



**CARTERSVILLE**  
**CITY COUNCIL MEETING**  
Council Chambers, Third Floor of City Hall  
Thursday, August 03, 2023 at 7:00 PM

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**AGENDA**

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**COUNCILPERSONS:**

Matt Santini – Mayor  
Calvin Cooley – Mayor Pro Tem  
Gary Fox  
Kari Hodge  
Cary Roth  
Jayce Stepp  
Taff Wren

**CITY MANAGER:**

Dan Porta

**CITY ATTORNEY:**

David Archer

**CITY CLERK:**

Julia Drake

Work Session - 6:00 PM

Regular Meeting - 7:00 PM

**OPENING OF MEETING**

**Invocation**

**Pledge of Allegiance**

**Roll Call**

**COUNCIL MEETING MINUTES**

1. July 20, 2023, Council Meeting Minutes

**CONTRACTS/AGREEMENTS**

- 2. Mission Road Sewer Project Closeout
- 3. Addendum to GMA Customer Service Training Contract
- 4. Updated Hydrology Study Proposal
- 5. Construction Manager at Risk (CMAR) for Fire Station #5

**RESOLUTIONS**

- 6. Pension Plan Resolution and Amendments
- 7. 178 W. Main Street Concept Plan

**FIRST READING OF ORDINANCES**

- [8.](#) Amendment and Restatement of the 1967 Retirement Plan
- [9.](#) Amendment and Restatement of the 2017 Retirement Plan
- [10.](#) Amendment to Retirement Plan Ordinances

#### **BID AWARD/PURCHASES**

- [11.](#) Loftness Mulcher Head for Skid Steer
- [12.](#) Fingerprint Machine Replacement
- [13.](#) Matthews Garage Invoice
- [14.](#) 167kVA Transformer Purchase

#### **ADJOURNMENT**

*Persons with disabilities needing assistance to participate in any of these proceedings should contact the human resources office, ADA coordinator, 48 hours in advance of the meeting at 770-387-5616.*

**P.O Box 1390 – 10 N. Public Square – Cartersville, Georgia 30120**  
**Telephone: 770-387-5616 – Fax 770-386-5841 – [www.cityofcartersville.org](http://www.cityofcartersville.org)**



## CITY COUNCIL ITEM SUMMARY

<b>MEETING DATE:</b>	August 3, 2023
<b>SUBCATEGORY:</b>	Council Minutes
<b>DEPARTMENT NAME:</b>	Planning and Development
<b>AGENDA ITEM TITLE:</b>	July 20, 2023, Council Meeting Minutes
<b>DEPARTMENT SUMMARY RECOMMENDATION:</b>	The Council Minutes from July 20, 2023, have been uploaded for your review and approval.
<b>LEGAL:</b>	N/A

City Council Meeting  
City Hall – Council Chambers  
July 20, 2023  
6:00 P.M. – Work Session  
7:00 P.M. – Council Meeting

**WORK SESSION**

Mayor Matthew Santini opened Work Session at 6:05 P.M. Council Members discussed each item from the agenda with corresponding Staff Members.

Council Member Cooley made a motion to enter Executive Session for the purpose of Attorney-Client Privilege. Council Member Stepp seconded the motion. Motion carried unanimously. Vote: 5-0

Mayor Santini closed Work Session at 6:40 P.M.

**OPENING MEETING**

Mayor Santini called the Council Meeting to order at 7:00 P.M.

Invocation by Council Member Cooley.

Pledge of Allegiance led by Council Member Wren.

The City Council met in Regular Session with Mathew Santini, Mayor, presiding, and the following present: Jayce Stepp, Council Member Ward Two; Calvin Cooley, Council Member Ward Four; Taff Wren, Council Member Ward Six; Dan Porta, City Manager; Julia Drake, City Clerk; and Keith Lovell, Assistant City Attorney.

Absent: Kari Hodge, Council Member Ward One; Cary Roth, Council Member Ward Three; Gary Fox, Council Member Ward Five

**REGULAR AGENDA**

Keith Lovell, Assistant City Attorney, reminded the council members that Mayor Santini would be required to vote at tonight’s meeting and that for an item to pass, each agenda item would require four (4) affirmatives to pass.

**COUNCIL MEETING MINUTES**

**1. July 6, 2023, Council Meeting Minutes**

Council Member Wren made a motion to approve the July 6, 2023, Meeting Minutes. Council Member Cooley seconded the motion. The motion carried unanimously. Vote: 4-0

**EMERGENCY READING OF ORDINANCES**

**2. Extension of Moratorium for Carter Grove Subdivision**



Dan Porta, City Manager, stated the city has been informed that the Bartow County Water System contractor will not be able to complete the water system improvements in this area until September. Due to the delay, it was requested to approve to extend the moratorium on building permits for Carter Grove Subdivision until December 31, 2023. If Bartow County’s contractor completes the water system improvements prior to this date, the City Council can lift the moratorium.

Council Member Wren made a motion to approve the emergency reading for the Extension of Moratorium for Carter Grove Subdivision. Council Member Stepp seconded the motion. Motion carried unanimously. Vote: 4-0

Reference Ordinance # 59-23

## **CONTRACTS/AGREEMENTS**

### **3. Annual EPD Water Testing Contract**

Sidney Forsyth, Water Department Director, stated the Water Department requests authorization to contract with the Department of Natural Resources Environmental Protection Division (EPD) Drinking Water Program for the period 7/1/2023 to 6/30/2024 and pay the budgeted invoice of \$10,120.00 through account 505.3310.52.1600.

Council Member Wren made a motion to approve the Annual EPD Water Testing Contract. Council Member Cooley seconded the motion. Motion carried unanimously. Vote: 4-0

### **4. Distributed Generation Agreement for 11 Autumn Canyon Path**

Derek Hampton, Electric Department Director, stated 11 Autumn Canyon Path, residential customer of Cartersville Electric System, installed a roof-mounted solar panel that will interconnect with the City’s distribution system.

When a power generation source connects to our distribution system, such as a solar power system, the Electric Department completes a visual inspection and field test to verify all operations meet our guidelines and do not negatively impact our system.

The owner has signed the interconnection agreement and passed the field test. The Electric Department recommended the Council approve the interconnection agreement and authorize the mayor to sign on behalf of the city.

Council Member Cooley made a motion to approve the Distributed Generation Agreement for 11 Autumn Canyon Path. Council Member Stepp seconded the motion. The motion carried unanimously. Vote: 4-0

### **5. Distributed Generation Agreement for Noble and Main**

Mr. Hampton stated Noble and Main, 145 West Main Street, installed solar panels that will interconnect with the City’s distribution system. The Electric Department recommended the Council approve the interconnection agreement and authorize the mayor to sign on behalf of the City.

Council Member Stepp made a motion to approve the Distributed Generation Agreement for Noble and Main. Council Member Wren seconded the motion. Motion carried unanimously. Vote: 4-0

**6. Third Amendment to the Solar Power Purchase Contract**

Mr. Hampton stated the Electric Department requests approval of the third amendment to the Power Purchasing Contract with MEAG Power. The amendment increases our entitlement to an additional portion of the project share due to abandonment by another participant. MEAG has requested expedited approval to maintain the project schedule. The City Attorney approved the amended contract.

Council Member Wren made a motion to approve the Third Amendment to the Solar Power Purchase Contract. Council Member Cooley seconded the motion. Motion carried unanimously. Vote: 4-0

**BID AWARD/PURCHASES**

**7. MV90 Renewal**

Mr. Hampton stated the Electric Department was seeking approval to renew the annual maintenance contract with Itron. Itron’s MV-90 software is used to program our larger customers’ meters and to download the interval data necessary to prepare the monthly billing. This software analyzes the customers’ demands, their consumption and provides the totalization necessary for customers with multiple meters to be treated like a single meter. This renewal is a sole-sourced budgeted item in the amount of \$15,559.99.

Council Member Wren made a motion to approve the MV90 Renewal. Council Member Cooley seconded the motion. Motion carried unanimously. Vote: 4-0

**CONTRACTS/AGREEMENTS**

**8. New Fire Station Topographical Survey**

Scott Carter, Fire Chief, stated the Fire Department requests approval for Croft and Associates, the design engineer for the new Fire Station #5 on Carter Grove Blvd, to complete a topographical survey for the site for \$14,920.00.

Council Member Wren made a motion to approve the New Fire Station Topographical Survey. Council Member Cooley seconded the motion. Motion carried unanimously. Vote: 4-0

**9. Highway System Revisions**

Mr. Porta stated Georgia Department of Transportation (GDOT) is planning to revise the State Highway System by adding the State Route 20 (SR 20CO) Connector in the City of Cartersville and Bartow County. GDOT requests for the City of Cartersville and Bartow County to formally accept the roadway(s) into its official system.

Council Member Cooley made a motion to approve the Highway System Revisions. Council Member Wren seconded the motion. Motion carried unanimously. Vote: 4-0

## **10. Municipal Gas Authority of Georgia Contract and Resolution**

Brian Friery, Gas Department Assistant Director, stated sixteen years ago, the Gas System contracted with Southeast Gas Acquisition and Supply Association (aka SEGAS) of Trussville, Alabama, to manage our natural gas supply. With the growing supply demand, it is necessary to seek the expertise of a natural gas supply manager within a consortium of other members. The Municipal Gas Authority of Georgia (aka Gas Authority) serves 79 members in Georgia, Alabama, Pennsylvania, Tennessee, and Florida. Eight years ago, the Gas System became a member of the Gas Authority's Subscribed Regulatory Compliance Service (aka SRCS), and we are confident in their ability to also manage our gas supply.

The Gas System recommended approval of the contract with the Gas Authority to manage the natural gas supply.

Additionally, this resolution will allow the City Gas System to contract with the Gas Authority for the management of the natural gas supply.

This contract was reviewed and approved by the City Attorney's office. Josh Stull, Regional Manager of the Gas Authority, was present to answer any questions.

Council Member Wren made a motion to approve the Municipal Gas Authority of Georgia Contract. Council Member Cooley seconded the motion. Motion carried unanimously. Vote: 4-0

## **CONTRACTS/AMENDMENTS**

### **11. Subsurface Exploration and Geotechnical Engineering Evaluation**

Freddy Morgan, Assistant City Manager, stated Geo-Hydro Engineers will provide geotechnical engineering services and an engineering report for the proposed site of the new Fire Station #5. We are asking for Council approval to enter into this agreement.

Council Member Cooley made a motion to approve the Subsurface Exploration and Geotechnical Engineering Evaluation. Council Member Wren seconded the motion. Motion carried unanimously. Vote: 4-0

## **BID AWARD/PURCHASES**

### **12. Pension Fund Investment Advisor Invoice**

Mr. Morgan stated Segal Marco Advisors has submitted their quarterly invoice. This invoice is paid from the Pension fund account in the amount of \$18,000.00 and was presented for approval.

Council Member Cooley made a motion to approve the Pension Fund Investment Advisor Invoice. Council Member Wren seconded the motion. Motion carried unanimously. Vote: 4-0

### **13. Ventilation Fan Replacement for City Garage**

Mr. Morgan stated the ventilation fans at the City Garage facility need to be relocated to the opposite wall to provide better air quality and cooler air temperature in the unconditioned

workspace. The current fan configuration raises the facility's air temperature by 15-20 degrees during the summer. Moving the fans to the opposite wall will allow the fans to pull from a colder air pool and provide better removal of vehicle exhaust from the workspace.

A quote was received for the replacement/relocation of the fans from Earl Hightower Construction in the amount of \$6,500.00 and K-Mac Electric in the amount of \$7,355.00 for the installation of 3-phase power to the new locations. Approval was requested to accept both bids and the total amount of \$13,855.00 to complete the project. This is a non-budgeted item, but workers' compensation health/safety funds will cover the cost.

Council Member Stepp made a motion to approve the Ventilation Fan Replacement for City Garage. Council Member Wren seconded the motion. Motion carried unanimously. Vote: 4-0

#### **14. Annual Membership in the Northwest GA Regional Commission**

Mr. Porta stated the annual membership for Northwest Georgia Regional Commission is due for renewal.

Council Member Wren made a motion to approve the Annual Membership in the Northwest Georgia Regional Commission. Council Member Stepp seconded the motion. Motion carried unanimously. Vote: 4-0

Council Member Wren made a motion to add three (3) items to the agenda. Council Member Stepp seconded the motion. Motion carried unanimously. Vote: 4-0

#### **15. Purchase of Clearview AI**

Frank McCann, Police Chief, stated the Police Department requests approval to purchase Clearview AI, a facial recognition database used for criminal investigations. The police department does not currently have this type of software to assist in solving criminal cases. This database will increase efficiency and effectiveness.

The initial cost for this database is \$17,894.00. After that, the yearly subscription is \$17,894.00. Clearview AI is a budgeted request, paid utilizing federal asset forfeiture funds. E-save and E-Verify documents are on file.

Council Member Wren made a motion to approve the Purchase of Clearview AI. Council Member Stepp seconded the motion. Motion carried unanimously. Vote: 4-0

### **ADDED ITEM**

#### **16. Utility Associates Inc.**

Mr. McCann requested approval to pay Utility Associates Inc. (In car/body cameras) \$95,315.00 for the annual support, maintenance, and cloud storage. The item is budgeted and will be paid for utilizing the general fun and SPLOST.

Council Member Cooley made a motion to approve the Utility Associates Inc invoice. Council Member Wren seconded the motion. Motion carried unanimously. Vote: 4-0

**17. Seized Baby Formula Donation – Resolution**

Mr. Lovell stated the City of Cartersville was seeking an order to release seized baby formula, and to authorize the donation of the seized formula to Advocates for Bartow’s Children, Inc.

Council Member Wren made a motion to approve the Seized Baby Formula Donation Resolution. Council Member Cooley seconded the motion. Motion carried unanimously.  
Vote: 4-0

**18. 178 W. Main Street – Second Amendment to Sales Agreement**

Mr. Lovell stated the agreement being presented would extend the deadline for the real estate purchase and sale agreement to allow all Council Members an opportunity to review the documentation. The approval would extend the deadline from August 1<sup>st</sup> to August 4, 2023.

Council Member Stepp made a motion to approve the 178 W. Main Street – Second Amendment to Sales Agreement. Council Member Wren seconded the motion. Motion carried unanimously. Vote: 4-0

**MONTHLY FINANCIAL REPORT**

**19. May 2023 Financial Report**

Tom Rhinehart, Finance Director, reviewed the May 2023 Financial Report and compared the numbers to May 2022.

Mr. Porta thanked Mr. Rhinehart and his staff for the update.

**ADJOURNMENT**

With no other business to discuss, Council Member Stepp made a motion to adjourn.

Meeting Adjourned at 7:24 P.M.

/s/ \_\_\_\_\_  
Matthew J. Santini  
Mayor

ATTEST:  
/s/ \_\_\_\_\_  
Julia Drake  
City Clerk



## CITY COUNCIL ITEM SUMMARY

<b>MEETING DATE:</b>	August 3, 2023
<b>SUBCATEGORY:</b>	Contracts/Agreements
<b>DEPARTMENT NAME:</b>	Water Department
<b>AGENDA ITEM TITLE:</b>	Mission Road Sewer Project Closeout
<b>DEPARTMENT SUMMARY RECOMMENDATION:</b>	The Mission Road Gravity Sewer Replacement Project has been completed. The final payment to the contractor, K.M. Davis Contracting Co., Inc. has been processed for payment. A reconciliation change order was provided that adjusted the final project cost to \$2,319,971.18, representing a \$68,757.12 deduction from the original contract price. I recommend approval for the Mayor to sign the final reconciliation change order to close the project.
<b>LEGAL:</b>	N/A

30-June-2023

Michael De Leon, PE  
Water System Engineer  
Cartersville Water Dept.  
148 Walnut Grove Road  
Cartersville, GA 30120

Re: City of Cartersville Contract No. 505-3320-54-1331  
Mission Road Gravity Sewer Replacement Phase III  
K.M. Davis Contracting Co., Inc.  
Progress Payment Request No. 13 (Final Payment Application)

Dear Mr. De Leon:

Enclosed for your review and approval is Payment Request Number 13 for the referenced construction project submitted by K.M. Davis Contracting Co., Inc. This payment request covers work in place from 26-April-2023 through 25-May-2023.

The project has been successfully constructed in accordance with the contract documents. Our review has found the final pay request in order, and we recommend processing the application for payment in the amount of **\$533,555.39** pending your review and concurrence.

This amount includes the release of all retainage monies associated with the construction contract. The finalized construction cost for this project totaled \$2,319,971.18. A final change order will be processed under separate cover to modify the contract amount to equal the final construction cost.

Should you have any comments or questions, please do not hesitate to contact us.

Sincerely,  
**RINDT, INC.**



Joshua A. Becker, PE  
Construction Manager

(Attachment)

Document 00 63 63

Change Order No. 2 (Final)

Date of Issuance: 30-June-2023	Effective Date: 30-June-2023
Owner: City of Cartersville	Owner's Contract No.: 505-3320-54-1331
Contractor: K.M. Davis Contracting Co., Inc.	Contractor's Project No.: 22-003
Engineer: RINDT, Inc.	Engineer's Project No.: R2017-019
Project: Mission Road Gravity Sewer Replacement Phase III	Contract Name: MR3

The Contract is modified as follows upon execution of this Change Order:

Description: This final Change Order adjusts Contract Times, Unit Quantities, and total Contract Amount to equal the actual times and amounts as constructed by KM Davis and approved by CWD (ref: KM Davis Application for Payment No. 13 (Final) dated 30-June-2023).

Attachments: N/A

CHANGE IN CONTRACT PRICE	CHANGE IN CONTRACT TIMES <i>[note changes in Milestones if applicable]</i>
Original Contract Price: \$ <u>2,388,728.30</u>	Original Contract Times: Substantial Completion: <u>28-October-2022 (270 days)</u> Ready for Final Payment: <u>28-November-2022 (300 days)</u> days or dates
[Increase] [Decrease] from previously approved Change Orders No. <u>  </u> to No. <u>  </u> : \$ <u>N/A</u>	Increase from previously approved Change Order No. 1: Substantial Completion: <u>168 days</u> Ready for Final Payment: <u>154 days</u>
Contract Price prior to this Change Order: \$ <u>2,388,728.30</u>	Contract Times prior to this Change Order: Substantial Completion: <u>14-April-2023(438 days)</u> Ready for Final Payment: <u>30-April-2023(454 days)</u> days or dates
Decrease of this Change Order: \$ <u>(68,757.12)</u>	Increase of this Change Order: Substantial Completion: <u>11-May-2023(27 days)</u> Ready for Final Payment: <u>25-May-2023(25 days)</u> days or dates
Contract Price incorporating this Change Order: \$ <u>2,319,971.18</u>	Contract Times with all approved Change Orders: Substantial Completion: <u>11-May-2023(465 days)</u> Ready for Final Payment: <u>25-May-2023 (479 days)</u> days or dates

RECOMMENDED:	ACCEPTED:	ACCEPTED:
By: <u>[Signature]</u> Engineer (if required)	By: _____ Owner (Authorized Signature)	By: <u>[Signature]</u> Contractor (Authorized Signature)
Title: <u>PROJECT/CONST. MGR</u>	Title: _____	Title: <u>Secretary &amp; Treasurer</u>
Date: <u>30-June-2023</u>	Date: _____	Date: <u>6/30/23</u>

Approved by Funding Agency (if applicable)

By: \_\_\_\_\_ Date: \_\_\_\_\_  
 Title: \_\_\_\_\_



Meeting: August 3, 2023 Item.2.

CERTIFICATE OF SUBSTANTIAL COMPLETION

Owner: City of Cartersville Owner's Contract No.: 505-3320-54-1331
Contractor: K.M. Davis Contracting Co., Inc. Contractor's Project No.: 22-003
Engineer: Rindt, Inc. Engineer's Project No.: R2017-019
Project: Mission Road Gravity Sewer Replacement Phase III Contract Name: N/A

This [final] Certificate of Substantial Completion applies to:

- [X] All Work [ ] The following specified portions of the Work:

11-May-2023

Date of Substantial Completion

The Work to which this Certificate applies has been inspected by authorized representatives of Owner, Contractor, and Engineer, and found to be substantially complete. The Date of Substantial Completion of the Work or portion thereof designated above is hereby established, subject to the provisions of the Contract pertaining to Substantial Completion.

A punch list of items to be completed or corrected is attached to this Certificate. This list may not be all-inclusive, and the failure to include any items on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract.

The responsibilities between Owner and Contractor for security, operation, safety, maintenance, heat, utilities, insurance, and warranties upon Owner's use or occupancy of the Work shall be as provided in the Contract, except as amended as follows: [Note: Amendments of contractual responsibilities recorded in this Certificate should be the product of mutual agreement of Owner and Contractor; see Paragraph 15.03.D of the General Conditions.]

Amendments to Owner's responsibilities: [X] None [ ] As follows

Amendments to Contractor's responsibilities: [X] None [ ] As follows:

The following documents are attached to and made a part of this Certificate: Punch List

This Certificate does not constitute an acceptance of Work not in accordance with the Contract Documents, nor is it a release of Contractor's obligation to complete the Work in accordance with the Contract.

EXECUTED BY ENGINEER: RECEIVED: RECEIVED:
By: [Signature] By: [Signature] By: [Signature]
(Authorized signature) Owner (Authorized Signature) Contractor (Authorized Signature)
Title: PROJECT MANAGER Title: Water System Engineer Title: Superintendent
Date: 28-JUNE-2023 Date: 7-21-23 Date: 6-21-23

**City of Cartersville Water Department**  
**Mission Road Gravity Sewer Replacement Phase III**

**Punch List**

**11-May-2023 (Updated 25-May-2023)**

1. ~~Complete sewer main installation (MH's 20 – 22).~~
2. ~~Clean remaining solids/debris from MH tables.~~
3. ~~Clean remaining solids/debris from Jackson St stormwater junction box.~~
4. ~~Provide post-substantial completion CCTV of constructed sewer mains.~~
5. ~~Complete water system improvements (near Mission Rd & Jackson St).~~
6. ~~Complete paving/roadway restoration.~~
7. ~~Complete abandonment of existing sewer system (grout, remove rings & covers). (Update: address grout spill without delay. Coordinate with Owner and Engineer to resolve).~~
8. ~~Anchor ring & cover in place at MH-11.~~
9. ~~Complete curb & gutter restoration at MH-11.~~
10. ~~Remove temporary mulch barrier at MH 11 – 12 segment.~~
11. ~~Replace broken top of stormwater junction box at Mission Rd & Jackson St).~~
12. ~~Complete fence & landscape restoration at 531 W Main St.~~
13. ~~Clean up construction debris and complete final stabilization at 527 W Main St.~~
14. ~~Repair basketball concrete slab at Beauregard St & Knight Way (721 West Ave).~~
15. ~~Add cap to cleanout riser at MH-18.~~
16. ~~Restore displaced riprap at MH 19 – 19.1 aerial crossing.~~
17. ~~Adjust MH-19.2 to be flush to existing grade.~~
18. ~~Repair driveway at 5 Beauregard St.~~
19. ~~Provide positive drainage at MH 12 – 13 segment.~~
20. ~~Seed & mulch remaining bare areas throughout project area.~~
21. ~~Remove temporary BMPs throughout project area.~~
22. ~~Final de-mobilization and clean-up of all construction equipment, materials & debris.~~
23. ~~Provide completed project As-Built drawings.~~
24. ~~Provide Final Affidavit.~~
25. ~~Provide valve markers on MH's 2 – 5.1.~~
26. ~~Add topsoil/smoothing in yards to allow desirable homeowner mowing.~~
27. ~~NPDES Permit close-out procedures.~~
28. ~~Request Substantial Completion.~~

Strikethrough denotes completed item. Reference Contract Documents 01 50 00, 01 70 00, and 00 72 15 (General Conditions Paragraph 15.03: Substantial Completion) for more on Contract Closeout Requirements.

