the Construction Manager before using any portion of the site.

§ 3.14 Cutting and Patching

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

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

§ 3.15 Cleaning Up

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

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner, or Construction Manager with the Owner's approval, may do so and the Owner shall be entitled to reimbursement from the Contractor.

§ 3.16 Access to Work

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

§ 3.17 Royalties, Patents and Copyrights

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

§ 3.18 Indemnification

§ 3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Construction Manager, Architect, Construction Manager's and Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

ARTICLE 4 ARCHITECT AND CONSTRUCTION MANAGER

§ 4.1 General

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

§ 4.1.2 The Owner shall retain a construction manager lawfully licensed to practice construction management or an entity lawfully practicing construction management in the jurisdiction where the Project is located. That person or entity is identified as the Construction Manager in the Agreement and is referred to throughout the Contract Documents as if singular in number.

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

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

§ 4.2 Administration of the Contract

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

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner and Construction Manager (1) known deviations from the Contract Documents and from the most recent Project schedule prepared by the Construction Manager, and (2) defects and deficiencies observed in the Work.

§ 4.2.3 The Construction Manager shall provide a staffing plan to include one or more representatives who shall be in attendance at the Project site whenever the Work is being performed. The Construction Manager will determine in general if the Work observed is being performed in accordance with the Contract Documents, will keep the Owner reasonably informed of the progress of the Work, and will report to the Owner and Architect (1) known deviations from the Contract Documents and the most recent Project schedule, and (2) defects and deficiencies observed in the Work.

§ 4.2.4 The Construction Manager will schedule and coordinate the activities of the Contractor and other Multiple Prime Contractors in accordance with the latest approved Project schedule.

§ 4.2.5 The Construction Manager, except to the extent required by Section 4.2.4, and Architect will not have control over, or charge of, and will not be responsible for construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1, and neither will be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. Neither the Construction Manager nor the Architect will have control over or charge of or be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or of any other persons or entities performing portions of the Work.

§ 4.2.6 **Communications Facilitating Contract Administration.** Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Construction Manager, and shall contemporaneously provide the same communications to the Architect about matters arising out of or relating to the Contract Documents. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with other Multiple Prime Contractors shall be through the Construction Manager and shall be contemporaneously provided to the Architect if those communications are about matters arising out of or related to the Contract Documents. Communications by and with the Owner's own forces shall be through the Owner.

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§ 4.2.7 The Construction Manager and Architect will review and certify all Applications for Payment by the Contractor, in accordance with the provisions of Article 9.

§ 4.2.8 The Architect and Construction Manager have authority to reject Work that does not conform to the Contract Documents and will notify each other about the rejection. The Construction Manager shall determine in general whether the Work of the Contractor is being performed in accordance with the requirements of the Contract Documents and notify the Owner, Contractor and Architect of defects and deficiencies in the Work. Whenever the Construction Manager considers it necessary or advisable, the Construction Manager will have authority to require additional inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, upon written authorization of the Owner, whether or not such Work is fabricated, installed or completed. The foregoing authority of the Construction Manager will be subject to the provisions of Sections 4.2.18 through 4.2.20 inclusive, with respect to interpretations and decisions of the Architect. However, neither the Architect's nor the Construction Manager's authority to act under this Section 4.2.8 nor a decision made by either of them in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect or the Construction Manager to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons performing any of the Work.

§ 4.2.9 The Construction Manager will receive and promptly review for conformance with the submittal requirements of the Contract Documents, all submittals from the Contractor such as Shop Drawings, Product Data and Samples. Where there are Multiple Prime Contractors, the Construction Manager will also check and coordinate the information contained within each submittal received from Contractor and other Multiple Prime Contractors, and transmit to the Architect those recommended for approval. By submitting Shop Drawings, Product Data, Samples and similar submittals, the Construction Manager represents to the Owner and Architect that the Construction Manager has reviewed and recommended them for approval. The Construction Manager's actions will be taken in accordance with the Project submittal schedule approved by the Architect or, in the absence of an approved Project submittal schedule, with reasonable promptness while allowing sufficient time to permit adequate review by the Architect.