END OF DOCUMENT



## CITY COUNCIL ITEM SUMMARY

<b>MEETING DATE:</b>	August 3, 2023
<b>SUBCATEGORY:</b>	Contracts/Agreements
<b>DEPARTMENT NAME:</b>	Administration
<b>AGENDA ITEM TITLE:</b>	Addendum to GMA Customer Service Training Contract
<b>DEPARTMENT SUMMARY RECOMMENDATION:</b>	Addendum No. 1 to the contract with Georgia Municipal Association (GMA) includes additional or “make-up” customer service training sessions for city employees.
<b>LEGAL:</b>	N/A

**FIRST ADDENDUM TO AGREEMENT FOR GEORGIA MUNICIPAL ASSOCIATION, INC. TO PROVIDE CONSULTING SERVICES FOR CITY OF CARTERSVILLE**

This First Addendum to Agreement for Georgia Municipal Association, Inc. to Provide Consulting Services for City of Cartersville (“Addendum”) is entered into upon signature of both parties, (the “Effective Date”), by and between Georgia Municipal Association, Inc. (“GMA”) and the City of Cartersville (“CITY”).

**BACKGROUND**

- A. GMA and CITY entered into a certain Agreement for Georgia Municipal Association, Inc. to Provide Consulting Services for City of Cartersville effective April 6, 2023 (Agreement).
- B. Pursuant to Exhibit A (Services and Compensation) of Agreement, “Training sessions will be 3 hours each to be held on dates & times established by City of Cartersville & GMA.” GMA and CITY have agreed to enter into this First Addendum in order to add an additional or “make-up” training sessions.

THEREFORE, in consideration of foregoing facts, the mutual covenants contained in this Addendum, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged and accepted by both parties, GMA and CITY now mutually covenant, declare and agree as follows:

**ADDENDUM**

- 1. Additional Training Session. Bullet Point 3 of Section I (Scope of Work) of Exhibit A of the Agreement shall be amended so as to read as follows:

Training sessions will be 3 hours each to be held on dates & times established by City of Cartersville & GMA. Additional or “make-up” classes may be held August 23, 2023, or on other dates as mutually agreed upon by GMA and City. Additional courses are 3 hours each and are provided for a maximum of 30 attendees per session at a cost of \$850, plus travel expenses for instructor(s) and shall otherwise comply with terms of Agreement.

**In witness whereof**, the parties have executed this Addendum and it is effective on the Effective Date.

**Georgia Municipal Association, Inc.  
(GMA)**

**City of Cartersville  
(City)**

By: Pam Helton

By: \_\_\_\_\_

Name: Pam Helton

Name: \_\_\_\_\_

Title: Director, Member Services

Title: \_\_\_\_\_

Date: July 5, 2023

Date: \_\_\_\_\_



## CITY COUNCIL ITEM SUMMARY

<b>MEETING DATE:</b>	August 3, 2023
<b>SUBCATEGORY:</b>	Contracts/Agreements
<b>DEPARTMENT NAME:</b>	Fire Department
<b>AGENDA ITEM TITLE:</b>	Updated Hydrology Study Proposal
<b>DEPARTMENT SUMMARY RECOMMENDATION:</b>	The Fire Department requests approval for Croft and Associates to complete an updated hydrology study for the new fire station at Carter Grove. The latest study that we are aware of is believed to have been conducted in 2005. We reached out to the original firm, but they have been unable to provide us with the data. The Public Works Superintendent recommended updating the study to include all changes to stormwater regulations and best management practices. The cost of the study is \$12,500.00 and is a budgeted expense.
<b>LEGAL:</b>	N/A



July 26, 2023

Scott Carter  
Fire Chief  
Cartersville Fire Department  
195 Cassville Road  
Cartersville, GA 30120

VIA EMAIL

**RE: Site Hydrology Study & Report Proposal  
Fire Station #5**

Dear Scott:

We are pleased to offer our services for a site hydrology study for the Cartersville Fire Station #5 project. We understand that a hydrology report of the site/existing detention pond is not currently available from the city, so this proposal provides the services required to create a report that will be utilized for the design of the new site and station. We appreciate the opportunity and look forward to working with you to accomplish this service for the City.

You will find outlined below the scope of services, design assumptions, deliverables and professional fees for this project.

**SCOPE OF SERVICES**

CROFT will perform stormwater calculations for the pre- and post-construction conditions of the project site in accordance with Georgia’s requirements. We will analyze the calculations to determine if the existing detention pond is adequately sized for the proposed Fire Station and its appurtenances. If the existing detention pond is found to be undersized, CROFT will provide a retrofit design to accommodate the additional stormwater runoff. We will present the calculations and our findings in a hydrology report.

**DELIVERABLES**

Deliverables will be provided electronically in PDF file format for your use.

**PROFESSIONAL FEES**

Professional fees for the project scope as outlined above will be as follows:

- Hydrology Study & Report .....\$12,500

*Note: Expenses (mileage, reproductions, etc.) are included in the indicated fees above.*

**ADDITIONAL SERVICES**

Additional services or changes to the project scope, as defined above, will be proposed and documented in writing and shall be formally approved by client. No additional fees will be charged without your prior written approval.

Scott, we understand that, if accepted and approved, this scope of work and associated fees will be added to our design contract for this fire station, and all the contract terms of that agreement will apply to this scope of work as well. We would like to thank you for the opportunity to submit this proposal and look forward to working with you on this project. Should you have any questions regarding this proposal, please do not hesitate to give me a call.

Sincerely,



**Michael Gunn, RA**  
**Croft & Associates, PC**

**City of Cartersville**

**APPROVAL:**

Accepted by:

Matt Santini, Mayor

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Date*

Attest:  
Julie Drake, City Clerk

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Date*



## CITY COUNCIL ITEM SUMMARY

<b>MEETING DATE:</b>	August 3, 2023
<b>SUBCATEGORY:</b>	Contracts/Agreements
<b>DEPARTMENT NAME:</b>	Administration Department
<b>AGENDA ITEM TITLE:</b>	Construction Manager at Risk (CMAR) for Fire Station #5
<b>DEPARTMENT SUMMARY RECOMMENDATION:</b>	This is the professional services agreement between the City and Reeves Young to perform CMAR services for Fire Station #5.
<b>LEGAL:</b>	Reviewed by Archer & Lovell



A NEW FIRE STATION  
FOR THE  
**CITY OF CARTERSVILLE**  
CARTERSVILLE, GEORGIA



# AIA<sup>®</sup> Document A133<sup>®</sup> – 2019

## **Standard Form of Agreement Between Owner and Construction Manager as Constructor** where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

**AGREEMENT** made as of the     day of     in the year  
*(In words, indicate day, month, and year.)*

**BETWEEN** the Owner:  
*(Name, legal status, address, and other information)*

City of Cartersville  
PO Box 1390  
1 N. Erwin Street  
Cartersville, GA 30120

and the Construction Manager:  
*(Name, legal status, address, and other information)*

Reeves Young, LLC  
45 Peachtree Industrial Blvd  
Sugar Hill, GA 30518

for the following Project:  
*(Name, location, and detailed description)*

City of Cartersville – Fire Station No. 5  
51 Carter Grove Blvd  
Cartersville, GA 30120

The Architect:  
*(Name, legal status, address, and other information)*

CROFT & Associates, Inc.  
3380 Blue Springs Road  
Kennesaw, GA 30144

The Owner and Construction Manager agree as follows.

**ADDITIONS AND DELETIONS:**  
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

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

AIA Document A201™–2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

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ARTICLE 1 INITIAL INFORMATION

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

*(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.")*

§ 1.1.1 The Owner’s program for the Project, as described in Section 4.1.1:

*(Insert the Owner’s program, identify documentation that establishes the Owner’s program, or state the manner in which the program will be developed.)*

Reference RFP City of Cartersville Fire Station No. 5 dated June 16, 2023

§ 1.1.2 The Project’s physical characteristics:

*(Identify or describe pertinent information about the Project’s physical characteristics, such as size; location; dimensions; geotechnical reports; site boundaries; topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site, etc.)*

9,000 SF Fire Station and Associated Site and Utility Development

§ 1.1.3 The Owner’s budget for the Guaranteed Maximum Price, as defined in Article 6:

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

\$8,000,000

§ 1.1.4 The Owner’s anticipated design and construction milestone dates:

- .1 Design phase milestone dates, if any:  
GMP to be submitted by no later than December 2023
- .2 Construction commencement date:  
No later than January 2024
- .3 Substantial Completion date or dates:  
No later than January 2025
- .4 Other milestone dates:  
TBD at GMP

§ 1.1.5 The Owner’s requirements for accelerated or fast-track scheduling, or phased construction, are set forth below:  
*(Identify any requirements for fast-track scheduling or phased construction.)*

N/A

§ 1.1.6 The Owner’s anticipated Sustainable Objective for the Project:  
*(Identify and describe the Owner’s Sustainable Objective for the Project, if any.)*

N/A

§ 1.1.6.1 If the Owner identifies a Sustainable Objective, the Owner and Construction Manager shall complete and incorporate AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, into this Agreement to define the terms, conditions and services related to the Owner’s Sustainable Objective. If E234–2019 is incorporated into this agreement, the Owner and Construction Manager shall incorporate the completed E234–2019 into the agreements with the consultants and contractors performing services or Work in any way associated with the Sustainable Objective.

§ 1.1.7 Other Project information:  
*(Identify special characteristics or needs of the Project not provided elsewhere.)*

§ 1.1.8 The Owner identifies the following representative in accordance with Section 4.2:  
*(List name, address, and other contact information.)*

Freddy L. Morgan  
 Assistant City Manager  
 City of Cartersville  
 PO Box 1390  
 1 N. Erwin Street  
 Cartersville, GA 30120  
 770-387-5672  
 fmorgan@cityofcartersville.org

§ 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 contact information.)*

CROFT & Associates, Inc.  
3380 Blue Springs Road  
Kennesaw, GA 30144

§ 1.1.10 The Owner shall retain the following consultants and contractors:  
*(List name, legal status, address, and other contact information.)*

.1 Geotechnical Engineer:

TBD

.2 Civil Engineer:

TBD

.3 Other, if any:

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

§ 1.1.11 The Architect’s representative:  
*(List name, address, and other contact information.)*

CROFT & Associates, Inc.  
3380 Blue Springs Road  
Kennesaw, GA 30144

§ 1.1.12 The Construction Manager identifies the following representative in accordance with Article 3:  
*(List name, address, and other contact information.)*

Mike Iezzi  
45 Peachtree Industrial Blvd  
Sugar Hill, GA 30518  
404-391-5482  
miezzi@reevesyoung.com

§ 1.1.13 The Owner’s requirements for the Construction Manager’s staffing plan for Preconstruction Services, as required under Section 3.1.9:  
*(List any Owner-specific requirements to be included in the staffing plan.)*

§ 1.1.14 The Owner's requirements for subcontractor procurement for the performance of the Work:  
(List any Owner-specific requirements for subcontractor procurement.)

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

§ 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 Project schedule, the Construction Manager's services, and the Construction Manager's compensation. The Owner shall adjust the Owner's budget for the Guaranteed Maximum Price and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

§ 1.3 Neither the Owner's nor the Construction Manager's representative shall be changed without ten days' prior notice to the other party.

## ARTICLE 2 GENERAL PROVISIONS

### § 2.1 The Contract Documents

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 3.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 3.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern. An enumeration of the Contract Documents, other than a Modification, appears in Article 15.

### § 2.2 Relationship of the Parties

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Construction Manager's skill and judgment in furthering the interests of the Owner to furnish efficient construction administration, management services, and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents.

### § 2.3 General Conditions

§ 2.3.1 For the Preconstruction Phase, AIA Document A201™–2017, General Conditions of the Contract for Construction, shall apply as follows: Section 1.5, Ownership and Use of Documents; Section 1.7, Digital Data Use and Transmission; Section 1.8, Building Information Model Use and Reliance; Section 2.2.4, Confidential Information; Section 3.12.10, Professional Services; Section 10.3, Hazardous Materials; Section 13.1, Governing Law. The term "Contractor" as used in A201–2017 shall mean the Construction Manager.

§ 2.3.2 For the Construction Phase, the general conditions of the contract shall be as set forth in A201–2017, which document is incorporated herein by reference. The term "Contractor" as used in A201–2017 shall mean the Construction Manager.

## ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 3.1 and 3.2, and in the applicable provisions of A201-2017 referenced in Section 2.3.1. The Construction Manager's Construction Phase responsibilities are set forth in Section 3.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both

phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

### § 3.1 Preconstruction Phase

#### § 3.1.1 Extent of Responsibility

The Construction Manager shall exercise reasonable care in performing its Preconstruction Services. The Owner and Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of services and information furnished by the Construction Manager. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require.

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

#### § 3.1.3 Consultation

§ 3.1.3.1 The Construction Manager shall schedule and conduct meetings with the Architect and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work.

§ 3.1.3.2 The Construction Manager shall advise the Owner and Architect on proposed site use and improvements, selection of materials, building systems, and equipment. The Construction Manager shall also provide recommendations to the Owner and Architect, consistent with the Project requirements, on constructability; availability of materials and labor; time requirements for procurement, installation and construction; prefabrication; 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. The Construction Manager shall consult with the Architect regarding professional services to be provided by the Construction Manager during the Construction Phase.

§ 3.1.3.3 The Construction Manager shall assist the Owner and Architect in establishing building information modeling and digital data protocols for the Project, using AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

#### § 3.1.4 Project Schedule

When Project requirements in Section 4.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule 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 identify items that affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered in advance of construction; and the occupancy requirements of the Owner.

#### § 3.1.5 Phased Construction

The Construction Manager, in consultation with the Architect, shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, and sequencing for phased construction. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities, and procurement and construction scheduling issues.

#### § 3.1.6 Cost Estimates

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

§ 3.1.6.2 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, an estimate of the Cost of the Work with increasing detail and refinement. The Construction Manager shall include in the estimate those costs to allow for the further development of the design, price escalation, and market conditions, until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. The estimate shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect in the event that the estimate of the Cost of the Work exceeds the latest approved Project budget, and make recommendations for corrective action.

§ 3.1.6.3 If the Architect is providing cost estimating services as a Supplemental Service, and a discrepancy exists between the Construction Manager's cost estimates and the Architect's cost estimates, the Construction Manager and the Architect shall work together to reconcile the cost estimates.

§ 3.1.7 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 regarding constructability and schedules, for the Architect's review and the Owner's approval.

§ 3.1.8 The Construction Manager shall provide recommendations and information to the Owner and Architect regarding equipment, materials, services, and temporary Project facilities.

§ 3.1.9 The Construction Manager shall provide a staffing plan for Preconstruction Phase services for the Owner's review and approval.

§ 3.1.10 If the Owner identified a Sustainable Objective in Article 1, the Construction Manager shall fulfill its Preconstruction Phase responsibilities as required in AIA Document E234™-2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement.

#### § 3.1.11 Subcontractors and Suppliers

§ 3.1.11.1 If the Owner has provided requirements for subcontractor procurement in section 1.1.14, the Construction Manager shall provide a subcontracting plan, addressing the Owner's requirements, for the Owner's review and approval.

§ 3.1.11.2 The Construction Manager shall develop bidders' interest in the Project.

§ 3.1.11.3 The processes described in Article 9 shall apply if bid packages will be issued during the Preconstruction Phase.

#### § 3.1.12 Procurement

The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

#### § 3.1.13 Compliance with Laws

The Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi-governmental authorities.

#### § 3.1.14 Other Preconstruction Services

Insert a description of any other Preconstruction Phase services to be provided by the Construction Manager, or reference an exhibit attached to this document

*(Describe any other Preconstruction Phase services, such as providing cash flow projections, development of a project information management system, early selection or procurement of subcontractors, etc.)*



### § 3.2 Guaranteed Maximum Price Proposal

§ 3.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's and Architect's review, and the Owner's acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, the Construction Manager's contingency described in Section 3.2.4, and the Construction Manager's Fee described in Section 6.1.2.

§ 3.2.2 To the extent that the Contract Documents are anticipated to require further development, the Guaranteed Maximum Price includes the costs attributable to such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes, or equipment, all of which, if required, shall be incorporated by Change Order.

§ 3.2.3 The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include the following:

- .1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- .2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 3.2.2;
- .3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, including allowances; the Construction Manager's contingency set forth in Section 3.2.4; and the Construction Manager's Fee;
- .4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; and
- .5 A date by which the Owner must accept the Guaranteed Maximum Price.

§ 3.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include a contingency for the Construction Manager's exclusive use to cover those costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order.

§ 3.2.5 The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal. In the event that the Owner or Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.

§ 3.2.6 If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

§ 3.2.7 The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the execution of the Guaranteed Maximum Price Amendment, unless the Owner provides prior written authorization for such costs.

§ 3.2.8 The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish such revised Contract Documents to the Construction Manager. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment and the revised Contract Documents.

§ 3.2.9 The Construction Manager shall include in the Guaranteed Maximum Price all sales, consumer, use and similar taxes for the Work provided by the Construction Manager that are legally enacted, whether or not yet effective, at the time the Guaranteed Maximum Price Amendment is executed.

**§ 3.3 Construction Phase****§ 3.3.1 General**

**§ 3.3.1.1** For purposes of Section 8.1.2 of A201–2017, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

**§ 3.3.1.2** The Construction Phase shall commence upon the Owner’s execution of the Guaranteed Maximum Price Amendment or, prior to acceptance of the Guaranteed Maximum Price proposal, by written agreement of the parties. The written agreement shall set forth a description of the Work to be performed by the Construction Manager, and any insurance and bond requirements for Work performed prior to execution of the Guaranteed Maximum Price Amendment.

**§ 3.3.2 Administration**

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

**§ 3.3.2.2** Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and a submittal schedule in accordance with Section 3.10 of A201–2017.

**§ 3.3.2.3 Monthly Report**

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 required by the Owner.

**§ 3.3.2.4 Daily Logs**

The Construction Manager shall keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner.

**§ 3.3.2.5 Cost Control**

The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect, and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 3.3.2.3 above.

**§ 3.3.2.6 As-Built Documentation**

Construction Manager will provide Owner with Project Record as-builts upon completion.

**ARTICLE 4 OWNER’S RESPONSIBILITIES****§ 4.1 Information and Services Required of the Owner**

**§ 4.1.1** The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner’s objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems, sustainability and site requirements.

**§ 4.1.2** Prior to the execution of the Guaranteed Maximum Price Amendment, the Construction Manager 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. After execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request such information as set forth in A201-2017 Section 2.2.

**§ 4.1.3** 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 Article 7, (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 Project’s scope and quality.

§ 4.1.4 **Structural and Environmental Tests, Surveys and Reports.** During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner’s control and relevant to the Construction Manager’s performance of the Work with reasonable promptness after receiving the Construction Manager’s written request for such information or services. The Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 4.1.4.1 The Owner shall furnish tests, inspections, and reports, required by law and as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 4.1.4.2 The Owner shall furnish surveys describing 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 other 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.

§ 4.1.4.3 The Owner, when such services are requested, shall furnish services of geotechnical engineers, which may include 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.

§ 4.1.5 During the Construction Phase, 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 Construction Manager’s performance of the Work with reasonable promptness after receiving the Construction Manager’s written request for such information or services.

§ 4.1.6 If the Owner identified a Sustainable Objective in Article 1, the Owner shall fulfill its responsibilities as required in AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement.

§ 4.2 **Owner’s Designated Representative**

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner’s representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201–2017, the Architect does not have such authority. The term "Owner" means the Owner or the Owner’s authorized representative.

§ 4.2.1 **Legal Requirements.** 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.

§ 4.3 **Architect**

The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B133™–2019, Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition, including any additional services requested by the Construction Manager that are necessary for the Preconstruction and Construction Phase services under this Agreement. The Owner shall provide the Construction Manager with a copy of the scope of services in the executed agreement between the Owner and the Architect, and any further modifications to the Architect’s scope of services in the agreement.

**ARTICLE 5 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES**

§ 5.1 **Compensation**

§ 5.1.1 For the Construction Manager’s Preconstruction Phase services described in Sections 3.1 and 3.2, the Owner shall compensate the Construction Manager as follows:

*(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)*

Nine Thousand Five Hundred \$9,500.00

§ 5.1.2 The hourly billing rates for Preconstruction Phase services of the Construction Manager and the Construction Manager’s Consultants and Subcontractors, if any, are set forth below.  
(If applicable, attach an exhibit of hourly billing rates or insert them below.)

Individual or Position	Rate
Preconstruction Manager	\$105/ Hour
Estimator	\$80/ Hour

§ 5.1.2.1 Hourly billing rates for Preconstruction Phase services include all costs to be paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, and shall remain unchanged unless the parties execute a Modification.

§ 5.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within ( ) months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager’s compensation for Preconstruction Phase services shall be equitably adjusted.

§ 5.2 Payments

§ 5.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed.

§ 5.2.2 Payments are due and payable upon presentation of the Construction Manager’s invoice. Amounts unpaid thirty ( 30 ) 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.)

1 % one percent

ARTICLE 6 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 6.1 Contract Sum

§ 6.1.1 The Owner shall pay the Construction Manager the Contract Sum in current funds for the Construction Manager’s performance of the Contract after execution of the Guaranteed Maximum Price Amendment. The Contract Sum is the Cost of the Work as defined in Article 7 plus the Construction Manager’s Fee.

§ 6.1.2 The Construction Manager’s Fee:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Construction Manager’s Fee.)

3.5%

§ 6.1.3 The method of adjustment of the Construction Manager’s Fee for changes in the Work:

10% for Changes in the Work above and beyond the GMP

§ 6.1.4 Limitations, if any, on a Subcontractor’s overhead and profit for increases in the cost of its portion of the Work:

15% Overhead and 5% Profit

§ 6.1.5 Rental rates for Construction Manager-owned equipment shall not exceed N/A percent ( 0 %) of the standard rental rate paid at the place of the Project.

§ 6.1.6 Liquidated damages, if any:

(Insert terms and conditions for liquidated damages, if any.)

N/A

**§ 6.1.7 Other:**

*(insert provisions for bonus, cost savings or other incentives, if any, that might result in a change to the Contract Sum.)*

50/50 Shared Savings between Reeves Young and the City of Cartersville

**§ 6.2 Guaranteed Maximum Price**

The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, subject to additions and deductions by Change Order as provided in the Contract Documents. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner.

**§ 6.3 Changes in the Work**

**§ 6.3.1** The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Construction Manager may be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

**§ 6.3.1.1** The Architect may order minor changes in the Work as provided in Article 7 of AIA Document A201–2017, General Conditions of the Contract for Construction.

**§ 6.3.2** Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Article 7 of AIA Document A201–2017, General Conditions of the Contract for Construction.

**§ 6.3.3** Adjustments to subcontracts awarded on the basis of a stipulated sum shall be determined in accordance with Article 7 of A201–2017, as they refer to "cost" and "fee," and not by Articles 6 and 7 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior written consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

**§ 6.3.4** In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in Article 7 of AIA Document A201–2017 shall mean the Cost of the Work as defined in Article 7 of this Agreement and the term "fee" shall mean the Construction Manager's Fee as defined in Section 6.1.2 of this Agreement.

**§ 6.3.5** If no specific provision is made in Section 6.1.3 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 6.1.3 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

**ARTICLE 7 COST OF THE WORK FOR CONSTRUCTION PHASE****§ 7.1 Costs to Be Reimbursed**

**§ 7.1.1** The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. The Cost of the Work shall include only the items set forth in Sections 7.1 through 7.7.

**§ 7.1.2** Where, pursuant to the Contract Documents, any cost is subject to the Owner's prior approval, the Construction Manager shall obtain such approval in writing prior to incurring the cost.

**§ 7.1.3** Costs shall be at rates not higher than the standard rates paid at the place of the Project, except with prior approval of the Owner.

**§ 7.2 Labor Costs**

**§ 7.2.1** Wages or salaries of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops.

**§ 7.2.2** Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site and performing Work, with the Owner's prior approval.

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**§ 7.2.2.1** Wages or salaries of the Construction Manager's supervisory and administrative personnel when performing Work and stationed at a location other than the site, but only for that portion of time required for the Work, and limited to the personnel and activities listed below:

*(Identify the personnel, type of activity and, if applicable, any agreed upon percentage of time to be devoted to the Work.)*

**§ 7.2.3** Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged at factories, workshops or while traveling, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

**§ 7.2.4** Costs paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 7.2.1 through 7.2.3.

**§ 7.2.5** If agreed rates for labor costs, in lieu of actual costs, are provided in this Agreement, the rates shall remain unchanged throughout the duration of this Agreement, unless the parties execute a Modification.

### **§ 7.3 Subcontract Costs**

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts and this Agreement.

### **§ 7.4 Costs of Materials and Equipment Incorporated in the Completed Construction**

**§ 7.4.1** Costs, including transportation and storage at the site, of materials and equipment incorporated, or to be incorporated, in the completed construction.

**§ 7.4.2** Costs of materials described in the preceding Section 7.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

### **§ 7.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items**

**§ 7.5.1** Costs of transportation, storage, installation, dismantling, maintenance, and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment, and tools, that are not fully consumed, shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Construction Manager shall mean fair market value.

**§ 7.5.2** Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site, and the costs of transportation, installation, dismantling, minor repairs, and removal of such temporary facilities, machinery, equipment, and hand tools. Rates and quantities of equipment owned by the Construction Manager, or a related party as defined in Section 7.8, shall be subject to the Owner's prior approval. The total rental cost of any such equipment may not exceed the purchase price of any comparable item.

**§ 7.5.3** Costs of removal of debris from the site of the Work and its proper and legal disposal.

**§ 7.5.4** Costs of the Construction Manager's site office, including general office equipment and supplies.

**§ 7.5.5** Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval.

### **§ 7.6 Miscellaneous Costs**

**§ 7.6.1** Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract.

§ 7.6.1.1 Costs for self-insurance, for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval.

§ 7.6.1.2 Costs for insurance through a captive insurer owned or controlled by the Construction Manager, with the Owner's prior approval.

§ 7.6.2 Sales, use, or similar taxes, imposed by a governmental authority, that are related to the Work and for which the Construction Manager is liable.

§ 7.6.3 Fees and assessments for the building permit, and for other permits, licenses, and inspections, for which the Construction Manager is required by the Contract Documents to pay.

§ 7.6.4 Fees of laboratories for tests required by the Contract Documents; except those related to defective or nonconforming Work for which reimbursement is excluded under Article 13 of AIA Document A201–2017 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 7.7.3.

§ 7.6.5 Royalties and license fees paid for the use of a particular design, process, or product, required by the Contract Documents.

§ 7.6.5.1 The cost of defending suits or claims for infringement of patent rights arising from requirements of the Contract Documents, payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims, and payments of settlements made with the Owner's consent, unless the Construction Manager had reason to believe that the required design, process, or product was an infringement of a copyright or a patent, and the Construction Manager failed to promptly furnish such information to the Architect as required by Article 3 of AIA Document A201–2017. The costs of legal defenses, judgments, and settlements shall not be included in the Cost of the Work used to calculate the Construction Manager's Fee or subject to the Guaranteed Maximum Price.

§ 7.6.6 Costs for communications services, electronic equipment, and software, directly related to the Work and located at the site, with the Owner's prior approval.

§ 7.6.7 Costs of document reproductions and delivery charges.

§ 7.6.8 Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility in the Contract Documents.

§ 7.6.9 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.

§ 7.6.10 Expenses incurred in accordance with the Construction Manager's standard written personnel policy for relocation and temporary living allowances of the Construction Manager's personnel required for the Work, with the Owner's prior approval.

§ 7.6.11 That portion of the reasonable expenses of the Construction Manager's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.

### § 7.7 Other Costs and Emergencies

§ 7.7.1 Other costs incurred in the performance of the Work, with the Owner's prior approval.

§ 7.7.2 Costs incurred in taking action to prevent threatened damage, injury, or loss, in case of an emergency affecting the safety of persons and property, as provided in Article 10 of AIA Document A201–2017.

§ 7.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors, or suppliers, provided that such damaged or nonconforming Work was not caused by the negligence of, or failure to fulfill a specific responsibility by, the Construction Manager, and only to the extent that the cost of repair or correction is not recovered by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others.

§ 7.7.4 The costs described in Sections 7.1 through 7.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201–2017 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 7.9.

**§ 7.8 Related Party Transactions**

§ 7.8.1 For purposes of this Section 7.8, the term "related party" shall mean (1) a parent, subsidiary, affiliate, or other entity having common ownership of, or sharing common management with, the Construction Manager; (2) any entity in which any stockholder in, or management employee of, the Construction Manager holds an equity interest in excess of ten percent in the aggregate; (3) any entity which has the right to control the business or affairs of the Construction Manager; or (4) any person, or any member of the immediate family of any person, who has the right to control the business or affairs of the Construction Manager.

§ 7.8.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction in writing, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods, or service, from the related party, as a Subcontractor, according to the terms of Article 9. If the Owner fails to authorize the transaction in writing, the Construction Manager shall procure the Work, equipment, goods, or service from some person or entity other than a related party according to the terms of Article 9.

**§ 7.9 Costs Not To Be Reimbursed**

§ 7.9.1 The Cost of the Work shall not include the items listed below:

- .1 Salaries and other compensation of the Construction Manager’s personnel stationed at the Construction Manager’s principal office or offices other than the site office, except as specifically provided in Section 7.2, or as may be provided in Article 14;
- .2 Bonuses, profit sharing, incentive compensation, and any other discretionary payments, paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, unless the Owner has provided prior approval;
- .3 Expenses of the Construction Manager’s principal office and offices other than the site office;
- .4 Overhead and general expenses, except as may be expressly included in Sections 7.1 to 7.7;
- .5 The Construction Manager’s capital expenses, including interest on the Construction Manager’s capital employed for the Work;
- .6 Except as provided in Section 7.7.3 of this Agreement, costs due to the negligence of, or failure to fulfill a specific responsibility of the Contract by, the Construction Manager, Subcontractors, and suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable;
- .7 Any cost not specifically and expressly described in Sections 7.1 to 7.7;
- .8 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and
- .9 Costs for services incurred during the Preconstruction Phase.

**ARTICLE 8 DISCOUNTS, REBATES, AND REFUNDS**

§ 8.1 Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included the amount to be paid, less such discount, in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds, and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained.

§ 8.2 Amounts that accrue to the Owner in accordance with the provisions of Section 8.1 shall be credited to the Owner as a deduction from the Cost of the Work.

**ARTICLE 9 SUBCONTRACTS AND OTHER AGREEMENTS**

§ 9.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager’s own personnel shall be performed under subcontracts or other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall



obtain bids. The Construction Manager shall obtain bids from Subcontractors, and from suppliers of materials or equipment fabricated especially for the Work, who are qualified to perform that portion of the Work in accordance with the requirements of the Contract Documents. The Construction Manager shall deliver such bids to the Architect and Owner with an indication as to which bids the Construction Manager intends to accept. The Owner then has the right to review the Construction Manager’s list of proposed subcontractors and suppliers in consultation with the Architect and, subject to Section 9.1.1, to object to any subcontractor or supplier. Any advice of the Architect, or approval or objection by the Owner, shall not relieve the Construction Manager of its responsibility to perform the Work in accordance with the Contract Documents. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

§ 9.1.1 When a specific subcontractor or supplier (1) is recommended to the Owner by the Construction Manager; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 9.2 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the Owner’s prior written approval. If a subcontract is awarded on the basis of cost plus a fee, the Construction Manager shall provide in the subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Article 10.

**ARTICLE 10 ACCOUNTING RECORDS**

The Construction Manager shall keep full and detailed records and accounts related to the Cost of the Work, and exercise such controls, as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner’s auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager’s records and accounts, including complete documentation supporting accounting entries, books, job cost reports, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor’s proposals, Subcontractor’s invoices, purchase orders, vouchers, memoranda, and other data relating to this Contract. The Construction Manager shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

**ARTICLE 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES**

**§ 11.1 Progress Payments**

§ 11.1.1 Based upon Applications for Payment submitted to the Architect by the Construction Manager, and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum, to the Construction Manager, as provided below and elsewhere in the Contract Documents.

§ 11.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

§ 11.1.3 Provided that an Application for Payment is received by the Architect not later than the 25th day of a month, the Owner shall make payment of the amount certified to the Construction Manager not later than the 30th day of the succeeding month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than thirty ( 30 ) days after the Architect receives the Application for Payment.

*(Federal, state or local laws may require payment within a certain period of time.)*

§ 11.1.4 With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that payments already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Construction Manager’s Fee.

§ 11.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among: (1) the various portions of the Work; (2) any contingency for costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order; and (3) the Construction Manager's Fee.

§ 11.1.5.1 The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. The schedule of values shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

§ 11.1.5.2 The allocation of the Guaranteed Maximum Price under this Section 11.1.5 shall not constitute a separate guaranteed maximum price for the Cost of the Work of each individual line item in the schedule of values.

§ 11.1.5.3 When the Construction Manager allocates costs from a contingency to another line item in the schedule of values, the Construction Manager shall submit supporting documentation to the Architect.

§ 11.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed, or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Construction Manager on account of that portion of the Work and for which the Construction Manager has made payment or intends to make payment prior to the next Application for Payment, by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

§ 11.1.7 In accordance with AIA Document A201–2017 and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

§ 11.1.7.1 The amount of each progress payment shall first include:

- .1 That portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the most recent schedule of values;
- .2 That portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction or, if approved in writing in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified; and
- .4 The Construction Manager's Fee, computed upon the Cost of the Work described in the preceding Sections 11.1.7.1.1 and 11.1.7.1.2 at the rate stated in Section 6.1.2 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work included in Sections 11.1.7.1.1 and 11.1.7.1.2 bears to a reasonable estimate of the probable Cost of the Work upon its completion.

§ 11.1.7.2 The amount of each progress payment shall then be reduced by:

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017;
- .3 Any amount for which the Construction Manager does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Construction Manager intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017;
- .5 The shortfall, if any, indicated by the Construction Manager in the documentation required by Section 11.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .6 Retainage withheld pursuant to Section 11.1.8.

**§ 11.1.8 Retainage**

**§ 11.1.8.1** For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:

*(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)*

5% of the Value of the payment requested, not to exceed 5% of the GMP.

**§ 11.1.8.1.1** The following items are not subject to retainage:

*(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)*

Material Deposits, General Conditions, Insurance and Bond Costs

**§ 11.1.8.2** Reduction or limitation of retainage, if any, shall be as follows:

*(If the retainage established in Section 11.1.8.1 is to be modified prior to Substantial Completion of the entire Work, insert provisions for such modification.)*

Reduced to 2.5% of GMP at 50% Completion; Construction Manager can request early retainage release for special circumstances such as Site Work and Concrete. Trade packages that may finish before 50% is reached.

**§ 11.1.8.3** Except as set forth in this Section 11.1.8.3, upon Substantial Completion of the Work, the Construction Manager may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 11.1.8. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:

*(Insert any other conditions for release of retainage, such as upon completion of the Owner’s audit and reconciliation, upon Substantial Completion.)*

**§ 11.1.9** If final completion of the Work is materially delayed through no fault of the Construction Manager, the Owner shall pay the Construction Manager any additional amounts in accordance with Article 9 of AIA Document A201–2017.

**§ 11.1.10** Except with the Owner’s prior written approval, the Construction Manager shall not make advance payments to suppliers for materials or equipment which have not been delivered and suitably stored at the site.

**§ 11.1.11** The Owner and the Construction Manager shall agree upon a mutually acceptable procedure for review and approval of payments to Subcontractors, and the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements.

**§ 11.1.12** In taking action on the Construction Manager’s Applications for Payment the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager, and such action shall not be deemed to be a representation that (1) the Architect has made a detailed examination, audit, or arithmetic verification, of the documentation submitted in accordance with Section 11.1.4 or other supporting data; (2) that the Architect has made exhaustive or continuous on-site inspections; or (3) that the Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits, and verifications, if required by the Owner, will be performed by the Owner’s auditors acting in the sole interest of the Owner.

**§ 11.2 Final Payment**

**§ 11.2.1** Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Construction Manager when

- .1 the Construction Manager has fully performed the Contract, except for the Construction Manager’s responsibility to correct Work as provided in Article 12 of AIA Document A201–2017, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- .3 a final Certificate for Payment has been issued by the Architect in accordance with Section 11.2.2.2.

§ 11.2.2 Within 30 days of the Owner’s receipt of the Construction Manager’s final accounting for the Cost of the Work, the Owner shall conduct an audit of the Cost of the Work or notify the Architect that it will not conduct an audit.

§ 11.2.2.1 If the Owner conducts an audit of the Cost of the Work, the Owner shall, within 10 days after completion of the audit, submit a written report based upon the auditors’ findings to the Architect.

§ 11.2.2.2 Within seven days after receipt of the written report described in Section 11.2.2.1, or receipt of notice that the Owner will not conduct an audit, and provided that the other conditions of Section 11.2.1 have been met, the Architect will either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect’s reasons for withholding a certificate as provided in Article 9 of AIA Document A201–2017. The time periods stated in this Section 11.2.2 supersede those stated in Article 9 of AIA Document A201–2017. The Architect is not responsible for verifying the accuracy of the Construction Manager’s final accounting.

§ 11.2.2.3 If the Owner’s auditors’ report concludes that the Cost of the Work, as substantiated by the Construction Manager’s final accounting, is less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Article 15 of AIA Document A201–2017. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager’s receipt of a copy of the Architect’s final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner’s auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect’s final Certificate for Payment.

§ 11.2.3 The Owner’s final payment to the Construction Manager shall be made no later than 30 days after the issuance of the Architect’s final Certificate for Payment, or as follows:

§ 11.2.4 If, subsequent to final payment, and at the Owner’s request, the Construction Manager incurs costs, described in Sections 7.1 through 7.7, and not excluded by Section 7.9, to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager for such costs, and the Construction Manager’s Fee applicable thereto, on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If adjustments to the Contract Sum are provided for in Section 6.1.7, the amount of those adjustments shall be recalculated, taking into account any reimbursements made pursuant to this Section 11.2.4 in determining the net amount to be paid by the Owner to the Construction Manager.

§ 11.3 Interest

Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

*(Insert rate of interest agreed upon, if any.)*

1 % one percent

ARTICLE 12 DISPUTE RESOLUTION

§ 12.1 Initial Decision Maker

§ 12.1.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 12 and Article 15 of A201–2017. However, for Claims arising from or relating to the Construction Manager’s Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution, and Section 12.1.2 of this Agreement shall not apply.

§ 12.1.2 The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017 for Claims arising from or relating to the Construction Manager’s Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker.

*(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)*

**§ 12.2 Binding Dispute Resolution**

For any Claim subject to, but not resolved by mediation pursuant to Article 15 of AIA Document A201–2017, the method of binding dispute resolution shall be as follows:

*(Check the appropriate box.)*

- Mediation pursuant to Article 15 of AIA Document A201–2017
- Litigation in a court of competent jurisdiction
- Other: *(Specify)*

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

**ARTICLE 13 TERMINATION OR SUSPENSION**

**§ 13.1 Termination Prior to Execution of the Guaranteed Maximum Price Amendment**

**§ 13.1.1** If the Owner and the Construction Manager do not reach an agreement on the Guaranteed Maximum Price, the Owner may terminate this Agreement upon not less than seven days’ written notice to the Construction Manager, and the Construction Manager may terminate this Agreement, upon not less than seven days’ written notice to the Owner.

**§ 13.1.2** In the event of termination of this Agreement pursuant to Section 13.1.1, the Construction Manager shall be compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination, in accordance with the terms of this Agreement. In no event shall the Construction Manager’s compensation under this Section exceed the compensation set forth in Section 5.1.

**§ 13.1.3** Prior to the execution of the Guaranteed Maximum Price Amendment, 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, and the Construction Manager may terminate this Agreement, upon not less than seven days’ written notice to the Owner, for the reasons set forth in Article 14 of A201–2017.

**§ 13.1.4** In the event of termination of this Agreement pursuant to Section 13.1.3, the Construction Manager shall be equitably compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination. In no event shall the Construction Manager’s compensation under this Section exceed the compensation set forth in Section 5.1.

**§ 13.1.5** If the Owner terminates the Contract pursuant to Section 13.1.3 after the commencement of the Construction Phase but prior to the execution of the Guaranteed Maximum Price Amendment, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 13.1.4:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager’s Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager’s Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
- .3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services.

**§ 13.1.6** The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.1.5.1. To the extent that the Owner elects to take legal

assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

§ 13.1.6.1 If the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described above, the Owner will reimburse or indemnify the Construction Manager for all costs arising under the subcontract, purchase order or rental agreement, if those costs would have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner chooses not to accept assignment of any subcontract, purchase order or rental agreement that would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager will terminate the subcontract, purchase order or rental agreement and the Owner will pay the Construction Manager the costs necessarily incurred by the Construction Manager because of such termination.

## § 13.2 Termination or Suspension Following Execution of the Guaranteed Maximum Price Amendment

### § 13.2.1 Termination

The Contract may be terminated by the Owner or the Construction Manager as provided in Article 14 of AIA Document A201–2017.

### § 13.2.2 Termination by the Owner for Cause

§ 13.2.2.1 If the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A201–2017, the amount, if any, to be paid to the Construction Manager under Article 14 of AIA Document A201–2017 shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed an amount calculated as follows:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager's Fee, computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract the costs and damages incurred, or to be incurred, by the Owner under Article 14 of AIA Document A201–2017.

§ 13.2.2.2 The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.2.2.1.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders.

### § 13.2.3 Termination by the Owner for Convenience

If the Owner terminates the Contract for convenience in accordance with Article 14 of AIA Document A201–2017, then the Owner shall pay the Construction Manager a termination fee as follows:

*(Insert the amount of or method for determining the fee, if any, payable to the Construction Manager following a termination for the Owner's convenience.)*

## § 13.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017; in such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Article 14 of AIA Document A201–2017, except that the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 6.1 and 6.3.5 of this Agreement.

**ARTICLE 14 MISCELLANEOUS PROVISIONS**

§ 14.1 Terms in this Agreement shall have the same meaning as those in A201–2017. Where reference is made in this Agreement to a provision of AIA Document A201–2017 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

**§ 14.2 Successors and Assigns**

§ 14.2.1 The Owner and Construction Manager, 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 14.2.2 of this Agreement, and in Section 13.2.2 of A201–2017, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 14.2.2 The Owner may, without consent of the Construction Manager, 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 Construction Manager shall execute all consents reasonably required to facilitate the assignment.

**§ 14.3 Insurance and Bonds**

**§ 14.3.1 Preconstruction Phase**

The Construction Manager shall maintain the following insurance for the duration of the Preconstruction Services performed under 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.

§ 14.3.1.1 Commercial General Liability with policy limits of not less than Two Million Dollars ( \$ 2,000,000 ) for each occurrence and Five Million Dollars ( \$ 5,000,000 ) in the aggregate for bodily injury and property damage.

§ 14.3.1.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Construction Manager with policy limits of not less than One Million Dollars ( \$ 1,000,000 ) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

§ 14.3.1.3 The Construction Manager may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided that such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 14.3.1.1 and 14.3.1.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 14.3.1.4 Workers’ Compensation at statutory limits and Employers Liability with policy limits not less than Five Hundred Thousand ( \$ 500,000 ) each accident, Five Hundred Thousand ( \$ 500,000 ) each employee, and Five Hundred Thousand ( \$ 500,000 ) policy limit.

§ 14.3.1.5 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than Not Required ( \$ 0 ) per claim and Not Required ( \$ 0 ) in the aggregate.

**§ 14.3.1.6 Other Insurance**

*(List below any other insurance coverage to be provided by the Construction Manager and any applicable limits.)*

**Coverage**

**Limits**

§ 14.3.1.7 **Additional Insured Obligations.** To the fullest extent permitted by law, the Construction Manager shall cause the primary and excess or umbrella policies for Commercial General Liability and Automobile Liability to include the Owner as an additional insured for claims caused in whole or in part by the Construction Manager’s negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner’s insurance policies and shall apply to both ongoing and completed operations.