§ 4.2.10 The Architect will review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Construction Manager, Contractor or separate contractors, while allowing sufficient time in the Architect's professional judgment to permit adequate review. Upon the Architect's completed review, the Architect shall transmit its submittal review to the Construction Manager.

§ 4.2.11 Review of the Contractor's submittals by the Construction Manager and Architect is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Construction Manager and Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12. The Construction Manager and Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Construction Manager and Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.12 The Construction Manager will prepare Change Orders and Construction Change Directives.

§ 4.2.13 The Construction Manager and the Architect will take appropriate action on Change Orders or Construction Change Directives in accordance with Article 7.7, and the Architect will have authority to order minor changes in the Work as provided in Section 7.4. The Architect, in consultation with the Construction Manager, will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

Attachment: A232-2009 PART 10F 2 (176-17 : Agreement with Robins & Morton Group - new Police HQ.)

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§ 4.2.14 Utilizing the documents provided by the Contractor, the Construction Manager will maintain at the site for the Owner one copy of all Contract Documents, approved Shop Drawings, Product Data, Samples and similar required submittals, in good order and marked currently to record all changes and selections made during construction. These will be available to the Architect and the Contractor, and will be delivered to the Owner upon completion of the Project.

§ 4.2.15 The Construction Manager will assist the Architect in conducting inspections to determine the dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion in conjunction with the Architect pursuant to Section 9.8; and receive and forward to the Owner written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10. The Construction Manager will forward to the Architect a final Application and Certificate for Payment or final Project Application and Project Certificate for Payment upon the Contractor's compliance with the requirements of the Contract Documents.

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

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

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

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

§ 4.2.20 The Construction Manager will receive and review requests for information from the Contractor, and forward each request for information to the Architect, with the Construction Manager's recommendation. The Architect will review and respond in writing to the Construction Manager to requests for information about the Contract Documents. The Construction Manager's recommendation and the Architect's response to each request will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 Definitions

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

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

§ 5.2 Award of Subcontracts and Other Contracts for Portions of the Work

§ 5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Construction Manager for review by the Owner, Construction Manager and Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Construction Manager may reply within 14 days to the Contractor in writing stating (+) whether the Owner, the

Construction Manager or the Architect has reasonable objection to any such proposed person or entity or, (2) that the Construction Manager, Architect or Owner requires additional time for review. Failure of the Construction Manager, Owner, or Architect to reply within the 14-day period shall constitute notice of no reasonable objection.

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

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

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

§ 5.3 Subcontractual Relations

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

§ 5.4 Contingent Assignment of Subcontracts

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

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

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

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

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

ARTICLE 6 CONSTRUCTION BY OWNER OR BY OTHER CONTRACTORS

§ 6.1 Owner's Right to Perform Construction with Own Forces and to Award Other Contracts

§ 6.1.1 The Owner reserves the right to perform limited construction or operations related to the Project with the Owner's own forces, which include persons or entities under separate contracts not administered by the Construction Manager, and to award other contracts in connection with other non-contiguous portions of the Project or other construction or operations on non-contiguous areas of the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of ~~subrogation~~ subrogation; provided however, this sentence does not apply to Owner furnished and installed equipment. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.

§ 6.1.2 When the Owner performs construction or operations with the Owner's own forces including persons or entities under separate contracts not administered by the Construction Manager, the Owner shall provide for coordination of such forces with the Work of the Contractor, who shall cooperate with them.

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

§ 6.2 Mutual Responsibility

§ 6.2.1 The Contractor shall afford the Owner's own forces, Construction Manager and other Multiple Prime Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall ~~connect~~ conduct and coordinate the Contractor's construction and operations with theirs and/or their separate contractors as required by the Contract Documents.

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

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs, including costs that are payable to a separate contractor or to other Multiple Prime Contractors because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of delays, improperly timed activities, damage to the Work or defective construction by the Owner's own forces or other Multiple Prime Contractors.