§ 14.3.1.8 The Construction Manager shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 14.3.1.

§ 14.3.2 Construction Phase

After execution of the Guaranteed Maximum Price Amendment, the Owner and the Construction Manager shall purchase and maintain insurance as set forth in AIA Document A133™–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, Exhibit B, Insurance and Bonds, and elsewhere in the Contract Documents.

§ 14.3.2.1 The Construction Manager shall provide bonds as set forth in AIA Document A133™–2019 Exhibit B, and elsewhere in the Contract Documents.

§ 14.4 Notice in electronic format, pursuant to Article 1 of AIA Document A201–2017, may be given in accordance with AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:

*(If other than in accordance with AIA Document E203–2013, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)*

§ 14.5 Other provisions:

ARTICLE 15 SCOPE OF THE AGREEMENT

§ 15.1 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.

§ 15.2 The following documents comprise the Agreement:

- .1 AIA Document A133™–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price
- .2 AIA Document A133™–2019, Exhibit A, Guaranteed Maximum Price Amendment, if executed
- .3 AIA Document A133™–2019, Exhibit B, Insurance and Bonds
- .4 AIA Document A201™–2017, General Conditions of the Contract for Construction
- .5 N/A Croft’s deliverable is not BIM but is construction documents in PDF Format.  
*(Insert the date of the E203-2013 incorporated into this Agreement.)*

.6 Other Exhibits:  
*(Check all boxes that apply.)*

AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, dated as indicated below:  
*(Insert the date of the E234-2019 incorporated into this Agreement.)*

.7 RFP Exhibit B Proposal Fee Schedule and Itemized Fee Breakdown

Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
----------	-------	------	-------



.8 Other documents, if any, listed below:  
*(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201–2017 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Construction Manager’s bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)*

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

\_\_\_\_\_  
**OWNER (Signature)**

Matthew J. Santini  
Manager  
\_\_\_\_\_  
*(Printed name and title)*

\_\_\_\_\_  
**CONSTRUCTION MANAGER (Signature)**

Chad McLeod  
President  
\_\_\_\_\_  
*(Printed name and title)*

\_\_\_\_\_  
**OWNER (Signature)**

**Julia Drake City Clerk**  
**(Printed Name and title)**

Init.

# Additions and Deletions Report for AIA® Document A133® – 2019

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 16:54:08 ET on 07/31/2023.

## PAGE 1

City of Cartersville  
PO Box 1390  
1 N. Erwin Street  
Cartersville, GA 30120

...

Reeves Young, LLC  
45 Peachtree Industrial Blvd  
Sugar Hill, GA 30518

...

City of Cartersville – Fire Station No. 5  
51 Carter Grove Blvd  
Cartersville, GA 30120

...

CROFT & Associates, Inc.  
3380 Blue Springs Road  
Kennesaw, GA 30144

## PAGE 2

Reference RFP City of Cartersville Fire Station No. 5 dated June 16, 2023

...

9,000 SF Fire Station and Associated Site and Utility Development

...

\$8,000,000

## PAGE 3

GMP to be submitted by no later than December 2023

...

No later than January 2024

...

No later than January 2025

...

TBD at GMP

...

N/A

...

N/A

...

Freddy L. Morgan  
Assistant City Manager  
City of Cartersville  
PO Box 1390  
1 N. Erwin Street  
Cartersville, GA 30120  
770-387-5672  
fmorgan@cityofcartersville.org  
**PAGE 4**

CROFT & Associates, Inc.  
3380 Blue Springs Road  
Kennesaw, GA 30144

...

TBD

...

TBD

...

CROFT & Associates, Inc.  
3380 Blue Springs Road  
Kennesaw, GA 30144

...

Mike Iezzi  
45 Peachtree Industrial Blvd  
Sugar Hill, GA 30518  
404-391-5482  
miezzi@reevesyoung.com  
**PAGE 9**

**§ 3.3.2.6 As-Built Documentation**

Construction Manager will provide Owner with Project Record as-builts upon completion.

PAGE 10

Nine Thousand Five Hundred \$9,500.00

PAGE 11

Preconstruction Manager  
Estimator

\$105/ Hour  
\$80/ Hour

...

§ 5.2.2 Payments are due and payable upon presentation of the Construction Manager’s invoice. Amounts unpaid thirty ( 30 ) 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.

...

1 % one percent

...

3.5%

...

10% for Changes in the Work above and beyond the GMP

...

15% Overhead and 5% Profit

§ 6.1.5 Rental rates for Construction Manager-owned equipment shall not exceed N/A percent ( 0 %) of the standard rental rate paid at the place of the Project.

...

N/A

PAGE 12

*(Insert (nser) provisions for bonus, cost savings or other incentives, if any, that might result in a change to the Contract Sum.)*

50/50 Shared Savings between Reeves Young and the City of Cartersville

PAGE 16

§ 11.1.3 Provided that an Application for Payment is received by the Architect not later than the 25th day of a month, the Owner shall make payment of the amount certified to the Construction Manager not later than the 30th day of the succeeding month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than thirty ( 30 ) days after the Architect receives the Application for Payment.

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5% of the Value of the payment requested, not to exceed 5% of the GMP.

...

Material Deposits, General Conditions, Insurance and Bond Costs

...

Reduced to 2.5% of GMP at 50% Completion; Construction Manager can request early retainage release for special circumstances such as Site Work and Concrete. Trade packages that may finish before 50% is reached.  
**PAGE 19**

1 % one percent  
**PAGE 20**

~~Arbitration~~  Mediation pursuant to Article 15 of AIA Document A201–2017  
**PAGE 22**

§ 14.3.1.1 Commercial General Liability with policy limits of not less than Two Million Dollars (\$ 2,000,000 ) for each occurrence and Five Million Dollars (\$ 5,000,000 ) in the aggregate for bodily injury and property damage.

§ 14.3.1.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Construction Manager with policy limits of not less than One Million Dollars (\$ 1,000,000 ) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

...

§ 14.3.1.4 Workers' Compensation at statutory limits and Employers Liability with policy limits not less than Five Hundred Thousand (\$ 500,000 ) each accident, Five Hundred Thousand (\$ 500,000 ) each employee, and Five Hundred Thousand (\$ 500,000 ) policy limit.

§ 14.3.1.5 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than Not Required (\$ 0 ) per claim and Not Required (\$ 0 ) in the aggregate.  
**PAGE 23**

.5 AIA Document E203™ 2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below: N/A Croft's deliverable is not BIM but is construction documents in PDF Format.

...

*(Insert the date of the E234-2019 incorporated into this Agreement.)*

.7 RFP Exhibit B Proposal Fee Schedule and Itemized Fee Breakdown  
**PAGE 24**

~~.7~~ .8 Other documents, if any, listed below:

...

Matthew J. Santini  
Manager

Chad McLeod  
President

...

**OWNER (Signature)**  
**Julia Drake City Clerk**  
**(Printed Name and title)**

## **Certification of Document's Authenticity**

**AIA® Document D401™ – 2003**

I, \_\_\_\_\_, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 16:54:08 ET on 07/31/2023 under Order No. 2114398840 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A133™ – 2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, other than those additions and deletions shown in the associated Additions and Deletions Report.

\_\_\_\_\_  
(Signed)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Dated)

# AIA® Document A201® – 2017

## General Conditions of the Contract for Construction

**for the following PROJECT:**

*(Name and location or address)*

City of Cartersville – Fire Station No. 5  
51 Carter Grove Blvd  
Cartersville, GA 30120

**THE OWNER:**

*(Name, legal status and address)*

City of Cartersville  
PO Box 1390  
1 N. Erwin Street  
Cartersville, GA 30120

**THE ARCHITECT:**

*(Name, legal status and address)*

CROFT & Associates, Inc.  
3380 Blue Springs Road  
Kennesaw, GA 30144

**TABLE OF ARTICLES**

- 1 GENERAL PROVISIONS
- 2 OWNER
- 3 CONTRACTOR
- 4 ARCHITECT
- 5 SUBCONTRACTORS
- 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS
- 7 CHANGES IN THE WORK
- 8 TIME
- 9 PAYMENTS AND COMPLETION
- 10 PROTECTION OF PERSONS AND PROPERTY
- 11 INSURANCE AND BONDS
- 12 UNCOVERING AND CORRECTION OF WORK

**ADDITIONS AND DELETIONS:**

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

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

For guidance in modifying this document to include supplementary conditions, see AIA Document A503™, Guide for Supplementary Conditions.

Init.

User Notes:

- 13 MISCELLANEOUS PROVISIONS
- 14 TERMINATION OR SUSPENSION OF THE CONTRACT
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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 or proposal 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 a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants, or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's 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 the Owner and by Separate Contractors.

**§ 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. The Initial Decision Maker shall not show partiality to the Owner or Contractor and shall not be liable for results of interpretations or decisions rendered in good faith.

**§ 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.



§ 1.2.1.1 The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

§ 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, the Architect's consultants, and Owner shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and 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 the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, 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 suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner, Architect, and the Architect's consultants.

### § 1.6 Notice

§ 1.6.1 Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement.

§ 1.6.2 Notice of Claims as provided in Section 15.1.3 shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

### § 1.7 Digital Data Use and Transmission

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

### § 1.8 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document

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G202™–2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

## 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 Section 4.2.1, the Architect does 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 Evidence of the Owner's Financial Arrangements

§ 2.2.1 Prior to commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 2.2.1, the Contract Time shall be extended appropriately.

§ 2.2.2 Following commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract only if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due; or (3) a change in the Work materially changes the Contract Sum. If the Owner fails to provide such evidence, as required, within fourteen days of the Contractor's request, the Contractor may immediately stop the Work and, in that event, shall notify the Owner that the Work has stopped. However, if the request is made because a change in the Work materially changes the Contract Sum under (3) above, the Contractor may immediately stop only that portion of the Work affected by the change until reasonable evidence is provided. If the Work is stopped under this Section 2.2.2, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided in the Contract Documents.

§ 2.2.3 After the Owner furnishes evidence of financial arrangements under this Section 2.2, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

§ 2.2.4 Where the Owner has designated information furnished under this Section 2.2 as "confidential," the Contractor shall keep the information confidential and shall not disclose it to any other person. However, the Contractor may disclose "confidential" information, after seven (7) days' notice to the Owner, where disclosure is required by law, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or by court or arbitrator(s) order. The Contractor may also disclose "confidential" information to its employees, consultants, sureties, Subcontractors and their employees, Sub-subcontractors, and others who need to know the content of such information solely and exclusively for the Project and who agree to maintain the confidentiality of such information.

### § 2.3 Information and Services Required of the Owner

§ 2.3.1 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.

§ 2.3.2 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.

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§ 2.3.3 If the employment of the Architect terminates, the Owner shall employ a successor to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

§ 2.3.4 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.

§ 2.3.5 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.

§ 2.3.6 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.

#### § 2.4 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.

#### § 2.5 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 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 default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

### 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 Contractor shall perform the Work in accordance with the Contract Documents.

§ 3.1.3 The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's 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 2.3.4, 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 Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the 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 Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the 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 submit 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, subject to Section 15.1.7, 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. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be 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 notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative 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 or entities 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 Work 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 approved by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with Section 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect 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

§ 3.5.1 The Contractor warrants to the Owner 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 to 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 Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.5.2 All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4.

### § 3.6 Taxes

The Contractor shall pay sales, consumer, use and similar taxes for the Work 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 Contractor shall secure and pay for the building permit as well as 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 and the Architect before conditions are disturbed and in no event later than 14 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect 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 that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect 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 and Contractor, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may submit a Claim 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 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 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 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.

**§ 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 notify the Owner and Architect of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Architect may notify the Contractor, stating whether the Owner or the Architect (1) has reasonable objection to the proposed superintendent or (2) requires additional time for review. Failure of the Architect to provide notice 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 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 and Submittal Schedules**

**§ 3.10.1** The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project.

**§ 3.10.2** The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule for the Architect's approval. The Architect's approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, or fails to provide submittals in accordance with the approved 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 perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.

**§ 3.11 Documents and Samples at the Site**

The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Architect and Owner, and

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delivered to the Architect 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 how 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 is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is 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 Architect without action.

**§ 3.12.5** The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Architect, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of Separate Contractors.

**§ 3.12.6** By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner 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 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 the requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Architect 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 Architect on previous submittals. In the absence of such 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.

**§ 3.12.10.1** 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

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specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately 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 and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review and 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.

§ 3.12.10.2 If the Contract Documents require the Contractor's design professional to certify that the Work has been performed in accordance with the design criteria, the Contractor shall furnish such certifications to the Architect at the time and in the form specified by the Architect.

### § 3.13 Use of Site

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

### § 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, or patching shall be restored to the condition existing prior to the cutting, fitting, or 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 or Separate Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter construction by the Owner or a Separate Contractor except with written consent of the Owner and of the Separate Contractor. Consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold, from the Owner or a Separate Contractor, its 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 and 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 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 and Architect with 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 and Architect harmless from loss on account thereof, but shall not be responsible for 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 or Architect. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Architect.



**§ 3.18 Indemnification**

**§ 3.18.1** To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, 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 3.18.1 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****§ 4.1 General**

**§ 4.1.1** The Architect is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement.

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

**§ 4.2 Administration of the Contract**

**§ 4.2.1** The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate for Payment. The 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. The Architect will not have control over, charge of, or responsibility for the 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.

**§ 4.2.3** 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 promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

**§ 4.2.4 Communications**

The Owner and Contractor shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

§ 4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 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 while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals 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 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 Architect's review shall not constitute approval of safety precautions or 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.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may order minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 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 Owner shall notify the Contractor of any change in the duties, responsibilities and limitations of authority of the Project representatives.

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

§ 4.2.12 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 rendered in good faith.

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

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests 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 a Separate Contractor or the subcontractors of a Separate Contractor.

**§ 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, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Architect may notify the Contractor whether the Owner or the Architect (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Architect to provide notice 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 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 or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner 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 for one previously selected if the Owner or Architect makes reasonable objection to such substitution.

**§ 5.3 Subcontractual Relations**

By appropriate written agreement, 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 the responsibility for safety of the Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner 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; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

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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 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 SEPARATE CONTRACTORS

### § 6.1 Owner's Right to Perform Construction and to Award Separate Contracts

§ 6.1.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each Separate Contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with any Separate Contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to its construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or with Separate Contractors, the Owner or its Separate Contractors shall have the same obligations and rights that the Contractor has 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 and Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs 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 or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Architect of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Architect of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not apparent.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a Separate Contractor 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 a Separate Contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage that the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or Separate Contractor as provided in Section 10.2.5.

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§ 6.2.5 The Owner and each Separate Contractor 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, Separate 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 Architect will allocate the cost among those responsible.

## 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, Contractor, and Architect. A Construction Change Directive requires agreement by the Owner 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. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work.

### § 7.2 Change Orders

§ 7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor, and Architect 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 Architect and signed by the Owner 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 7.3.4.

§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the adjustment on the basis of reasonable 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 Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

- .1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Architect;
- .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, directly related to the change; and
- .5 Costs of supervision and field office personnel directly attributable to the change.

§ 7.3.5 If the Contractor disagrees with the adjustment in the Contract Time, the Contractor may make a Claim in accordance with applicable provisions of Article 15.

§ 7.3.6 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the 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.

§ 7.3.7 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.

§ 7.3.8 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 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 Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's 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 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 Architect will 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 may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Architect and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Architect that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

### 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.

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§ 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, commence the Work prior to the effective date of insurance required to be furnished by the Contractor and Owner.

§ 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 (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that the Contractor asserts, and the Architect determines, justify delay, then the Contract Time shall be extended 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

§ 9.1.1 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.

§ 9.1.2 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

### § 9.2 Schedule of Values

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Architect before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

### § 9.3 Applications for Payment

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect 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. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and 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 Architect, but not yet included in Change Orders.

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§ 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 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 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, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work.

#### § 9.4 Certificates for Payment

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Contractor and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data in the Application for Payment, that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. 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 Architect. However, the issuance of a Certificate for Payment will not be a representation that the Architect 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, or procedures; (3) reviewed copies of requisitions received from Subcontractors and 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 Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from 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 suppliers for labor, materials or equipment;

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- .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 either party disputes the Architect's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, that party may submit a Claim in accordance with Article 15.

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

§ 9.5.4 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier 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 Contractor shall reflect such payment on its next Application for Payment.

#### § 9.6 Progress Payments

§ 9.6.1 After the Architect has issued a 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 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 Architect 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 Architect and Owner 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 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 and suppliers to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.

§ 9.6.5 The Contractor's payments to 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 or provided by 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, create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.6.8 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

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**§ 9.7 Failure of Payment**

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after 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 Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' notice to the Owner 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 shutdown, 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 that 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 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 Contractor's list, the Architect 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 Contractor's list, which is not sufficiently complete in accordance with 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 to determine Substantial Completion.

**§ 9.8.4** When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and 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 the Certificate. Upon such acceptance, and consent of surety if any, the Owner shall make payment of retainage applying to the 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 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 shall 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.

**§ 9.9.2** Immediately prior to such partial occupancy or use, the Owner, 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 receipt of the Contractor’s notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect’s knowledge, information and belief, and on the basis of the Architect’s on-site visits and inspections, the Work has been completed in accordance with 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 Architect’s final 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 (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, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) documentation of any special warranties, such as manufacturers’ warranties or specific Subcontractor warranties, and (6) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and 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, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance 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 the lien, claim, security interest, or encumbrance, 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 Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, 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 the 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 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;
- .3 terms of special warranties required by the Contract Documents; or
- .4 audits performed by the Owner, if permitted by the Contract Documents, after final payment.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor, or a 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.

§ 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

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- .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, a Subcontractor, or a Sub-subcontractor; and
- .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.

§ 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 implement, 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 the owners and users of adjacent sites and utilities of the safeguards.

§ 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 and 10.2.1.3 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 and 10.2.1.3. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either 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 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, notice of the 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 and Substances

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. 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 notify the Owner and Architect of the condition.

§ 10.3.2 Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the 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 and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect will

promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall 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 by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, 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 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 tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is 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 hazardous 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 hazardous 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 reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances 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 reimburse 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 Insurance and Bonds

§ 11.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner, Architect, and Architect's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.

§ 11.1.2 The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.

§ 11.1.3 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.

§ 11.1.4 **Notice of Cancellation or Expiration of Contractor's Required Insurance.** Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act

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or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

## § 11.2 Owner's Insurance

§ 11.2.1 The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located.

§ 11.2.2 **Failure to Purchase Required Property Insurance.** If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform the Contractor in writing prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.

§ 11.2.3 **Notice of Cancellation or Expiration of Owner's Required Property Insurance.** Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.

## § 11.3 Waivers of Subrogation

§ 11.3.1 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; (2) the Architect and Architect's consultants; and (3) Separate Contractors, 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 those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

§ 11.3.2 If during the Project construction period the Owner insures properties, real or personal or both, at 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, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance.

## § 11.4 Loss of Use, Business Interruption, and Delay in Completion Insurance

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The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, due to fire or other causes of loss. The Owner waives all rights of action against the Contractor and Architect for loss of use of the Owner's property, due to fire or other hazards however caused.

#### **§11.5 Adjustment and Settlement of Insured Loss**

**§ 11.5.1** A loss insured under the property insurance required by the Agreement 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 11.5.2. The Owner shall pay the Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements the Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.

**§ 11.5.2** Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.

### **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 Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination 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 that the Architect has not specifically requested to examine prior to its being covered, the 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, the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

#### **§ 12.2 Correction of Work**

##### **§ 12.2.1 Before Substantial Completion**

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, discovered before 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 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 any 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 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 2.5.

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§ 12.2.2.2 The one-year period for correction of Work 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 of the Owner or Separate Contractors, whether completed or partially completed, 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, excluding that jurisdiction's choice of law rules. 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 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 the assignment.

### § 13.3 Rights and Remedies

§ 13.3.1 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.

§ 13.3.2 No action or failure to act by the Owner, 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 upon in writing.

### § 13.4 Tests and Inspections

§ 13.4.1 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

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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 Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

§ 13.4.2 If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the 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 Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner’s expense.

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 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 Architect’s services and expenses, shall be at the Contractor’s expense.

§ 13.4.4 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 Architect.

§ 13.4.5 If the Architect is to observe tests, inspections, or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.4.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 13.5 Interest

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate the parties 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.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 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, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, 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 Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, 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 reasonable evidence as required by Section 2.2.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, 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’ notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead and profit on Work not executed, and costs incurred by reason of such termination.

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§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work 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' notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

#### § 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;
- .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 reasons described in Section 14.2.1 exist, and upon certification by the Architect that sufficient cause exists to justify such action, the Owner 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' 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 Architect's services and expenses made necessary thereby, and other damages 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 be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

#### § 14.3 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 Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under 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 the Contract.

#### § 14.4 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 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.

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§ 14.4.3 In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement.

## 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, payment of money, a change in the Contract 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. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

#### § 15.1.2 Time Limits on Claims

The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and 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 Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.

#### § 15.1.3 Notice of Claims

§ 15.1.3.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party under this Section 15.1.3.1 shall 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.

§ 15.1.3.2 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party. In such event, no decision by the Initial Decision Maker is required.

#### § 15.1.4 Continuing Contract Performance

§ 15.1.4.1 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.

§ 15.1.4.2 The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The Architect will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.

#### § 15.1.5 Claims for Additional Cost

If the Contractor wishes to make a Claim for an increase in the Contract Sum, notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

#### § 15.1.6 Claims for Additional Time

§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 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.

§ 15.1.6.2 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.

### § 15.1.7 Waiver of 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 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

### § 15.2 Initial Decision

§ 15.2.1 Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, 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. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a 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 the 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, if the Architect 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.

§ 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 receipt of an initial decision, demand in writing that the other party file for mediation. If such a demand is made and the party receiving the demand fails to file for mediation within 30 days after receipt thereof, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

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§ 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 15.1.7, 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 Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, demand in writing that the other party file for binding dispute resolution. If such a demand is made and the party receiving the demand fails to file for binding dispute resolution within 60 days after receipt thereof, then both parties waive their rights to binding dispute resolution proceedings with respect to the initial decision.

§ 15.3.4 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.

(Paragraphs deleted)

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§ 1.5.1 ~~The Architect and Architect, the Architect’s consultants-consultants, and Owner~~ shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and 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 the Project is not to be construed as publication in derogation of the Architect’s or Architect’s consultants’ reserved rights.

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§ 3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, ~~Architect, 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.

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### § 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. The Arbitration shall be conducted in the place where the Project is located, unless another location is mutually agreed upon. 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** Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party 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** Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party 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 those of the Owner and Contractor under this Agreement.

# Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, \_\_\_\_\_, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 08:09:49 ET on 07/28/2023 under Order No. 2114398840 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A201™ – 2017, General Conditions of the Contract for Construction, other than those additions and deletions shown in the associated Additions and Deletions Report.

\_\_\_\_\_  
(Signed)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Dated)





## CITY COUNCIL ITEM SUMMARY

<b>MEETING DATE:</b>	August 3, 2023
<b>SUBCATEGORY:</b>	Resolutions
<b>DEPARTMENT NAME:</b>	Administration
<b>AGENDA ITEM TITLE:</b>	Pension Plan Resolution and Amendments
<b>DEPARTMENT SUMMARY RECOMMENDATION:</b>	This resolution and subsequent amendments are addressed in the restatement of the 1967 Pension plan and 2017 Pension plan. The intent is to capture all previously intended amendments for both plans. Our pension attorney has provided the language to address each amendment and the Pension Board has approved of each.
<b>LEGAL:</b>	Reviewed by Archer & Lovell

Resolution No. \_\_\_\_

WHEREAS, the City of Cartersville (the “Employer”) maintains The City of Cartersville Pension Plan (the “Pension Plan”) and The City of Cartersville 2017 Pension Plan (the “2017 Plan”) for the benefit of such of its employees as are eligible thereunder; and

WHEREAS, in accordance with the power reserved to it in Section 12.1 of each of the Pension Plan and the 2017 Plan, the Employer may amend the Pension Plan and the 2017 Plan at any time, subject to certain conditions not now relevant; and

WHEREAS, the Employer desires to amend and restate the Pension Plan and the 2017 Plan for applicable amendments and law changes; and

NOW, THEREFORE, it is RESOLVED, that the Pension Plan shall be, and hereby is, amended and restated in accordance with The City of Cartersville Pension Plan, Amended and Restated as of July 1, 2023, attached hereto; and it is further

RESOLVED, , that the 2017 Plan shall be, and hereby is, amended and restated in accordance with The City of Cartersville 2017 Pension Plan, Amended and Restated as of July 1, 2023, attached hereto; and it is further

RESOLVED, that the proper officers of the Employer and the Pension Board are hereby authorized and directed to take all actions and to execute and deliver all agreements, instruments, indentures and other documents, as they shall deem necessary to carry out the intent of the foregoing resolutions.

ADOPTED this the \_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
Matthew J. Santini  
Mayor

Attest:

\_\_\_\_\_  
Julia Drake  
City Clerk

**THE CITY OF CARTERSVILLE PENSION PLAN**

**Effective January 1, 1967  
Amended and Restated as of July 1, 2023**

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# ARTICLE 1

## General

Section 1.1	Introduction
Section 1.2	Definitions
Section 1.3	Construction

1.1 Introduction: The City of Cartersville, Georgia, a municipal corporation, adopted an ordinance to provide a pension and retirement system for eligible Employees of the City and related governmental entities effective January 1, 1967, which has been amended from time to time. This restatement of the City of Cartersville Pension Plan is effective July 1, 2023.

All rights and benefits of an Employee whose Termination of Employment, as herein defined, occurred prior to July 1, 2023, shall be determined solely by the provisions in effect at the time of that Termination of Employment unless otherwise specifically provided herein.

1.2 Definitions: Where following words and phrases appear in this document, they shall have the meanings stated below:

(a) Accrued Benefit: Accrued Benefit means, on any date of determination, the Normal Retirement Benefit computed under Section 6.1 on the basis of the Participant’s Average Monthly Compensation and the number of years of Benefit Accrual Service as of that date.

The Accrued Benefit is expressed as a monthly benefit payable at Normal Retirement Date.

(b) Actuarial Equivalent: The equivalent value as determined on the basis of an interest rate of seven percent (7%) per annum compounded annually, and a mortality table for Participants constructed by using 1983 Group Annuity Mortality Table. For purposes of determining the present value of an Accrued Benefit or any distribution from the Plan on and after October 1, 2017, Actuarial Equivalent shall mean the actuarially equivalent value as determined on the basis of a discount rate of seven percent (7%) per annum compounded annually and the unisex mortality table promulgated by the Secretary of the Treasury for purposes of determining lump sum distributions as of the annuity starting date pursuant to Section 417(e)(3) of the Internal Revenue Code.

(c) Age: The actual attained age of a Participant as of any applicable date.

(d) Average Monthly Compensation: The average monthly Compensation received by a Participant during the last 36 consecutive months or highest 3 years out of the last 10 years prior to his Termination of Employment affording the highest such average. In the event a Participant is on a Leave of Absence (except for military leave), that period will not be included in the averaging period.

- (e) Beneficiary: A individual or legal entity designated to receive payments or any death benefit arising under this Plan upon the death of a Participant or Beneficiary as provided in Article VIII.
- (f) Benefit Accrual Service: As defined in Article V.
- (g) Compensation: For calendar years starting on or after January 1, 2006, "Compensation" shall mean the base compensation paid to a Participant by the Employer, as reflected in the Employer's payroll records, and Earnings shall also include compensation deferred pursuant to Code Sections 401(k), 403(b) or 457, compensation redirected pursuant to Code Section 125 or 132(f)(4), and contributions picked-up under Code Section 414(h). Total Compensation will not exceed base compensation that would have been paid to the Participant by the Employer if there had been none of the above deductions (401(k), 403(b), Code Sections 124, 132(f)(4), or 414(h)).

Notwithstanding anything in this Section to the contrary, a Participant's Compensation for any Plan Year will not exceed the limitation set forth in Code Section 401(a)(17) in effect for that Plan Year. For Plan Years beginning on or after January 1, 1994 and before January 1, 2002, the Compensation of each Participant taken into account under the Plan shall not exceed \$150,000, as adjusted for cost of living increases under Code Section 401(a)(17)(B). For Plan Years beginning on or after January 1, 2002, the Compensation of each Participant taken into account under the Plan shall not exceed \$200,000, as adjusted for cost of living increases under Code Section 401(a)(17)(B). If a Plan Year consists of fewer than 12 months, the Code Section 401(a)(17) limitation will be multiplied by a fraction, the numerator of which is the number of months in that Plan Year, and the denominator of which is 12. The cost of living adjustment in effect for a calendar year applies to determine Compensation for the Plan Year that begins with or within the calendar year

- (h) Disability Retirement: A physical or mental condition which totally and presumably permanently prevents a Participant from engaging in any substantially gainful employment and which entitles the Participant to receipt of a Social Security Disability Insurance Benefit under the Social Security Act; provided, however, if a Participant is not covered by Social Security, either through the Employer or through any other employer, the Pension Board shall determine the Participant's Disability in accordance with the provisions of the following:
  - (1) Whenever such a Participant not covered by Social Security files an application for a Disability Retirement Pension with the Pension Board, the Participant shall submit therewith a signed certificate from a licensed practicing physician of Georgia certifying to the Disability of such Participant. Promptly thereafter the Pension Board shall order the Participant to be examined by a physician to be named by the Board who likewise shall certify the physical ability or disability of the Participant. The Pension Board shall pay for the fees and expenses of such physician. In the event the certificates of the respective physicians generally agree upon Disability, such facts shall be conclusive as to the physical condition of the

Participant and the Pension Board shall grant a Disability Retirement Pension in accordance with Section 4.4 of the Plan. In the event the certificates of the aforesaid physicians disagree as to whether the Participant is disabled, then under these circumstances that question shall be submitted to a third physician selected by the Pension Board. The medical opinion of the third physician, after examination of the Participant and consultation with the other two physicians, shall decide such question. The Participant and the Pension Board shall share the fees and expenses of the third physician equally.

- (2) Notwithstanding any other provision of this Section, no Participant shall qualify for a Disability Retirement Pension if the Pension Board determines that the Participant's Disability results from (i) self-addiction to alcohol or narcotics, (ii) an injury suffered while engaged in a felonious or criminal act or enterprise or (iii) service in the Armed Forces of the United States which entitles the Participant to a veteran's disability pension; but this provision shall not prevent the Participant from qualifying for a Pension under another provision of the plan.
  - (3) The Pension Board may adopt such rules as it deems necessary to administer the provisions of this Section and such rules shall be applied uniformly and consistently to all Participants in similar circumstances.
- (i) Early Retirement Date: The first day of any month on or following the earlier of a Participants' fifty-fifth (55) birthday and after ten (10) years of Vesting Service or 10 years prior to their first Eligibility for an Unreduced Retirement Benefit but not prior to age 50.
  - (j) Effective Date: The original Effective Date of this plan which is January 1, 1967. This restatement of the Plan is effective as of July 1, 2023.
  - (k) Employee: Any person who is employed by the Employer on a regular full-time basis with an employment type "regular full time" in the city's payroll system or the equivalent classification in any successor payroll system.
  - (l) Employer: The City of Cartersville.
  - (m) Fund: The total of all deposits credited to the Plan increased by any amounts added or credited to the Fund and decreased by any amounts withdrawn from or charged against the Fund.
  - (n) Normal Retirement Benefit: The amount of monthly retirement benefit described in Article VI which a Participant is eligible to receive from this Plan if the Participant continues as an Employee until Normal Retirement Date.
  - (o) Normal Retirement Date: The first day of the month on or immediately following a Participant's sixth-fifth (65) birthday with ten (10) years of Vesting Service.



- (p) Participant: An Employee who meets the requirements of Article II with the exception that the City Manager may choose whether or not to be a Participant.
- (q) Plan: The City of Cartersville Pension Plan.
- (r) Plan Administrator: The Employer.
- (s) Plan Year: The twelve-consecutive-month period for maintaining records for this Plan beginning each July 1 and ending each June 30.
- (t) Retirement Board: As defined in Article X.
- (u) Termination of Employment: The retirement, resignation or other voluntary or involuntary cessation of an Employee's employment with the Employer.
- (v) Vesting Service: As defined in Article V.

1.3 Construction: Whenever herein used, the masculine gender shall include the feminine gender and, if applicable, the singular shall include the plural. The words "hereof", "herein", "hereunder" or any other compounding of the word "here" shall mean and refer to the entire Plan rather than to any particular provision or section of this Title, unless specifically delineated as such.

**ARTICLE II**

**Participation**

Section 2.1	Commencement of Participation
Section 2.2	Termination of Participation
Section 2.3	Reinstatement of Participation
Section 2.4	Leave of Absence
Section 2.5	No New Participants
Section 2.6	Rehired Employees

2.1 Commencement of Participation: Each Employee who is hired prior to January 1, 2017, shall become a Participant in the Plan on the first day of the month coinciding with or next following the date on which he shall have:

- (a) completed six (6) consecutive months of employment with the Employer; and
- (b) attained eighteen (18) years of age.

Prior to September 1, 2001 the following requirements applied. Each Employee became become a Participant in the Plan on the first day of the month coinciding with or next following the date on which he shall have:

- (a) completed one year of employment with the Employer; and
- (b) attained twenty one (21) years of age.

Employment is deemed to have begun on the first day of the month if the employee commenced working on or before the first non-holiday weekday of the month as indicated by the employment policy of the Employer.

2.2 Termination of Participation: A Participant shall cease to be a contributing Participant hereunder on the day of his Termination of Employment. A person's participation in the Plan shall end when he or she is no longer employed by the Employer if he or she is not entitled to either an immediate or deferred retirement benefit under the Plan.

2.3 Reinstatement of Participation: An Employee who ceases to be a contributing Participant according to Section 2.2 hereof and who subsequently returns to employment as an Employee shall be reinstated as a Participant and shall resume Participant contributions:

- (a) immediately following such return as an Employee if he left his Participant contributions in the Fund upon his Termination of Employment, or
- (b) immediately following such return as an Employee if he received his Participant contributions in the Fund upon his Termination of Employment. An Employee who received a lump sum upon termination has 12 months to return his lump sum with interest compounded at five percent (5%) or his Credited Service will not include the period of prior employment.

- 2.4 Leave of Absence: Except to the extent otherwise required by law, a Participant shall not be credited with service for Vesting Service or Benefit Accrual Service during any period of an authorized or unauthorized leave of absence without pay, or disciplinary suspension without pay. Notwithstanding the foregoing, in the case of a leave of absence due to service in the Armed Forces of the United States, the Employee must return to active employment with the Employer within the periods prescribed under the re-employment provisions of Title 38, Chapter 43, of the United States Code. Within five (5) years of the Employee's return to active employment from a leave of absence due to military service, the Employee may contribute the Participant contributions that were not made during his leave of absence in order to receive credit for Vesting Service and Benefit Accrual Service while on leave.
  
- 2.5 No New Participants: Notwithstanding any other provision of the Plan to the contrary, any Employee who is hired on or after January 1, 2017, shall not become a Participant in the Plan, and shall be eligible to participate in The City of Cartersville 2017 Pension Plan. Further, no Participant who resumes employment on or after January 1, 2017, shall resume participation in the Plan.
  
- 2.6 Rehired Employees: Notwithstanding any other provision of the Plan to the contrary, any former Employee who is rehired on or after January 1, 2017, shall not be eligible to reenter the Plan, and shall be eligible to participate in The City of Cartersville 2017 Pension Plan. For benefit accrual purposes in the Plan, a rehired Participant's benefit is frozen, and his or her Compensation is frozen as of his or her date of termination. However, vesting on and after the date of rehire will be applied in determining the rehired Participant's vested benefit and eligibility for distribution options under the Plan.

**ARTICLE III**

**Contributions**

- Section 3.1 Contributions by the Employer
- Section 3.2 Contributions by Participants
- Section 3.3 Return of Contributions
- Section 3.4 Direct Rollover of Certain Contributions

3.1 Contributions by the Employer: The Employer shall make contributions to the Fund in such amounts and at such times as shall be necessary to provide the benefits set forth herein and in accordance with the provisions of any law applicable to the Plan. Subject to the provisions of Section 3.3 hereof, all contributions made by the Employer to the Fund shall be used to reduce future Employer contributions and shall be used solely for the exclusive benefit of Participants and their Beneficiaries and to defray reasonable expenses of the Plan or Fund. Forfeitures arising because of death or Termination of Employment before a Participant becomes eligible for a benefit from the Plan or arising for any other reason shall be applied to reduce the cost of the Plan, not to increase the benefits otherwise payable to Participants. Employer contributions shall be deposited in the Fund in such amounts as the Retirement Board in conjunction with the annual actuarial examination shall determine necessary to keep the Fund actuarially sound, subject to the appropriation of funds by the Employer.

3.2 Contributions by Participants: As a condition of employment, each Participant (other than current or former police and fire personnel as described below) shall be required to contribute toward the cost of the Plan in an amount equal to three and one-tenth percent (3.1%) of the Participant’s Compensation. Notwithstanding the foregoing, as a condition of employment, each Participant who is police and fire personnel or who is former police and fire personnel that transferred to another City department (hereinafter referred to as “Former Police and Fire Personnel”) shall be required to contribute toward the cost of the Plan in an amount equal to four and one-tenth percent (4.1%) of such Participant’s Compensation for each Plan Year.

- (a) Voluntary contributions are not permitted.
- (b) The contributions of each Participant shall be deducted from the Participant’s pay and deposited in the Fund.
- (c) A Participant will not be permitted to withdraw his contributions prior to actual Termination of Employment.
- (d) Effective June 20, 1985, Participant contributions are “picked up” by the Employer as described in Code Section 414(h)(2) and will be treated as being paid by the Employer in determining tax treatment.

3.3 Return of Contributions: The Retirement Board shall return to the contributing Employer or Participant a contribution made by the Employer or Participant due to mistake of fact if the Retirement Board determines that such mistake existed at the time of the contribution and the contribution is returned within twelve (12) months of the date it was made.

### 3.4 Direct Rollover of Certain Distributions:

(a) Notwithstanding any provision of the Plan to the contrary that would otherwise limit a Distributee's election under this Section, a Distributee may elect, at the time and in the manner prescribed by the Administrator, to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the Distributee in a Direct Rollover. The following definitions shall apply to this Section:

- (1) An "Eligible Rollover Distribution" is any distribution of all or any portion of the balance to the credit of the Distributee, except that an Eligible Rollover Distribution does not include: (A) any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the Distributee or the joint lives (or joint life expectancies) of the Distributee and the Distributee's designated beneficiary, or for a specified period of ten (10) years or more; (B) any distribution to the extent such distribution is required under Code Section 401(a)(9); or (C) the portion of any distribution that is not includable in gross income. A Distributee may not elect a direct rollover with respect to an Eligible Rollover Distribution during the Plan Year that is less than \$200. If the Distributee elects to have only a portion of an Eligible Rollover Distribution paid to an Eligible Retirement Plan, that portion must be equal to at least \$500. A portion of a distribution shall not fail to be an Eligible Rollover Distribution merely because the portion consists of after-tax employee contributions, which are not includable in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in Code Section 408(a) or (b) or to a qualified trust described in Code Section 401(a) or to an annuity contract described in Code Section 403(b) that agrees to separately account for amounts so transferred (and earnings thereon), including separately accounting for the portion of such distribution that is includable in gross income and the portion that is not.
- (2) An "Eligible Retirement Plan" is an individual retirement account described in Code Section 408(a), an individual retirement annuity described in Code Section 408(b) (other than an endowment contract), an annuity plan described in Code Section 403(a), or a qualified trust described in Code Section 401(a), an annuity contract described in Code Section 403(b) that accepts the Distributee's Eligible Rollover Distribution, an eligible plan under Code Section 457(b) which is maintained by a state, political subdivision, or agency or instrumentality of a state and which agrees to separately account for amounts transferred to such plan from this Plan, and, to the extent permitted and in accordance with the rules applicable under Code Section 408A, a Roth individual retirement account described in Code Section 408A.
- (3) A "Distributee" includes an Employee or former Employee. In addition, the Employee's or former Employee's surviving spouse and the Employee's

or former Employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Code Section 414(p), are Distributees with regard to the interest of the spouse or former spouse.

- (4) A "Direct Rollover" is a payment by the Plan to the Eligible Retirement Plan specified by the Distributee.
- (5) A non-spouse Beneficiary of a deceased Participant who is either an individual or an irrevocable trust, where the beneficiaries of such trust are identifiable and the trustee provides the Plan Administrator with a final list of trust beneficiaries or a copy of the trust document by October 31 of the year following the Participant's death, shall be a Distributee with regard to the interest of the deceased Participant, but only if the Eligible Rollover Distribution is transferred in a direct trustee-to-trustee transfer to an Eligible Retirement Plan which is an individual retirement account described in Code Section 408(a) or an individual retirement annuity described in Code Section 408(b) (other than an endowment contract).

**ARTICLE IV**

**Benefit Eligibility**

- Section 4.1 Normal Retirement
- Section 4.2 Early Retirement
- Section 4.3 Late Retirement
- Section 4.4 Disability Retirement
- Section 4.5 Vested Termination of Employment Prior to Retirement
- Section 4.6 Non-Vested Termination
- Section 4.7 Special Early Retirement
- Section 4.8 Termination of the Plan

4.1 Normal Retirement: An active Participant who attains his Normal Retirement Date shall be one hundred percent (100%) vested in his Normal Retirement Benefit. A Participant may retire from service upon reaching his Normal Retirement Date or he may postpone his retirement and remain in service after his Normal Retirement Date, in which event the provisions of 4.3 shall be applicable.

4.2 Early Retirement: An active Participant who attains his Early Retirement Date shall be 100% vested in his Accrued Benefit.

4.3 Late Retirement: A Participant who works past his Normal Retirement Date shall be 100% vested in his Accrued Benefit and shall be retired on the first day of the month after the Retirement Board receives his written application to retire.

4.4 Disability Retirement: A Participant shall be eligible for a Disability Retirement Pension if their employment is terminated prior to their Normal Retirement Date by reason of Disability after they are vested in the pension plan. Payment of a Disability Retirement Pension shall commence as of the first day of the month following the date the Participant terminates employment due to Disability, as long as the following conditions are met.

- (a) Employee’s medical condition occurred or became symptomatic during the time they were employed in an employee/employer relationship with the employer (City of Cartersville);
- (b) Employee was totally and permanently disabled at the time they terminated employment; and
- (c) Employee has not been employed with any other employer after such termination.

The Pension Board shall have the right at intervals of not less than one year, prior to a Participant’s Normal Retirement Date, to require proof of continuing Disability, such as to require the Participant to submit proof of receipt of Social Security Disability Benefits or, in absence of that, to require an examination of any Participant receiving a Disability Retirement Pension; provided, however, for purposes of this Section, a Participant’s

Normal Retirement Date shall be no earlier than their sixty-fifth (65<sup>th</sup>) birthday with 10 years of vesting service; or fifty-fifth (55<sup>th</sup>) birthday with 25 years of vesting service; or fiftieth (50<sup>th</sup>) birthday with 20 years of vesting service for police and fire personnel (or Former Police and Fire Personnel). In the event such Participant is found not to be suffering from a Disability, the Pension Board shall, after hearing evidence thereon and giving the Participant opportunity to be heard, discontinue such Participant's Disability Retirement Pension. In the event such Participant receiving a Disability Retirement Pension refuses to submit to a physical examination after thirty (30) days' notice to report for such examination or to supply proof, of continuing Disability, the Pension Board shall discontinue payments of the disability Retirement Pension until the Participant submits to such examination or supplies such proof, and the Participant shall be deemed to have forfeited their Pension during the time of refusal.

Following certification that a Participant's Disability has ceased, in accordance with the foregoing provisions of the preceding paragraph, the following rules shall apply:

- (a) Such Participant shall not be prevented from qualifying for a Pension under another provision of the Plan based only upon their vesting service, benefit accrual service and compensation prior to their Disability Retirement; and
- (b) Any such participant shall not receive vested service or benefit accrual service for their period of Disability and any Pension payments received during their Disability period shall be disregarded.

Workers' Compensation Benefits - Further notwithstanding any other provisions of the Cartersville Pension Plan, if at the time of retirement a participant is receiving payments under the provisions of the Georgia Workers' Compensation Law which are being paid at the expense of the city, the amount of pension payable under the plan shall be reduced by the amount being received as workers' compensation. This reduction shall continue as long as the retired participant is receiving workers' compensation, and upon discontinuance of workers' compensation payments, the offset shall be eliminated and the retired participant shall be entitled to receive sums as calculated under the terms of the pension plan. No such reduction shall operate to reduce the sums payable under the provisions of the Cartersville Pension Plan below \$200.00 per month.

The cost of providing a disability retirement option shall be paid by the City, in lieu of providing long-term disability insurance coverage for employees vested in the Pension Plan.

Effective on September 1, 2003, all City of Cartersville personnel that are vested in the Cartersville Pension Plan have the option to apply for disability retirement if they meet the above guidelines.

4.5 Vested Termination of Employment Prior to Retirement: A Participant whose Termination of Employment occurs prior to eligibility for a normal or early retirement shall be 100% vested in his Accrued Benefit if he has completed ten (10) years of Vesting Service.