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

§ 6.2.5 The Owner and other Multiple Prime Contractors shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

§ 6.3 Owner's Right to Clean Up

If a dispute arises among the Contractor, other Multiple Prime Contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Construction Manager, with notice to the Architect, will allocate the cost among those responsible.

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ARTICLE 7 CHANGES IN THE WORK

§ 7.1 General

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

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

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

§ 7.2 Change Orders

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

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

§ 7.3 Construction Change Directives

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

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

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

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

§ 7.3.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

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

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

§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Construction Manager shall determine the method and the adjustment on the basis of reasonable

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expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Construction Manager may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following:

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

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

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

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

§ 7.4 Minor Changes in the Work

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

ARTICLE 8 TIME

§ 8.1 Definitions

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

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

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

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

§ 8.2 Progress and Completion

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

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

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

§ 8.3 Delays and Extensions of Time

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

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

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

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

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

§ 9.2 Schedule of Values

Where the Contract is based on a Stipulated Sum or Guaranteed Maximum Price, the Contractor shall submit to the Construction Manager, before the first Application for Payment, a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Construction Manager and Architect may require. This schedule, unless objected to by the Construction Manager or Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. In the event there is one Contractor, the Construction Manager shall forward to the Architect the Contractor's schedule of values. If there are Multiple Prime Contractors responsible for performing different portions of the Project, the Construction Manager shall forward the Multiple Prime Contractors' schedules of values only if requested by the Architect.

§ 9.3 Applications for Payment

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

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

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

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location

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agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

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

§ 9.4 Certificates for Payment

§ 9.4.1 Where there is only one Contractor, the Construction Manager will, within seven days after the Construction Manager's receipt of the Contractor's Application for Payment, review the Application, certify the amount the Construction Manager determines is due the Contractor, and forward the Contractor's Application and Certificate for Payment to the Architect. Within seven days after the Architect receives the Contractor's Application for Payment from the Construction Manager, the Architect will either issue to the Owner a Certificate for Payment, with a copy to the Construction Manager, for such amount as the Architect determines is properly due, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 9.5.1. The Construction Manager will promptly forward to the Contractor the Architect's notice of withholding certification.

§ 9.4.2 Where there are Multiple Prime Contractors performing portions of the Project, the Construction Manager will, within seven days after the Construction Manager receives the Multiple Prime Contractors' Applications for Payment: (1) ~~review~~ Review the Applications and certify the amount the Construction Manager determines is due each of the Multiple Prime Contractors; (2) ~~prepare~~ Prepare a Summary of Contractors' Applications for Payment by combining information from each Multiple Prime Contractors' application with information from similar applications for progress payments from other Multiple Prime Contractors; (3) ~~prepare~~ Prepare a Project Application and Certificate for Payment; (4) ~~certify~~ Certify the amount the Construction Manager determines is due all Multiple Prime Contractors; and (5) ~~forward~~ Forward the Summary of Contractors' Applications for Payment and Project Application and Certificate for Payment to the Architect.

§ 9.4.3 Within seven days after the Architect receives the Project Application and Project Certificate for Payment and the Summary of Contractors' Applications for Payment from the Construction Manager, the Architect will either issue to the Owner a Project Certificate for Payment, with a copy to the Construction Manager, for such amount as the Architect determines is properly due, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 9.5.1. The Construction Manager will promptly forward the Architect's notice of withholding certification to the Contractors.

§ 9.4.4 The Construction Manager's certification of an Application for Payment or, in the case of Multiple Prime Contractors, a Project Application and Certificate for Payment shall be based upon the Construction Manager's evaluation of the Work and the information provided as part of the Application for Payment. The Construction Manager's certification will constitute a representation that, to the best of the Construction Manager's knowledge, information and belief, the Work has progressed to the point indicated and the quality of the Work is in accordance with the Contract Documents. The certification will also constitute a recommendation to the Architect and Owner that the Contractor be paid the amount certified.