A Participant is always 100% vested in his Participant contributions.



- 4.6 Non-Vested Termination: If a Participant completes less than ten (10) years of Vesting Service as of his Termination of Employment, then his Participant contributions without interest thereon shall be payable to him after his Termination of Employment. Upon receipt of such payment, the Participant's years of Benefit Accrual Service and Vesting Service shall be canceled for all periods before the payment.
- 4.7 Special Early Retirement: A special early retirement benefit shall be calculated using the formula described in Section 6.1, except that three years shall be added to the age, Benefit Accrual Service and Vesting Service of the Participant. Reduction for early commencement of benefits shall be as described in Section 6.2. Payments shall commence as of February 1, 1997. If the "adjusted" age of a Participant who retires under the provision of this Section 4.7 is less than age 55, the benefit is calculated as if payable at the earliest commencement age, but the benefit shall commence as of February 1, 1997.

On or about December 1, 1996, each eligible Participant shall be notified of his eligibility for the special early retirement benefit and the requirements for his election to receive said benefit. Each such eligible Participant shall be required to advise the Plan Administrator in writing of his election on or after December 1, 1996 but no later than January 31, 1997, on such form of forms provided by the Plan Administrator. Such form shall set forth the special early retirement date selected by the Participant, provided that such early retirement shall occur on or after December 1, 1996 but not later than January 31, 1997. Failure by an otherwise eligible Participant to affirmatively elect by January 31, 1997 to be covered by the special early retirement benefit shall constitute an irrevocable waiver of such right.

If a Participant who retires pursuant to Section 4.7 subsequently returns to employment as an Employee, his retirement benefit hereunder shall cease. Upon his subsequent retirement or termination of employment, his retirement benefit shall be based upon his age, Vesting Service, and Benefit Accrual Service before and after his retirement under this Section 4.7 without regard to the modifications herein. However, in no event shall the retirement benefit of a Participant upon his subsequent retirement or termination of employment be less than the retirement benefit he was receiving or would have been receiving under this Section 4.7 if a Participant who returns to employment hereunder dies in active service, the spouse's benefit payable, if any, shall be determined in accordance with Article VIII without regard to the modifications in this Section 4.7.

- 4.8 Termination of the Plan: In the case of a termination or partial termination of the Plan, the Accrued Benefit of each Participant shall become 100% vested and nonforfeitable.

## ARTICLE V

### Service

- Section 5.1 Vesting Service
- Section 5.2 Benefit Accrual Service

- 5.1 Vesting Service: A year of Vesting Service will be credited from the Employee’s date of hire with the Employer and each anniversary thereof. Vesting Service shall be determined by the Elapsed Time Method. Vesting Service will include only service completed while a Participant is an Employee of the Employer. Notwithstanding the foregoing, all years of Vesting Service credited to an Employee for vesting under the rules governing Vesting Service in the Plan prior to January 1, 2023, shall be credited to Participants as Years of Service.
  
- 5.2 Benefit Accrual Service: Benefit Accrual Service is the elapsed period of time from a Participant’s Participation in the plan to the date service is being determined. Service will be calculated in completed calendar months. Benefit Accrual Service will include only service completed while an Employee of the Employer. Calendar months start on the first non-holiday weekday of the month and end on the last non holiday weekday.

## ARTICLE VI

### Benefits

- 6.1 Normal Retirement
- 6.2 Early Retirement
- 6.3 Late Retirement
- 6.4 Vested Termination of Employment Prior to Retirement
- 6.5 One-Time Increase
- 6.6 Disability Retirement
- 6.7 Court Ordered
- 6.8 Special Retirement Benefits
- 6.9 Buyback Benefit at Termination
- 6.10 Terminal Pay
- 6.11 Qualified Military Service

6.1 Normal Retirement: A Participant's Normal Retirement Benefit is a monthly benefit payable upon his Normal Retirement Date equal to 2% of his Average Monthly Compensation multiplied by his years of Benefit Accrual Service.

6.2 Early Retirement: A Participant's benefit payable due to Early Retirement is determined as follows:

- (a) A Participant who retires from active service after attaining age fifty-five (55) with twenty-five (25) or more years of Vesting Service shall be entitled to his Accrued Benefit payable as of the first of the month coincident with or next following his Termination of Employment. Prior to August 26, 1991, a Participant who retired from active service after attaining age fifty-five (55) with thirty (30) or more years of Benefit Accrual Service shall be entitled to his Accrued Benefit payable as of the first of the month coincident with or next following his Termination of Employment.
- (b) A Participant who retires from active service on an Early Retirement Date with less than twenty-five (25) years of Vesting Service (or less than thirty (30) years of Benefit Accrual Service prior to August 26, 1991) shall be entitled to his Accrued Benefit payable as of his Normal Retirement Date. However, the Participant may elect to receive a reduced benefit commencing on the first day of any month coincident with or following his Early Retirement Date. In that case, the Participant's benefit shall be equal to his Accrued Benefit reduced by three percent (3%) a year (.25% a month) for each of the first five years and by six percent (6%) a year (.50% a month) for each of the next five years (years six through ten) for which the commencement date precedes the earlier of the Participant's Normal Retirement Date or the date he would have attained age 55 with 25 years of Vesting Service (or age 55 with 30 years of Benefit Accrual Service prior to August 26, 1991).
- (c) All police and fire personnel (or Former Police and Fire Personnel) have the option to retire at age 50 with a minimum of 20 years of vested service with a monthly

annuity equal to 2% of the employee's average monthly compensation multiplied by their years of benefit accrual service.

Every vested police and fire personnel (or Former Police and Fire Personnel) with a minimum age of 50 years can retire with less than 20 years of vested service at a reduced benefit. The monthly benefit would be equal to the employee's accrued benefit reduced by 7% a year for each year in which the termination date precedes the date the employee would have attained 20 years of vested service. At termination date, the employee would be required to decide what retirement option to take and to pay into the pension plan all required contributions in order to be eligible to retire under the selected retirement option.

The entire cost to fund this early retirement at age 50 with 20 years of vested service is to be paid by all personnel of the police and fire departments (or Former Police and Fire Personnel). To be eligible for this early retirement option, each Participant who is police and fire personnel (or Former Police and Fire Personnel) will have to make the applicable contribution of four and one-tenth percent (4.1%) of Compensation as described in Section 3.2 for a minimum of five (5) years the prior to such Participant's retirement.

Employees hired prior to July 21, 2000, within the police and fire department (or Former Police and Fire Personnel) who elect to retire early under this retirement option, are eligible to continue insurance coverage under the city's medical, dental and life insurance plan, but must pay the entire insurance premium between the age of 50 and 55. A retiree under this early retirement option who elects not to continue participation with the city's insurance provider would relinquish their right to all future insurance coverage through the City.

- 6.3 Late Retirement: A Participant's benefit payable upon late retirement shall be calculated by the formula for computing the Normal Retirement Benefit as described in Section 6.1 hereof, using years of Benefit Accrual Service as of his Termination of Employment and the greater of the following for Average Monthly Compensation:
- (a) The Participant's Average Monthly compensation as of his Normal Retirement Date, and
  - (b) The Participant's Average Monthly compensation as of his Termination of Employment.
- 6.4 Vested Termination of Employment Prior to Retirement: A terminated Participant with a deferred vested benefit may elect to receive his vested benefit as provided below:
- (a) To receive, in one lump sum, an amount equal to his total Participant contributions without interest. In such event, the Participant's Accrued Benefit shall be canceled. If such a Participant subsequently returns to the service of the Employer and does not exercise his option to return contributions as provided in Section 7.6, he shall be deemed a new Employee. If such a Participant subsequently returns to the service of the Employer and exercises his option to return contributions as

provided in Section 7.6, he shall be deemed a Participant upon the first day of the month coincident with or next following the date of his rehire.

- (b) To leave his Participant contributions in the Fund and retain 100% of his Accrued Benefit. If a Participant elects to leave his contributions in the Fund under Section 6.4(b), then his Accrued Benefit is payable as of his Normal Retirement Date. However, such Participant may elect to receive a reduced benefit on the first day of any month coincident with or following his Early Retirement Date (or the date which would have been his Early Retirement date and he remained an active Participant). In that case, the Participant's benefit shall be the Actuarial Equivalent of his Accrued Benefit reduced for the number of years and months the benefit commencement date precedes age 65. Other provisions apply to retirements prior to the effective date of this document.
- (c) Notwithstanding any provision of the Plan to the contrary, a Participant who is police and fire personnel (or Former Police and Fire Personnel) with a minimum of 20 years of vested service may elect to leave his Participant contributions in the Fund and elect on the first day of any month coincident with or following the date he reaches age 50 to receive a monthly annuity equal to 2% of the Participant's average monthly compensation multiplied by their years of benefit accrual service.
- 6.5 One-Time Increase: Effective April 1, 1995, a one-time increase shall be made to Participant's and Beneficiaries' benefits in payment status if the Participant retired prior to 1992. The increase shall be (i) equal to \$5 per month per each year that the Participant's year of retirement preceded 1992, with a maximum of \$75 per month, and (ii) payable for the life of the Participant, or if the Participant elected a joint and survivor annuity, for the life of the Participant and the Beneficiary.
- Effective April 1, 2001, Cartersville City Council approved a one-time cost of living increase so that each retiree would receive \$10.00 per month for each year that the participant has been retired up to a maximum of \$80.00 per month for each year that the participant has been retired.
- 6.6 Disability Retirement: A Participant's Disability Retirement Benefit is a monthly benefit payable upon their Disability Retirement Date equal to 2% of their Average Monthly Compensation multiplied by their years of Benefit Accrual Service.
- 6.7 Special Retirement Benefits: The Board may, from time to time with Council approval, offer benefit enhancements, or the opportunity to retire under specified terms and conditions to an Employee or group of Employees.
- 6.8 Buyback Benefit at Termination: Any Employee Employed on December 31, 2010 or hired or rehired subsequent to that date is eligible for a Buyback Benefit. The Buyback Benefit will allow the participant to purchase additional service at Termination or Retirement. The service will be limited to the total of (a) and (b) following:
- (a) The additional service they would have had if at their date of hire Eligibility was defined as 18 years and 6 months of service.

- (b) The additional service they would have had if they had repaid their employee contributions with interest when they were rehired.

Only complete months of service can be bought, but any fraction up to the limit of (a) plus can be purchased. The benefit formula is the same as used for the Benefit the participant has elected to receive. The money used to buyback the benefit will be in all other ways treated as Employee Contributions. The cost of Buyback Benefits will be computed as the Actuarial Equivalent in Section 1.2(b), except that in the case of a Termination who is not retiring, there will be no mortality prior to the Normal Retirement age.

Buyback Benefits purchased by a Participant shall be part of the Participant's Normal Retirement Benefit calculated under Section 6.1, and shall be subject to the benefit distribution and accrual limitations of Article IX which incorporates the limits of Section 415 of the Code.

6.9 Terminal Pay. Effective July 8, 2020, Terminal Pay of Eligible Employees (accrued vacation and any other post termination compensation) shall not be paid from the Plan.

6.10 Qualified Military Service.

- (a) In the case of a Participant who dies while performing Qualified Military Service (as defined in Code Section 414(u)), the survivor of the Participant is entitled to any additional survivor benefits (other than benefit accruals relating to the period of Qualified Military Service) provided under the Plan as though the Participant resumed employment and then terminated on account of death.
- (b) In the case of a Participant who becomes disabled (as defined in Section 1.2(k)) or dies while performing Qualified Military Service (as defined in Code Section 414(u)), the Participant shall be treated for purposes of benefit accruals under the Plan during the period of Qualified Military Service as if the Participant had remained employed by the Employer and then terminated employment due to disability or death.
- (c) In the case of an individual who receives differential pay from the Employer:
- (1) such individual will be treated as an Employee of the Employer making the payment; and
  - (2) the differential pay shall be treated as wages and will be included in calculating the Employee's Compensation under the Plan.

If all Employees performing service in the Uniformed Services are entitled to receive differential pay on reasonably equivalent terms and are eligible to make contributions based on the payments on reasonably equivalent terms, the Plan shall not be treated as failing to meet the requirements of any provision described in Code Section 414(u)(1)(c) by reason of any benefit based on differential pay. However, for purposes of applying this Item, the provisions of Code Section 410(b)(3), (4) and (5) shall be taken into account.

For purposes of this Section 6.10, “differential pay” means any payment which is made by an Employer to an individual while the individual is performing service in the uniformed services while on active duty for a period of more than 30 days, and represents all or a portion of the wages the individual would have received from the Employer if the individual were performing services for the Employer. In applying the provisions of this Section, “uniformed services” are services as described in Code Section 3401(h)(2)(A).

## ARTICLE VII

### Forms of Payment

Section 7.1	Normal Form of Payment
Section 7.2	Optional Forms of Payment
Section 7.3	Conditions Relative to the Form of Payment
Section 7.4	Distribution Limitations
Section 7.5	Reemployment of a Retired Participant
Section 7.6	Reemployment of a Terminated Participant Without Contributions in the Fund

- 7.1 Normal Form of Payment: The normal form of payment for benefits under the Plan shall be a modified cash refund annuity, payable in monthly installments ending with the last monthly payment before the Participant's death. Under this annuity form, a lump sum amount is paid to the Beneficiary upon the death of the Participant equal to the amount, if any, by which the balance of the Participant contributions, with interest accrued until the date that payments commenced (accrued at a rate of four percent (4%) per annum), exceeds the sum of the annuity payments made to the Participant prior to his death. Interest will be credited as follows: contributions made during each completed calendar year will get ½ a year of simple interest. Accumulated contributions at the beginning of the year will get a full year of interest. Accumulated contributions during the year of Termination, Retirement or Death will get ½ a year of interest if the termination is in the first half of the year and a full year of interest if the termination is in the second half of the year.
- 7.2 Optional Forms of Payment: In lieu of the normal form of payment as described in Section 7.1, a Participant may elect to receive his benefit under one of the following optional forms of payment which are the Actuarial Equivalent of the benefit payable under the normal form of payment.
- (a) Twenty (20) Years Certain and Life Annuity: A benefit payable for the Participant's life provided that a combined minimum of 240 monthly payments will be made to the Participant and his Beneficiary.
  - (b) Ten (10) Years Certain and Life Annuity: A benefit payable for the Participant's life provided that a combined minimum of 120 monthly payments will be made to the Participant and his Beneficiary.
  - (c) Five (5) Years Certain and Life Annuity: A benefit payable for the Participant's life provided that a combined minimum of 60 monthly payments will be made to the Participant and his Beneficiary.
  - (d) Joint and 100% Survivor Annuity: A benefit payable during the Participant's life and, after his death, payable during the life of, and to, the Beneficiary named by him when he elected the option.



- (e) Joint and 75% Survivor Annuity: A benefit payable during the Participant's life and, after his death, payable at three fourths (3/4) the rate paid to him during the life of, and to, the Beneficiary Named by him when he elected the option.
- (f) Joint and 50% Survivor Annuity: A benefit payable during the Participant's lifetime and, after his death, payable at one-half (1/2) the rate paid to him during the life of, and to, the Beneficiary named by him when he elected the option.

### 7.3 Conditions Relative to the Form of Payment:

#### (a) Restrictions on Optional Forms of Payment:

- (1) An optional form of payment may not be chosen if it provides monthly payments to the Beneficiary which will exceed the monthly payments to the Participant or if it provides monthly payments to the Beneficiary, other than the Participant's spouse, where the Actuarial Equivalent of the payments expected to be made to the Participant is less than 50% of the Actuarial Equivalent of the total payments expected to be made under such optional form. These payments will end with the last monthly payments preceding the death of the Beneficiary.
- (2) Upon the later of the death of the Participant and the death of the Beneficiary, a lump sum amount is paid equal to the amount, if any, by which the balance of the Participant contributions, with accrued interest (accrued at a rate of four percent (4%) per annum), exceeds the sum of the annuity payments made to the Participant and the Beneficiary.

#### (b) Electing an Optional Form of Payment: A Participant may elect any one of the optional forms of payment described in Section 7.2 subject to the following:

- (1) The Participant must file a written notice specifying the form to be elected and naming his Beneficiary, where applicable; and
- (2) Such notice must be filed at least 90 days before the Participant's retirement date or 90 days after such Participant receives written notice of the available election, if later.

#### (c) Change in Election: A Participant may elect to change the form of payment, the designated Beneficiary or the amount payable to the Beneficiary by filing written notice of such change with the Plan Administrator at least 90 days prior to his retirement date or 90 days after such Participant receives written notice of the available elections, if later. The Plan Administrator may require that the Participant's spouse co-sign any election made by the Participant.

#### (d) Death: If a Participant shall have elected an optional form of retirement income; and

- (1) If the Beneficiary shall die and the Participant shall notify the Plan Administrator of the death before the start of Participant's retirement income payments, the election shall be void.

- (2) If the Beneficiary shall die after commencement of an optional form of payment but before the death of the retired Participant, such Participant shall continue to receive the income payable to that Participant in accordance with such election.
- (3) If the Participant dies before the date the election of the option becomes effective, the election shall be void.
- (4) Death benefits will be paid in accordance with Article VIII.

7.4 Distribution Limitation: Notwithstanding any other provision of this Plan, all distributions from this Plan shall conform to the regulations issued under Section 401(a)(9) of the Internal Revenue Code, applicable to Governmental Plans, as defined in Section 414(d) of the Internal Revenue code, including the incidental death benefit provisions of Section 401(a)(9)(G) of the Internal Revenue Code. Further, such regulations shall override any plan provision that is inconsistent with Section 401(a)(9) of the Internal Revenue Code.

7.5 Reemployment of a Retired Participant:

- (a) Benefits Cease: The retirement benefit payable from the Plan to any retired Participant shall cease as of the first date of reemployment, if such Participant is reemployed as an Employee. Retirement benefits shall resume as of the first day of the month following Termination of Employment. Such cessation or suspension of retirement benefit payable shall not affect the payment of retirement benefits after the death of a reemployed Participant under any optional form of payment which shall at that time be in effect.
- (b) Contribution Resume: Upon the reemployment of a retired Participant as an Employee, he shall be required to make Participant contributions toward a retirement benefit in accordance with the provisions of Section 3.2 hereof.
- (c) Benefits Redetermined: The amount of the retirement benefit to be paid upon the subsequent Termination of Employment of a Participant described in Section 7.5(a) shall be redetermined on the basis of the increased service, Age, and contributions. The Plan's formula for computing a retirement benefit in effect at the time of each Termination of Employment shall apply to determine each portion of the Participant's retirement benefit attributable to Years of Benefit Accrual Service earned since the preceding Termination of Employment. In any case where the payment of a retirement benefit which was reduced on account of early retirement is suspended on account of reemployment, the amount of the retirement benefit to be paid on subsequent Termination of Employment shall also be determined so that the amount of reduction made for early retirement on the previous retirement date will be adjusted to reflect the duration of the period for which the benefit is suspended.
- (d) Part Time or Consultant Employment: If a Retired Participant is paid by the Employer in any fashion (including as a consultant) excluding severance said Monthly Retirement Benefit shall be suspended as of the date of their Return to Service. For the purposes of this sub section (d) a Return to Service occurs at the earlier of when a

Retired Participant has received compensation of any sort for a period of six months or has been compensated in excess of 1,040 hours. The Retirement Benefit will then recommence the first of the month coincident with or following the termination of compensation.

- 7.6 Reemployment of a Terminated Participant Without Contributions in the Fund: If a Participant terminates employment with 6 months or more of Benefit Accrual Service, receives a lump sum distribution of his employee contributions without interest and later returns to service as an Employee of the Employer, then the Participant may repay the contributions, subject to the following in order to receive credit for prior service.
- (a) The period of time between the Participant's termination of employment and his rehire is less than or equal to five years after July 1, 1997, and/or more than five years if the period of time between the Participant's termination of employment and his rehire occurred prior to July 1, 1997.
  - (b) The individual must repay his total Participant contributions with interest at the rate of 5% per year, compounded annually from the date the distribution was made from the Plan until the date of repayment.
  - (c) The individual must repay his total Participant contributions with interest within 12 months following his re-employment. However, a participant actively employed with the Employer on July 1, 1997, the effective date of this Section 7.6, may repay his contributions for prior service within the 60 days following July 1, 1997.

## ARTICLE VIII

### Death Benefits

- Section 8.1      Death Benefit While an Active Participant  
 Section 8.2      Death Benefit after Termination of Employment  
 Section 8.3      Designation of Beneficiary

8.1      Death Benefit While an Active Participant: If a Participant dies while an Employee, the Plan pays the death benefit explained below.

- (a)      If the Participant was married at the time of their death and had completed ten (10) years of Vesting Service, then the surviving spouse can elect one of the following benefits.
- (1)      If the Participant has met the requirements of Normal Retirement or unreduced Early Retirement under this Plan, (unreduced Early Retirement is for Police and Fire (Former Police and Fire Personnel) age 50 with a minimum of 20 years of service; age 55 with minimum of 25 years of service; or age 65 with a minimum of 10 years of service), the Plan pays the spouse a monthly annuity calculated at 100% spousal formula rate as in the living benefit. The benefit shall begin on the first of the month following the date of the Participant's death, with the provision that upon the death of the spouse, a lump sum is paid to the spouse's beneficiary equal to the amount, if any, by which the balance of the Participant contributions, with interest accrued to the date of death of the Participant at the rate of four percent (4%) per annum, exceeds the sum of the annuity payments previously made to the spouse.
  - (2)      If the Participant has not met the requirements of Normal Retirement under this Plan, a monthly annuity equal to 50% of the Participant's Accrued Benefit as of the date of the Participant's death payable to the spouse. The benefit shall begin on the first of the month coincident with or next following the later of the date the Participant would have reached age 55, with the provision that upon the death of the spouse, a lump sum is paid to the spouse's beneficiary equal to the amount, if any, by which the balance of the Participant contributions, with interest accrued to the date of death of the Participant at the rate of four percent (4%) per annum, exceeds the sum of the annuity payments previously made to the spouse.
  - (3)      A lump sum payment equal to the Participant contributions made by the Participant plus interest accrued until the date of the Participant's death at the rate of four percent (4%) per annum.
- (b)      If the Participant's death occurs where a benefit is not payable under Section (a.), the Participant's Beneficiary shall receive a lump sum payment equal to the Participant contributions made by the Participant plus interest accrued until the date of Participant's death at the rate of four percent (4%) per annum.

- 8.2 Death Benefit after Termination of Employment: If the Participant's death occurs after Termination of Employment but before benefit payments have begun, the Participant's Beneficiary shall receive a lump sum payment equal to the Participant contributions made by the Participant, plus interest accrued until the date of the Participant's death at the rate of four percent (4%) per annum.

If the Participant's death occurs after benefit payments have begun, the death benefit will be determined by the form of payment option in effect at the time of death.

- 8.3 Designation of Beneficiary: There is no requirement to designate a beneficiary prior to retirement. The Beneficiary is the Participants Spouse, if any. If there is no spouse any guaranteed payments which otherwise would be paid to a Beneficiary upon the death of the Participant will be discounted and paid in one sum to the executors or administrators of the Participant's estate. At retirement a participant may designate a Beneficiary other than their spouse only if electing a Period Certain benefit.

**ARTICLE IX**

**Maximum Benefits**

The maximum annual benefit payable to a Participant under the Plan shall be subject to the limitations set forth in Section 415 of the Code and any regulations issued there under. If for any year the foregoing plan limitation would be exceeded, the benefit provided under this Plan shall be reduced to the extent necessary to meet applicable limitations for the limitation year. For these purposes, the term “limitation year” is the calendar year, and any change to the limitation year must be accomplished through an amendment which designates a new 12-month limitation year that begins during the limitation year begin amended.

## ARTICLE X

### Administration of Plan

Section 10.1 Retirement Board

Section 10.2 Powers and Duties of Retirement Board

#### 10.1 Retirement Board:

- (a) The general administration of the plan and the responsibility for carrying out the provisions of this division are hereby vested in a retirement board. Such board shall be composed of five (5) members; three (3) of whom shall be participating employees whom shall be elected as follows one (1) from the Police and Fire Departments, one (1) from the Gas, Electric and Water and Sewer Departments and one (1) from the Community Development, Public Works, City Clerk, Garage, Parks and Recreation, Finance, and Administration Departments. The elected participating employees shall serve six-year staggered terms or until their successors are elected. The other two (2) members shall be the city manager and the city finance director whose terms shall be equivalent to their employment in those capacities. Current board members terms will expire upon passage of this ordinance. A new election will then be held for the three (3) employee board members, whose terms will expire as follows: Police and Fire Department board member term will expire in three (3) years; Gas, Electric and Water and Sewer Departments board member term will expire in two (2) years; Community Development, Public Works, City Clerk, Garage, Parks and Recreation, Finance, and Administration Department board member term will expire in one (1) year. Thereafter, an election will be held on the Tuesday after the first Monday in November of every year for one board member.
- (b) The board shall elect a chairman from among its members. The board shall also appoint a secretary who shall keep all records of its meetings and actions and execute in behalf of the board any paper or instrument when so required by the board.
- (c) The board members shall serve without pay but shall be entitled to reimbursement for all reasonable and necessary disbursements made or expenses incurred by them in the performance of their duties. The board may be authorized to compensate the secretary in an amount approved by the mayor and council.
- (d) No member shall be personally liable by virtue of any contract, agreement, bond or other instrument or undertaking made or executed by him as a member of the board, nor for honest mistakes of judgment, nor for any loss unless resulting from his own willful misconduct; and no member shall be liable for the act of neglect, omission or wrongdoing of any other member, or for those agents or counsel of the board.
- (e) The city shall hold the Retirement Board harmless from and shall indemnify the members for the consequences of their acts or omissions and conduct in their official capacity, including the cost of litigation and counsel fees, except for such act, omissions or conduct for which such member is liable under subsection (d).

- (f) Meetings of the board shall be held at such times and places as the majority of the members shall from time to time determine. A majority of the membership shall constitute a quorum, and all decisions, acts and resolutions of the board shall be by an affirmative vote of at least three (3) members.
- (g) When a vacancy occurs or exists on the board, the remaining members, provided that they are not less than three (3), are authorized to perform all functions of the board. However, vacancies on the board shall be filled as expeditiously as possible.
- (h) The city attorney or other attorney engaged by the board is the legal advisor to the board.

10.2 Powers and Duties of Retirement Board:

- (a) The Retirement Board shall have the duties expressly provided or implied under the provisions of this division, and in addition thereto, the following to:
  - (1) Holding meetings upon, notice, as may from time to time be required.
  - (2) Maintain adequate age, service and salary records on all employees participating under the plan and any other related data that may be necessary in the administration of the Plan and in the effective operation thereof, such data to be furnished to the board by the city.
  - (3) Pass upon applications for benefits, verify the qualifications of the applicants for benefits, and authorize the payment of benefits by the trustee.
  - (4) Keep a detailed record of all benefit payments and other expenditures made pursuant to the provisions of the Plan to the persons qualifying for such payments, to the end that all financial transactions will be properly accounted for.
  - (5) Make and enforce uniform nondiscriminatory rules and regulations for the efficient administration of the Plan and resolve any questions or interpretations that may arise in connection with the Plan.
  - (6) Employ actuarial and other technical assistance necessary during the operation of the Plan in connection with the determination of cost and liabilities.
- (b) The board shall pay the expenses for technical assistance as provided in paragraph (a)(6) and for expenses for the Fund established in Section 11.1, but in no case may the funds be diverted from investments for any use other than the Plan.
- (c) The board shall establish any necessary rules and procedures for the administration of the Plan and the conduct of their meetings as they deem advisable. The decisions and rules of a majority shall be final and binding on all parties and shall not be subject to appeal.
- (d) The board shall annually or as often as requested transmit to the city and the members a report showing the financial condition of the Plan.



## ARTICLE XI

### Administration of the Trust Fund

Section 11.1 Establishment of Employee Fund

Section 11.2 Investment of Trust Fund

11.1 Establishment of Employee Fund: The Retirement Board shall maintain a Fund into which the contributions of each Participant and of the employer shall be paid, which Fund shall comprise a trust fund held for and in behalf of all Participants and beneficiaries thereof. The Retirement Board shall designate a custodian to hold the Fund as the assets of the Plan by entering into a custodial agreement with the entity designated.

11.2 Investment of Trust Fund:

(a) By the Retirement Board: All contributions made to the Fund pursuant to this Plan shall be paid to the custodian and, except as herein otherwise provided, shall be held, invested and reinvested without distinction between principal and income, in such securities or in such other property, real or personal, wherever situated, as the Retirement Board shall deem advisable, including, but not limited to, real property, shares of stock, common or preferred, whether or not listed on any exchange, participation's in mutual investment funds, bonds and mortgages, and other evidences of indebtedness or ownership. The custodian shall hold and retain all the property and assets of the Fund, including income from investments and from all other sources, for the exclusive benefit of the Participants and their Beneficiaries, as provided herein, and for paying the costs and expenses of administering the Plan or Fund, to the extent that the same are not paid by the Employer.

(b) By Investment Manager: The Retirement Board may enter into one or more agreements for the appointment of one or more Investment Managers to supervise and direct the investment and reinvestment of a portion or all of the Fund in accordance with the provisions of this Plan in the same manner and with the same powers, duties, obligations, responsibilities and limitations as apply to the Retirement Board. As a condition to its appointment, an Investment Manager shall acknowledge in writing that it is a fiduciary with respect to the Fund. An Investment Manager so appointed shall be an Investment Advisor registered pursuant to the Investment Advisor's Act of 1940, a bank as defined in such Act or an insurance company which is qualified to manage the assets of employee benefit plans pursuant to the laws of more than one state. The custodian shall be bound by the supervision and direction of the Investment Manager, unless and until the Retirement Board amends or revokes the appointment or authority of the Investment Manager. An Investment Manager shall have sole investment responsibility for that portion of the Fund which it has been appointed to manage. An Investment Manager shall receive such reasonable compensation chargeable against the Fund as shall be agreed upon by the Retirement Board. The Retirement Board may revoke an agreement with the Investment Manager at any time by thirty (30) days' written notice to the Investment Manager. Any Investment Manager may resign by thirty (30) day's written notice to the Retirement Board.

**ARTICLE XII**

**Modification or Discontinuance of the Plan**

Section 12.1 Right to Amend or Terminate

Section 12.2 Change of Benefits or Suspension of Contributions

- 12.1 Right to Amend or Terminate: The City of Cartersville, Georgia, expects and intends to maintain the Plan in force indefinitely, but necessarily reserves the right to change or discontinue the Plan at any time.
  
- 12.2 Change of Benefits or Suspension of Contributions: At any time and from time to time, the Plan may be changed in whole or in part, or the contributions of the Employer may be suspended.

## ARTICLE XIII

### Miscellaneous

Section 13.1	Misstatement in Application for Retirement Benefit
Section 13.2	Missing Persons
Section 13.3	Non-Alienation of Benefits Exceptions
Section 13.4	Plan Not a Contract of Employment
Section 13.5	Payment to Minors and Incompetents
Section 13.6	Additional Participating Employers

- 13.1 Misstatement in Application for Retirement Benefit: Upon discovering that an Employee or Participant has provided any incorrect information to the Retirement Board or has omitted to provide needed information to the Retirement Board, his contributions and retirement benefit shall be adjusted on the basis of the correct facts as the Retirement Board directs. The amount of any previous underpayments or overpayments to such Participant shall be adjusted by said Participant's succeeding payments.
- 13.2 Missing Persons: If the Retirement Board is unable to pay any benefit from the Fund because the identity or whereabouts of a Participant or Beneficiary cannot be ascertained, the Retirement Board may direct that such benefit and all further benefits with respect to such person shall be suspended until such person is located. If state law provides that a missing Participant shall be treated as deceased, a death benefit shall be paid to the beneficiary or estate of the Participant as though the death of the Participant had occurred on the date when the benefit was first suspended according to the preceding sentence.
- 13.3 Non-Alienation of Benefits Exceptions: No benefits which shall be payable under the Plan shall be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, garnishment, encumbrance or charge, including without limitation any domestic relations order.
- 13.4 Plan Not a Contract of Employment: This Plan shall not be deemed to constitute a contract of employment. This Plan has no effect on a person's right to become an Employee. This Plan has no effect on an Employee's rights, duties or obligations related to his status as an Employee.
- 13.5 Payment to Minors and Incompetents: If a person who is entitled to any payment through this Plan is a minor or is incompetent, the Retirement Board shall direct said payments to be paid to the legal representative of the estate of the minor or incompetent person.
- 13.6 Additional Participating Employers:
- (a) If any entity is now or becomes associated with the Employer, the Retirement Board may include the employees of that entity in the membership of the Plan. In that event, the Retirement Board shall determine to what extent, if any, credit and benefits shall be granted for previous service with the entity, but subject to the continued qualification of the trust for the Plan as tax-exempt under the Internal Revenue Code.

- (b) Any entity associated with the Employer may terminate its participation in the Plan upon appropriate action by it, in which event the funds of the Plan held on account of Participants in the employ of that entity shall be held as part of the Fund.

IN WITNESS WHEREOF, the City of Cartersville has caused the Plan to be executed effective as of the date mentioned above by its duly authorized officer on this \_\_\_\_ day of \_\_\_\_\_, 2023.

**CITY OF CARTERSVILLE**

Attest: \_\_\_\_\_  
Julia Drake  
City Clerk

By: \_\_\_\_\_  
Matthew J. Santini  
Mayor

**THE CITY OF CARTERSVILLE**  
**2017 PENSION PLAN**

**Effective January 1, 2017**  
**Amended and Restated as of July 1, 2023**

**THE CITY OF CARTERSVILLE  
2017 PENSION PLAN  
(Amended and Restated as of July 1, 2023)**

**EXECUTION PAGE**

IN WITNESS WHEREOF, the City of Cartersville (the “City”) has executed this amended and restated The City of Cartersville 2017 Pension Plan on the \_\_\_\_ day of \_\_\_\_\_, 2023, effective as of July 1, 2023.

**CITY OF CARTERSVILLE**

Attest: \_\_\_\_\_  
Julia Drake  
City Clerk

By: \_\_\_\_\_  
Matthew J. Santini  
Mayor

**THE CITY OF CARTERSVILLE**  
**2017 PENSION PLAN**  
**(Amended and Restated as of July 1, 2023)**

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## ARTICLE 1

### General

Section 1.1	Introduction
Section 1.2	Definitions
Section 1.3	Construction

1.1 Introduction: The City of Cartersville, Georgia, a municipal corporation (the “City”), adopted this defined benefit pension plan for eligible Employees of the City and related governmental entities who are hired or rehired on and after January 1, 2017, which has been amended from time to time. This restatement of the Plan is effective July 1, 2023.

All rights and benefits of an Employee whose Termination of Employment, as herein defined, occurred prior to July 1, 2023, shall be determined solely by the provisions in effect at the time of that Termination of Employment unless otherwise specifically provided herein.

1.2 Definitions: Where following words and phrases appear in this document, they shall have the meanings stated below.

(a) Accrued Benefit: Accrued Benefit means, on any date of determination, the Participant’s Normal Retirement Benefit computed under Section 6.1 on the basis of the Participant’s Average Monthly Compensation and the number of years of Benefit Accrual Service as of that date.

The Accrued Benefit is expressed as a monthly benefit payable at Normal Retirement Date.

(b) Accrued Funding Percentage: The Accrued Funding Percentage is the funded status of the Plan determined for a Plan Year by the Plan’s actuary and based upon the Actuarial Assumptions of the Plan for the Plan Year.

(c) Actuarial Equivalent: The equivalent value as determined on the basis of an interest rate of seven percent (7%) per annum compounded annually, and a mortality table for Participants constructed by using 1983 Group Annuity Mortality Table. For purposes of determining the applicability and amount of any lump sum payment of a Participants’ Accrued Benefit from the Plan, and for all purposes measuring Accrued Benefits for purposes of the maximum benefit limitations of Code §415 and Article IX, the applicable mortality table shall be the table designated in Rev. Rul. 2007-67. For purposes of determining the present value of an Accrued Benefit or any distribution from the Plan on and after October 1, 2017, Actuarial Equivalent shall mean the actuarially equivalent value as determined on the basis of a discount rate of seven percent (7%) per annum compounded annually and the unisex mortality table promulgated by the Secretary of the Treasury for purposes of determining lump sum distributions as of the annuity starting date pursuant to Code §417(e)(3).

- (d) Actuarial Assumptions: For the propose of computing Plan liabilities as referenced in this Plan, the assumptions independent of investment return shall not produce consistent gains or losses over rolling five year periods, as determined by the Plan’s actuary. In the event that a rolling five year period produces a net gain or loss, the assumptions shall be modified to produce a net gain not to exceed two percent (2%) of Plan liabilities as defined by Sections 6.1 through 6.6. The Plan discount rate will be set at seven percent (7%). The actuarial value of assets at the Measurement Date shall always be market value excluding all future contributions. The actuarial funding method for the Plan shall be entry age normal as a level percent of Compensation, and the actuarial funding method may not be amended except as provided in Section 12.1. The discount rate for any Measurement Date may be decreased but may not be increased above the greater of 7% or 3% over the rolling five year inflation rate as defined by CPIU.
- (e) Age: The actual attained age of a Participant as of any applicable date.
- (f) Average Monthly Compensation: The average monthly Compensation received by a Participant during the last 36 consecutive months or highest three years out of the last ten years prior to his Termination of Employment affording the highest such average. The period during which a Participant is on a Leave of Absence (except for qualified military service), is not included in the averaging period.
- (g) Beneficiary: An individual or legal entity designated to receive payments or any death benefit arising under this Plan upon the death of a Participant or Beneficiary as provided in Article VIII.
- (h) Benefit Accrual Service: As defined in Article V.
- (i) Code: The Internal Revenue Code of 1986, as amended.
- (j) Compensation: “Compensation” shall mean the Participant’s base pay from the Employer, as reflected in the Employer’s payroll records. Compensation shall include compensation deferred on a pre-tax basis under Code §§401(k), 403(b) or 457, compensation redirected pursuant to Code §§125, 401(k), 402(b), or 132(f)(4), and contributions picked-up under Code §414(h). Compensation shall exclude overtime pay and bonus pay received by a Participant. Total Compensation may not exceed the base Compensation that would have been paid to the Participant by the Employer in the absence of any deferrals under Code §§401(k), 403(b), 125, 132(f)(4), and 414(h).

Notwithstanding anything in this Section to the contrary, a Participant’s Compensation for any Plan Year will not exceed the limitation set forth in Code §401(a)(17) in effect for that Plan Year. The Compensation of each Participant taken into account under the Plan shall not exceed \$200,000, as adjusted for cost of living increases under Code §401(a)(17)(B). If a Plan Year consists of fewer than 12 months, the Code §401(a)(17) limitation will be multiplied by a fraction, the numerator of which is the number of months in that Plan Year, and the denominator of which is 12. The cost of living adjustment in effect for a calendar

year applies to determine Compensation for the Plan Year that begins with or within the calendar year.

- (k) Disability Retirement: A physical or mental condition which totally and presumably permanently prevents a Participant from engaging in any substantially gainful employment and which entitles the Participant to receipt of a Social Security Disability Insurance Benefit under the Social Security Act; provided, however, if a Participant is not covered by Social Security, either through the Employer or through any other employer, the Pension Committee shall determine the Participant's Disability in accordance with the provisions of the following:
- (i) Whenever such a Participant not covered by Social Security files an application for a Disability Retirement Pension with the Pension Committee, the Participant shall submit therewith a signed certificate from a licensed practicing physician of Georgia certifying to the Disability of such Participant. Promptly thereafter the Pension Committee shall order the Participant to be examined by a physician to be named by the Pension Committee who likewise shall certify the physical ability or disability of the Participant. The Pension Committee shall pay for the fees and expenses of such physician. In the event the certificates of the respective physicians generally agree upon Disability, such facts shall be conclusive as to the physical condition of the Participant and the Pension Committee shall grant a Disability Retirement Pension in accordance with Section 4.4 of the Plan. In the event the certificates of the aforesaid physicians disagree as to whether the Participant is disabled, then under these circumstances that question shall be submitted to a third physician selected by the Pension Committee. The medical opinion of the third physician, after examination of the Participant and consultation with the other two physicians, shall decide such question. The Participant and the Pension Committee shall share the fees and expenses of the third physician equally.
  - (ii) Notwithstanding any other provision of this Section, no Participant shall qualify for a Disability Retirement Pension if the Pension Committee determines that the Participant's Disability results from (i) self-addiction to alcohol or narcotics, (ii) an injury suffered while engaged in a felonious or criminal act or enterprise or (iii) service in the Armed Forces of the United States which entitles the Participant to a veteran's disability pension; but this provision shall not prevent the Participant from qualifying for a Pension under another provision of the plan.
  - (iii) The Pension Committee may adopt such rules as it deems necessary to administer the provisions of this Section and such rules shall be applied uniformly and consistently to all Participants in similar circumstances.
- (l) Early Retirement Date: The first day of any month on or following a Participant's 55<sup>th</sup> birthday and after ten years of Vesting Service.
- (m) Effective Date: The Effective Date of this Plan, which is January 1, 2017. This restatement of the Plan is effective as of July 1, 2023.

- (n) Employee: Any person who is employed by the Employer on a regular full-time basis with an employment type “regular full time” in the City’s payroll system or the equivalent classification in any successor payroll system. In addition, the term Employee shall include each elected official who is sworn in to perform services for the City.
- (o) Employer: The City of Cartersville. The Employer is sometimes referred to as the City. Actions by the City are taken by the City Council of the City of Cartersville or its delegates.
- (p) Fund: The total of all deposits credited to the Plan increased by any amounts added or credited to the Fund and decreased by any amounts withdrawn from or charged against the Fund.
- (q) Measurement Date: The Measurement Date for determining the Accrued Funding Percentage is the January 1<sup>st</sup> preceding the Plan Year to which the Accrued Funding Percentage applies.
- (r) Normal Retirement Benefit: The amount of monthly retirement benefit described in Article VI which a Participant is eligible to receive from this Plan if the Participant continues as an Employee until Normal Retirement Date.
- (s) Normal Retirement Date: The first day of the month on or immediately following a Participant’s 65<sup>th</sup> birthday with ten years of Vesting Service.
- (t) Participant: An Employee who is hired on or after January 1, 2017, and meets the requirements of Article II, with the exception that the City Manager may make an irrevocable election whether or not to be a Participant in the Plan.
- (u) Pension Committee: Pension Committee is defined in Article X.
- (v) Plan: The City of Cartersville 2017 Pension Plan.
- (w) Plan Administrator: The Employer.
- (x) Plan Year: The twelve-consecutive-month period for maintaining records for this Plan beginning each July 1 and ending each June 30.
- (y) Termination of Employment: The retirement, resignation or other voluntary or involuntary cessation of an Employee’s employment with the Employer.
- (z) Vesting Service: Vesting Service is defined in Article V.

1.3 Construction: Whenever herein used, the masculine gender shall include the feminine gender and, if applicable, the singular shall include the plural. The words “hereof”, “herein”, “hereunder” or any other compounding of the word “here” shall mean and refer to the entire Plan rather than to any particular provision or section of this Title, unless specifically delineated as such.

ARTICLE II

Participation

Section 2.1	Commencement of Participation
Section 2.2	Termination of Participation
Section 2.3	Reinstatement of Participation
Section 2.4	Leave of Absence
Section 2.5	Rehired Employees

- 2.1 Commencement of Participation: Each Employee who is hired on or after July 1, 2023, shall become a Participant in the Plan on the first day of employment with the Employer. Each Employee who was hired before July 1, 2023, but had not satisfied the waiting period in effect immediately prior to July 1, 2023, shall become a Participant in the Plan effective July 1, 2023, provided that such Employee who had not satisfied the waiting period as of July 1, 2023, shall not be entitled to receive Benefit Accrual Service or Vesting Service for his period of employment prior to July 1, 2023.
  
- 2.2 Termination of Participation: A Participant shall cease to be a contributing Participant hereunder on the day of his Termination of Employment. A person’s participation in the Plan shall end when he or she is no longer employed by the Employer if he or she is not entitled to either an immediate or deferred retirement benefit under the Plan.
  
- 2.3 Reinstatement of Participation: An Employee who ceases to be a contributing Participant according to Section 2.2 hereof and who subsequently returns to employment as an Employee shall be reinstated as a Participant and shall resume Participant contributions:
  - (a) immediately following such return as an Employee if he left his Participant contributions in the Fund upon his Termination of Employment; or
  - (b) immediately following such return as an Employee if he received his Participant contributions in the Fund upon his Termination of Employment. An Employee who received a lump sum upon Termination of Employment has 12 months to return his lump sum with interest compounded at 5% or his Benefit Accrual Service will not include the period of prior employment.
  
- 2.4 Leave of Absence: Except to the extent otherwise required by law, a Participant shall not be credited with service for Vesting Service or Benefit Accrual Service during any period of an authorized or unauthorized leave of absence without pay, or disciplinary suspension without pay. Notwithstanding the foregoing, in the case of a leave of absence due to service in the Armed Forces of the United States, the Employee must return to active employment with the Employer within the periods prescribed under the re-employment provisions of Title 38, Chapter 43, of the United States Code. Within five (5) years of the Employee’s return to active employment from a leave of absence due to military service, the Employee may contribute the Participant contributions that were not made during his leave of absence in order to receive credit for Vesting Service and Benefit Accrual Service while on leave.