§ 9.4.5 The Architect's issuance of a Certificate for Payment or in the case of Multiple Prime Contractors, Project Application and Certificate for Payment, shall be based upon the Architect's evaluation of the Work, the recommendation of the Construction Manager, and information provided as part of the Application for Payment or Project Application for Payment. The Architect's certification will constitute a representation that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated, that the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified.

§ 9.4.6 The representations made pursuant to Sections 9.4.4 and 9.4.5 are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Construction Manager or Architect.

§ 9.4.7 The issuance of a separate Certificate for Payment or a Project Certificate for Payment will not be a representation that the Construction Manager or Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed the Contractor's construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.5 Decisions to Withhold Certification

§ 9.5.1 The Construction Manager or Architect may withhold a Certificate for Payment or Project Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Construction Manager's or Architect's opinion the representations to the Owner required by Section 9.4.4 and 9.4.5 cannot be made. If the Construction Manager or Architect is unable to certify payment in the amount of the Application, the Construction Manager will notify the Contractor and Owner as provided in Section 9.4.1 and 9.4.3. If the Contractor, Construction Manager and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment or a Project Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Construction Manager or Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence or subsequent observations, may nullify the whole or a part of a Certificate for Payment or Project Certificate for Payment previously issued, to such extent as may be necessary in the Construction Manager's or Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from the acts and omissions described in Section 3.3.2 because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.

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

§ 9.5.3 If the Architect or Construction Manager withholds certification for payment under Section 9.5.1, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Construction Manager and both will reflect such payment on the next Certificate for Payment.

§ 9.6 Progress Payments

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

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

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

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

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

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

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

§ 9.7 Failure of Payment

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

§ 9.8 Substantial Completion

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

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

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

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

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

§ 9.9 Partial Occupancy or Use

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

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

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

§ 9.10 Final Completion and Final Payment

§ 9.10.1 Upon completion of the Work, the Contractor shall forward to the Construction Manager a written notice that the Work is ready for final inspection and acceptance and shall also forward to the Construction Manager a final Contractor's Application for Payment. Upon receipt, the Construction Manager will evaluate the completion of Work of the Contractor and then forward the notice and Application, with the Construction Manager's recommendations, to the Architect who will promptly make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Construction Manager and Architect will promptly issue a final Certificate for Payment or Project Certificate for Payment stating that to the best of their knowledge, information and belief, and on the basis of their on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Construction Manager's and Architect's final Certificate for Payment or Project Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect through the Construction Manager (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to

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cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

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

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

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

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

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract. The Contractor shall submit the Contractor's safety program to the Construction Manager for review and coordination with the safety programs of other Contractors.

The Construction Manager's responsibilities for review and coordination of safety programs shall not extend to direct control over or charge of the acts or omissions of the Contractors, Subcontractors, agents or employees of the Contractors or Subcontractors, or any other persons performing portions of the Work and not directly employed by the Construction Manager.

§ 10.2 Safety of Persons and Property

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

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

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

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

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

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2, 10.2.1.3 and 10.2.1.4 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2, 10.2.1.3 and 10.2.1.4, except damage or loss attributable to acts or omissions of the Owner, Construction Manager or Architect or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

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

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

§ 10.2.8 Injury or Damage to Person or Property

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

§ 10.3 Hazardous Materials

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

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

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

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tangible property (other than the Work itself), except to the extent that such damage, loss or expense is not due to the fault or negligence of the party seeking indemnity.

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

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

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

§ 10.4 Emergencies

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

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 Contractor's Liability Insurance

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

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

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

§ 11.1.3 Certificates of insurance acceptable to the Owner shall be submitted to the Construction Manager for transmittal to the Owner with a copy to the Architect prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or

allowed to expire until at least 30 days' prior written notice has been given to the Owner. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage shall be furnished by the Contractor with reasonable promptness.

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

§ 11.2 Owner's Liability Insurance

~~The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.~~ **§ 11.2.1** The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

§ 11.3 Property Insurance

§ 11.3.1 Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project. The Owner will name the Construction Manager, Contractor, Subcontractors and Sub-Subcontractors as additional insureds. The Owner will provide evidence of insurance using ACORD Form 28 before construction begins. At the Contractor's request the Owner will provide to the Contractor copies of all insurance policies listed on ACORD Form 28.

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

§ 11.3.1.2 If the Owner does not intend to purchase such property insurance required by the Contract and with all of the coverages in the amount described above, the Owner shall so inform the Contractor in writing prior to commencement of the Work. The Contractor may then effect insurance that will protect the interests of the Contractor, Subcontractors and Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to the Owner. If the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, without so notifying the Contractor in writing, then the Owner shall bear all reasonable costs properly attributable thereto.

§ 11.3.1.3 If the property insurance requires deductibles, the Owner shall pay costs not covered because of such deductibles.

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

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

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

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

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

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

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

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

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

§ 11.3.9 If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and

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Contractor. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.

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

§ 11.4 Performance Bond and Payment Bond

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

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

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 Uncovering of Work

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

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

§ 12.2 Correction of Work

§ 12.2.1 Before or After Substantial Completion

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

§ 12.2.2 After Substantial Completion

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

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

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

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

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

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.3 Acceptance of Nonconforming Work

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

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

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

§ 13.2 Successors and Assigns

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

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

§ 13.3 Written Notice

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

§ 13.4 Rights and Remedies

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

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

§ 13.5 Tests and Inspections

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

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

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

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

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

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

§ 13.6 Interest

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

§ 13.7 Time Limits on Claims

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

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 ~~Termination by the Contractor~~ Termination By the Contractor

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any

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other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped;
- .3 Because the Construction Manager has not certified or the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 The Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Section 2.2.1.

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

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

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

§ 14.2 ~~Termination by the Owner for Cause~~ Termination By the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the ~~Contractor~~ Contractor:

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

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

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

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

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Construction Manager's and Architect's services and expenses made necessary thereby, and other damages

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incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall, upon application, be certified by the Initial Decision Maker after consultation with the Construction Manager, and this obligation for payment shall survive termination of the Contract.

§ 14.3 ~~Suspension by the Owner for Convenience~~ Suspension By the Owner for Convenience

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

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

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

§ 14.4 ~~Termination by the Owner for Convenience~~ Termination By the Owner for Convenience

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

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

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

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

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Claims

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

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

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

§ 15.1.4 Claims for Additional Cost. If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.3.

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§ 15.1.5 Claims for Additional Time

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

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

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

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

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

§ 15.2 Initial Decision

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

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

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

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

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

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

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

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

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

§ 15.3 Mediation

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

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

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

§ 15.4 Arbitration

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

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

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

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

§ 15.4.4 Consolidation or Joinder

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

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

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

ORDINANCE NO. (ID # 2321)

Amend Zoning Ord & Map: 73A Jeanette St/221 Veterans Parkway, R-5M to C-3 - 1st Reading.

ORDINANCE NO. _____

AN ORDINANCE TO AMEND THE ZONING
ORDINANCE AND ZONING MAP OF THE CITY OF OPELIKA

BE IT ORDAINED by the City Council (the “City Council”) of the City of Opelika, Alabama (the “City”) as follows:

Section 1. That Ordinance 124-91 entitled “Zoning Ordinance City of Opelika, Alabama”, adopted on September 17, 1991, and the Zoning Map of the City of Opelika provided for and referred to therein, as previously amended and/or modified, be and the same is hereby amended by rezoning or redistricting the parcel of land hereinafter in this section described, so as to change such parcel from one class of district to another class of district as follows, to-wit:

From a R-5M District (High-Density Residential District) to a C-3 District (General Commercial District), the parcel of land hereinafter described:

For a point of reference, commence at the Southwest corner of Section 15, Township 19 North, Range 26 East, Lee County, Alabama; run thence North 00°30’ East for a distance of 2679 feet to a point; run thence South 89°31’ East for a distance of 1278 feet to a point; run thence North 00°30’ East for a distance of 1475.20 feet to the POINT OF BEGINNING of the property herein described and conveyed; from said point of beginning, continue to run thence North 00°30’ East for a distance of 960 feet to a point; run thence North 89°30’ West for a distance of 662 feet to a point; run thence South 00°30’ West for a distance of 960 feet to a point on the Northerly margin of Hazel Street; thence along the Northerly margin of said Hazel Street, run thence South 89°30’ East for a distance of 662 feet to the POINT OF BEGINNING.

The above-described property contains 12.2 acres, more or less, and is located at 73 A Jeanette Street/221 Veterans Parkway and is located on the east side of Veterans Parkway.

Section 2. Any ordinance or part thereof in conflict with provisions of this Ordinance be and the same are hereby repealed.

Section 3. This Ordinance shall be published in a newspaper of general circulation in the City of Opelika, Lee County, Alabama.

ADOPTED AND APPROVED this the ____ day of _____, 2017.

 PRESIDENT OF THE CITY COUNCIL OF THE
 CITY OF OPELIKA, ALABAMA

ATTEST:

 CITY CLERK

TRANSMITTED TO MAYOR on this the ____ day of _____, 2017.

CITY CLERK

ACTION BY MAYOR

APPROVED this the ____ day of _____, 2017.

MAYOR

ATTEST:

CITY CLERK

ORDINANCE NO. (ID # 2319)

Amend Zoning Ord & Map: 2712 South Uniroyal Road, R-4M to M-1 - 1st Reading.

ORDINANCE NO. _____

AN ORDINANCE TO AMEND THE ZONING
ORDINANCE AND ZONING MAP OF THE CITY OF OPELIKA

BE IT ORDAINED by the City Council (the “City Council”) of the City of Opelika, Alabama (the “City”) as follows:

Section 1. That Ordinance 124-91 entitled “Zoning Ordinance City of Opelika, Alabama”, adopted on September 17, 1991, and the Zoning Map of the City of Opelika provided for and referred to therein, as previously amended and/or modified, be and the same is hereby amended by rezoning or redistricting the parcel of land hereinafter in this section described, so as to change such parcel from one class of district to another class of district as follows, to-wit:

From a R-4M District (Medium-Density Residential District) to a M-1 District (Industrial District), the parcel of land hereinafter described:

All that lot, tract or parcel of land situated, lying and being in Opelika, Lee County, Alabama, containing 29.46 acres, more or less, and being shown and described as PARCEL “A” on that certain map or plat entitled “Plat of Boundary Survey for Springdale Development Co., LLC, Southeast Quarter of Section 21, Township 19 North, Range 27 East, Opelika, Lee County, Alabama, dated August 14, 2006, prepared by Barrett-Simpson, Inc., recorded in Plat Book 28, at Page 198, in the Office of the Judge of Probate of Lee County, Alabama.

LESS AND EXCEPT:

That portion of the above-described property previously conveyed to The Trustees of Chewacla Baptist Church as reflected in Quit Claim Deed filed for record on 04/06/11 in Deed Book 2377, at Page 806, in the Office of the Judge of Probate of Lee County, Alabama.

The above-described property contains 28.8 acres, more or less, and is located at 2712 South Uniroyal Road, Opelika, Alabama, 36801.

Section 2. Any ordinance or part thereof in conflict with provisions of this Ordinance be and the same are hereby repealed.

Section 3. This Ordinance shall be published in a newspaper of general circulation in the City of Opelika, Lee County, Alabama.

ADOPTED AND APPROVED this the ____ day of _____, 2017.

PRESIDENT OF THE CITY COUNCIL OF THE
CITY OF OPELIKA, ALABAMA

ATTEST:

CITY CLERK

TRANSMITTED TO MAYOR on this the ____ day of _____, 2017.

CITY CLERK

ACTION BY MAYOR

APPROVED this the ____ day of _____, 2017.

MAYOR

ATTEST:

CITY CLERK