- 2.5 Rehired Employees: Any former Employee who is rehired on or after the Effective Date of this Plan shall be eligible to participate in this Plan, and shall not be eligible to reenter The City of Cartersville Pension Plan. Rehired Employees must complete the eligibility requirements of Section 2.1 to enter the Plan, but all service prior to termination shall be taken into account. For benefit accrual purposes in The City of Cartersville Pension Plan, a rehired Participant's benefit is frozen, and his or her Compensation is frozen as of his or her date of termination. However, vesting on and after the date of rehire will be applied in determining the rehired Participant's vested benefit and eligibility for distribution options under The City of Cartersville Pension Plan.

**ARTICLE III**

**Contributions**

- Section 3.1 Contributions by the Employer
- Section 3.2 Contributions by Participants
- Section 3.3 Return of Contributions
- Section 3.4 Direct Rollover of Certain Contributions

3.1 Contributions by the Employer: The Employer shall make contributions to the Fund in such amounts and at such times as shall be necessary to provide the benefits set forth herein and in accordance with the provisions of any law applicable to the Plan. Subject to the provisions of Section 3.3 hereof, all contributions made by the Employer to the Fund shall be used to reduce future Employer contributions and shall be used solely for the exclusive benefit of Participants and their Beneficiaries and to defray reasonable expenses of the Plan or Fund. Forfeitures arising because of death or Termination of Employment before a Participant becomes eligible for a benefit from the Plan or arising for any other reason shall be applied to reduce the cost of the Plan, not to increase the benefits otherwise payable to Participants. Employer contributions shall be deposited in the Fund in such amounts as the Retirement Board in conjunction with the annual actuarial examination shall determine necessary to keep the Fund actuarially sound, subject to the appropriation of funds by the Employer.

3.2 Contributions by Participants: As a condition of employment, each eligible Participant who is not sworn in as an Employee of the City shall be required to contribute toward the cost of the Plan in an amount equal to 3.1% of the Participant’s Compensation for each Plan Year. Each eligible Participant who is a fireman or policeman shall be required to contribute toward the cost of the Plan in an amount equal to 4.1% of such Participant’s Compensation for each Plan Year. Notwithstanding the foregoing, each Participant who is who is former police and fire personnel that transferred to another City department (hereinafter referred to as “Former Police and Fire Personnel”) shall continue to be required to contribute toward the cost of the Plan in an amount equal to four and one-tenth percent (4.1%) of such Participant’s Compensation for each Plan Year. Notwithstanding the foregoing, each Participant who is who is former police and fire personnel that transferred to another City department (hereinafter referred to as “Former Police and Fire Personnel”) shall continue to be required to contribute toward the cost of the Plan in an amount equal to four and one-tenth percent (4.1%) of such Participant’s Compensation for each Plan Year.

- (a) Voluntary contributions are not permitted.
- (b) The contributions of each Participant shall be deducted from the Participant’s Compensation and deposited in the Fund.
- (c) A Participant will not be permitted to withdraw his contributions prior to actual Termination of Employment.



- (d) Participant contributions are “picked up” by the Employer as described in Code §414(h)(2), as amended, and will be treated as being paid by the Employer in determining appropriate tax treatment of such amounts.

3.3 Return of Contributions: The Pension Committee shall return to the contributing Employer or Participant a contribution made by the Employer or Participant due to mistake of fact if the Pension Committee determines that such mistake existed at the time of the contribution and the contribution is returned within 12 months of the date it was made.

3.4 Direct Rollover of Certain Distributions:

- (a) Notwithstanding any provision of the Plan to the contrary that would otherwise limit a Distributee's election under this Section, a Distributee may elect, at the time and in the manner prescribed by the Plan Administrator, to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the Distributee in a Direct Rollover. The following definitions shall apply to this Section:

- (i) An "Eligible Rollover Distribution" is any distribution of all or any portion of the balance to the credit of the Distributee, except that an Eligible Rollover Distribution does not include: (A) any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the Distributee or the joint lives (or joint life expectancies) of the Distributee and the Distributee's designated beneficiary, or for a specified period of ten (10) years or more; (B) any distribution to the extent such distribution is required under Code §401(a)(9); or (C) the portion of any distribution that is not includable in gross income. A Distributee may not elect a direct rollover with respect to an Eligible Rollover Distribution during the Plan Year that is less than \$200. If the Distributee elects to have only a portion of an Eligible Rollover Distribution paid to an Eligible Retirement Plan, that portion must be equal to at least \$500. A portion of a distribution shall not fail to be an Eligible Rollover Distribution merely because the portion consists of after-tax employee contributions, which are not includable in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in Code §408(a) or (b) or to a qualified trust described in Code §401(a) or to an annuity contract described in Code §403(b) that agrees to separately account for amounts so transferred (and earnings thereon), including separately accounting for the portion of such distribution that is includable in gross income and the portion that is not.

- (ii) An "Eligible Retirement Plan" is an individual retirement account described in Code §408(a), an individual retirement annuity described in Code §408(b) (other than an endowment contract), an annuity plan described in Code §403(a), or a qualified trust described in Code §401(a), an annuity contract described in Code §403(b) that accepts the Distributee's Eligible Rollover Distribution, an eligible plan under Code §457(b) which is maintained by a state, political subdivision, or agency or instrumentality of a state and which

agrees to separately account for amounts transferred to such plan from this Plan, and, to the extent permitted and in accordance with the rules applicable under Code §408A, a Roth individual retirement account described in Code §408A.

- (iii) A "Distributee" includes an Employee or former Employee. In addition, the Employee's or former Employee's surviving spouse and the Employee's or former Employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Code §414(p), are Distributees with regard to the interest of the spouse or former spouse
- (iv) A "Direct Rollover" is a payment by the Plan to the Eligible Retirement Plan specified by the Distributee.
- (v) A non-spouse Beneficiary of a deceased Participant who is either an individual or an irrevocable trust, where the beneficiaries of such trust are identifiable and the trustee provides the Plan Administrator with a final list of trust beneficiaries or a copy of the trust document by October 31 of the year following the Participant's death, shall be a Distributee with regard to the interest of the deceased Participant, but only if the Eligible Rollover Distribution is transferred in a direct trustee-to-trustee transfer to an Eligible Retirement Plan which is an individual retirement account described in Code §408(a) or an individual retirement annuity described in Code §408(b) (other than an endowment contract).

**ARTICLE IV**

**Benefit Eligibility**

- Section 4.1 Normal Retirement
- Section 4.2 Early Retirement
- Section 4.3 Late Retirement
- Section 4.4 Disability Retirement
- Section 4.5 Vested Termination of Employment Prior to Retirement
- Section 4.6 Non-Vested Termination
- Section 4.7 Termination of the Pay

4.1 Normal Retirement: An active Participant who attains his Normal Retirement Date shall be 100% vested in his Normal Retirement Benefit. A Participant may retire from service upon reaching his Normal Retirement Date or he may postpone his retirement and remain in service after his Normal Retirement Date, in which event the provisions of Section 4.3 shall be applicable.

4.2 Early Retirement: An active Participant who attains his Early Retirement Date shall be 100% vested in his Accrued Benefit.

4.3 Late Retirement: A Participant who works past his Normal Retirement Date shall be 100% vested in his Accrued Benefit and shall be retired on the first day of the month after the Pension Committee receives his written application to retire.

4.4 Disability Retirement: A Participant shall be eligible for a Disability Retirement Pension if his employment is terminated prior to his Normal Retirement Date by reason of Disability after he has a vested interest in the Plan. Payment of a Disability Retirement Pension shall commence as of the first day of the month following the date the Participant terminates employment due to Disability, as long as the following conditions are met:

- (i) The Participant’s medical condition occurred or became symptomatic during the time he was employed in an employee/employer relationship with the Employer (City of Cartersville);
- (ii) The Participant was totally and permanently disabled at the time he incurred a termination of employment; and
- (iii) The Participant has not been employed with or by any other employer after such termination.

(a) The Pension Committee shall have the right at intervals of not less than one year, prior to a Participant’s Normal Retirement Date, to require proof of continuing Disability, such as to require the Participant to submit proof of receipt of Social Security Disability Benefits or, in absence of that, to require an examination of any Participant receiving a Disability Retirement Pension; provided, however, for purposes of this Section, a Participant’s Normal Retirement Date shall be no earlier than their sixty-fifth (65th) birthday with 10 years of Vesting Service; or fifty-fifth

(55th) birthday with 25 years of Vesting Service; or fiftieth (50th) birthday with 20 years of Vesting Service for police and fire personnel (or Former Police and Fire Personnel). In the event such Participant is found not to be suffering from a Disability, the Pension Committee shall, after hearing evidence thereon and giving the Participant opportunity to be heard, discontinue such Participant's Disability Retirement Pension. In the event such Participant receiving a Disability Retirement Pension refuses to submit to a physical examination after 30 days' notice to report for such examination or to supply proof, of continuing Disability, the Pension Committee shall discontinue payments of the disability Retirement Pension until the Participant submits to such examination or supplies such proof, and the Participant shall be deemed to have forfeited their Pension during the time of refusal.

- (b) Following certification that a Participant's Disability has ceased, in accordance with the provisions of the preceding paragraph, the following rules shall apply:
  - (i) Such Participant shall not be prevented from qualifying for a pension under another provision of the Plan based only upon his Vesting Service, Benefit Accrual Service and Compensation prior to his Disability Retirement; and
  - (ii) Any such Participant shall not receive Vesting Service or Benefit Accrual Service for his period of Disability and any Pension benefit payments received during his Disability period shall be disregarded.
- (c) Workers' Compensation Benefits - Notwithstanding any other provisions of the Plan, if at the time of retirement a Participant is receiving payments under the provisions of the Georgia Workers' Compensation Law which are being paid at the expense of the City, the amount of pension benefit payable under the Plan shall be reduced by the amount being received as workers' compensation. This reduction shall continue as long as the retired Participant is receiving workers' compensation benefit, and upon discontinuance of workers' compensation payments, the offset shall be eliminated and the retired Participant shall be entitled to receive benefits as calculated under the terms of the pension plan. No such reduction shall operate to reduce the sums payable under the provisions of the Plan below \$200.00 per month.
- (d) The cost of providing a Disability retirement option shall be paid by the City, in lieu of providing long-term disability insurance coverage for Employees vested in the Plan.

4.5 Vested Termination of Employment Prior to Retirement: A Participant whose Termination of Employment occurs prior to eligibility for a normal or early retirement benefit shall be 100% vested in his Accrued Benefit if he has completed ten years of Vesting Service.

A Participant is always 100% vested in his Participant contributions.

4.6 Non-Vested Termination: If a Participant completes less than ten years of Vesting Service as of his Termination of Employment, then his Participant contributions without interest

thereon shall be payable to him after his Termination of Employment. Upon receipt of such payment, the Participant's years of Benefit Accrual Service and Vesting Service shall be canceled for all periods before the payment.

- 4.7 Termination of the Plan: In the case of a termination or partial termination of the Plan, the Accrued Benefit of each Participant shall become 100% vested and non-forfeitable.

**ARTICLE V**

**Service**

- Section 5.1 Vesting Service
- Section 5.2 Benefit Accrual Service

- 5.1 Vesting Service: A year of Vesting Service will be credited from the Employee’s date of hire with the Employer and each anniversary thereof. Vesting Service shall be determined by the elapsed time method. Vesting Service will include only service completed while a Participant is an Employee of the Employer. Notwithstanding the foregoing, all years of Vesting Service credited to an Employee for vesting under the rules governing Vesting Service in the Plan prior to January 1, 2023, shall be credited to Participants as Years of Service.
  
- 5.2 Benefit Accrual Service: Benefit Accrual Service is the elapsed period of time from a Participant’s participation in the Plan to the date service is being determined. Service will be calculated in completed calendar months. Benefit Accrual Service will include only service completed while a Participant is an Employee of the Employer. Calendar months start on the first non-holiday weekday of the month and end on the last non holiday weekday.

## ARTICLE VI

### Benefits

- Section 6.1 Normal Retirement
- Section 6.2 Early Retirement
- Section 6.3 Late Retirement
- Section 6.4 Vested Termination of Employment Prior to Retirement
- Section 6.5 Disability Retirement
- Section 6.6 Special Retirement Benefits
- Section 6.7 Qualified Military Service

6.1 Normal Retirement: A Participant’s Normal Retirement Benefit for a Plan Year is a monthly benefit payable upon his Normal Retirement Date equal to 2% of the Participant’s Average Monthly Compensation multiplied by his years of Benefit Accrual Service.

6.2 Early Retirement: A Participant’s benefit payable due to Early Retirement is determined as set forth below.

- (a) A Participant who retires from active service after attaining age 55 with 25 or more years of Vesting Service shall be entitled to his Accrued Benefit payable as of the first of the month coincident with or next following his Termination of Employment.
- (b) A Participant who retires from active service on an Early Retirement Date with less than 25 years of Vesting Service shall be entitled to his Accrued Benefit payable as of his Normal Retirement Date. However, the Participant may elect to receive a reduced benefit commencing on the first day of any month coincident with or following his Early Retirement Date. In that case, the Participant’s benefit shall be equal to his Accrued Benefit reduced by 3% a year (.25% a month) for each of the first five years and by 6% a year (.50% a month) for each of the next five years (years six through ten) for which the commencement date precedes the Participant’s Normal Retirement Date.
- (c) All police and fire personnel (or Former Police and Fire Personnel) have the option to retire at age 50 with a minimum of 20 years of Vesting Service with a monthly annuity equal to their Accrued Benefit. Every vested police and fire personnel (or Former Police and Fire Personnel) with a minimum age of 50 years may retire with less than 20 years of Vesting Service at a reduced benefit. The monthly benefit is equal to the Participant’s Accrued Benefit, reduced by 7% a year for each year in which the termination date precedes the date the Participant would have attained 20 years of Vesting Service. At his termination date, the Participant is required to elect the retirement option desired and to pay into the Plan all required contributions in order to be eligible to retire under the selected retirement option.

The entire cost to fund this early retirement at age 50 with 20 years of Vesting Service is to be paid by all personnel of the police and fire departments (or Former Police and Fire Personnel). To be eligible for this early retirement option, each

Participant who is police and fire personnel (or Former Police and Fire Personnel) will have to make the applicable contribution of four and one-tenth percent (4.1%) of Compensation as described in Section 3.2 for a minimum of five (5) years the prior to such Participant's retirement.

- 6.3 Late Retirement: A Participant's benefit payable upon late retirement shall be calculated by the formula for computing the Normal Retirement Benefit as described in Section 6.1 hereof, using years of Benefit Accrual Service as of his Termination of Employment and the greater of the following for Average Monthly Compensation:
- (a) The Participant's Average Monthly compensation as of his Normal Retirement Date; or
  - (b) The Participant's Average Monthly compensation as of his Termination of Employment.
- 6.4 Vested Termination of Employment Prior to Retirement: A terminated Participant with a deferred vested benefit may elect to receive his vested benefit as provided below.
- (a) To receive, in one lump sum, an amount equal to his total Participant contributions without interest. In such event, the Participant's Accrued Benefit shall be canceled. If a Participant electing to receive his Participant contributions in a lump sum subsequently returns to the service of the Employer and does not exercise his option to return contributions as provided in Section 7.6, he shall be deemed a new Employee. If such a Participant subsequently returns to service with the Employer and exercises his option to return contributions as provided in Section 7.6, he shall be deemed a Participant upon the date of his rehire.
  - (b) To leave his Participant contributions in the Fund and retain 100% of his Accrued Benefit. If a Participant elects to leave his contributions in the Fund under this Section 6.4(b), then his Accrued Benefit will be payable as of his Normal Retirement Date. However, such Participant may elect to receive a reduced benefit on the first day of any month coincident with or following his Early Retirement Date (or the date which would have been his Early Retirement Date and he remained an active Participant). In that case, the Participant's benefit shall be the Actuarial Equivalent of his Accrued Benefit reduced for the number of years and months the benefit commencement date precedes age 65.
  - (c) Notwithstanding any provision of the Plan to the contrary, a Participant who is police and fire personnel (or Former Police and Fire Personnel) with a minimum of 20 years of Vesting Service may elect to leave his Participant contributions in the Fund and retain 100% of his Accrued Benefit. Such Participant may elect to receive a monthly annuity equal to his Accrued Benefit (unreduced) on the first day of any month coincident with or following the date he reaches age 50.
- 6.5 Disability Retirement: A Participant's Disability Retirement Benefit is a monthly benefit payable upon his Disability Retirement Date equal to the Normal Retirement Benefit under Section 6.1, with payment commencing upon his Disability Retirement Date.



6.6 Special Retirement Benefits: The Pension Committee may, from time to time with approval of the City Council, offer benefit enhancements, or the opportunity to retire under specified terms and conditions to an Employee or group of Employees. Any special retirement benefit granted including any temporarily benefit increase associated with any such retirement benefit, must be 100% funded as of the date the benefit is granted by the City Council. Plan surpluses may not be used in any manner to grant or fund special retirement benefit.

6.7 Qualified Military Service.

- (a) In the case of a Participant who dies while performing Qualified Military Service (as defined in Code §414(u)), the survivor of the Participant is entitled to any additional survivor benefits (other than benefit accruals relating to the period of Qualified Military Service) provided under the Plan as though the Participant resumed employment and then terminated on account of death.
- (b) In the case of a Participant who becomes disabled (as defined in Section 1.2(k)) or dies while performing Qualified Military Service (as defined in Code §414(u)), the Participant shall be treated for purposes of benefit accruals under the Plan during the period of Qualified Military Service as if the Participant had remained employed by the Employer and then terminated employment due to disability or death.
- (c) In the case of an individual who receives differential pay from the Employer:
  - (i) such individual will be treated as an Employee of the Employer making the payment; and
  - (ii) the differential pay shall be treated as wages and will be included in calculating the Employee’s Compensation under the Plan.

If all Employees performing service in the Uniformed Services are entitled to receive differential pay on reasonably equivalent terms and are eligible to make contributions based on the payments on reasonably equivalent terms, the Plan shall not be treated as failing to meet the requirements of any provision described in Code §414(u)(1)(c) by reason of any benefit based on differential pay. However, for purposes of applying this Item, the provisions of Code §410(b)(3), (4) and (5) shall be taken into account.

For purposes of this Section 6.7, “differential pay” means any payment which is made by an Employer to an individual while the individual is performing service in the uniformed services while on active duty for a period of more than 30 days, and represents all or a portion of the wages the individual would have received from the Employer if the individual were performing services for the Employer. In applying the provisions of this Section, “uniformed services” are services as described in Code §3401(h)(2)(A).

## ARTICLE VII

### Forms of Payment

Section 7.1	Normal Form of Payment
Section 7.2	Optional Forms of Payment
Section 7.3	Conditions Relative to the Form of Payment
Section 7.4	Distribution Limitations
Section 7.5	Reemployment of a Retired Participant
Section 7.6	Reemployment of a Terminated Participant Without Contributions in the Fund

- 7.1 Normal Form of Payment: The normal form of payment for benefits under the Plan shall be a modified cash refund annuity, payable in monthly installments ending with the last monthly payment before the Participant's death. Under this annuity form, a lump sum amount is paid to the Beneficiary upon the death of the Participant equal to the amount, if any, by which the balance of the Participant contributions, with interest accrued until the date that payments commenced (accrued at a rate of 4% per annum), exceeds the sum of the annuity payments made to the Participant prior to his death. Interest will be credited as follows: contributions made during each completed calendar year will get one half a year of simple interest; accumulated contributions at the beginning of the year will be credited with a full year of interest; and accumulated contributions during the year of Termination of retirement, retirement or death will get one half a year of interest if the termination is in the first half of the year and a full year of interest if the termination is in the second half of the year.
- 7.2 Optional Forms of Payment: In lieu of the normal form of payment as described in Section 7.1, a Participant may elect to receive his benefit under one of the following optional forms of payment which are the Actuarial Equivalent of the benefit payable under the normal form of payment.
- (a) 20 Years Certain and Life Annuity: A benefit payable for the Participant's life provided that a combined minimum of 240 monthly payments will be made to the Participant and his Beneficiary.
  - (b) Ten Years Certain and Life Annuity: A benefit payable for the Participant's life provided that a combined minimum of 120 monthly payments will be made to the Participant and his Beneficiary.
  - (c) Five Years Certain and Life Annuity: A benefit payable for the Participant's life provided that a combined minimum of 60 monthly payments will be made to the Participant and his Beneficiary.
  - (d) Joint and 100% Survivor Annuity: A benefit payable during the Participant's life and, after his death, payable during the life of, and to, the Beneficiary named by him when he elected the option.

- (e) Joint and 75% Survivor Annuity: A benefit payable during the Participant's life and, after his death, payable at 3/4 the rate paid to him during the life of, and to, the Beneficiary Named by him when he elected the option.
- (f) Joint and 50% Survivor Annuity: A benefit payable during the Participant's lifetime and, after his death, payable at 1/2 the rate paid to him during the life of, and to, the Beneficiary named by him when he elected the option.

### 7.3 Conditions Relative to the Form of Payment:

- (a) Restrictions on Optional Forms of Payment:
  - (i) An optional form of payment may not be chosen if it provides monthly payments to the Beneficiary which will exceed the monthly payments to the Participant or if it provides monthly payments to the Beneficiary, other than the Participant's spouse, where the Actuarial Equivalent of the payments expected to be made to the Participant is less than 50% of the Actuarial Equivalent of the total payments expected to be made under such optional form. These payments will end with the last monthly payments preceding the death of the Beneficiary.
  - (ii) Upon the later of the death of the Participant and the death of the Beneficiary, a lump sum amount is paid equal to the amount, if any, by which the balance of the Participant contributions, with accrued interest (accrued at a rate of 4% per annum), exceeds the sum of the annuity payments made to the Participant and the Beneficiary.
- (b) Electing an Optional Form of Payment: A Participant may elect any one of the optional forms of payment described in Section 7.2 subject to the following:
  - (i) The Participant must file a written notice specifying the form to be elected and naming his Beneficiary, where applicable; and
  - (ii) Such notice must be filed at least 180 days before the Participant's retirement date or 180 days after such Participant receives written notice of the available election, if later.
- (c) Change in Election: A Participant may elect to change the form of payment, the designated Beneficiary or the amount payable to the Beneficiary by filing written notice of such change with the Plan Administrator at least 90 days prior to his retirement date or 90 days after such Participant receives written notice of the available elections, if later. The Plan Administrator may require that the Participant's spouse co-sign any election made by the Participant.
- (d) Death: If a Participant shall have elected an optional form of retirement income; and

- (i) If the Beneficiary shall die and the Participant shall notify the Plan Administrator of the death before the start of Participant's retirement income payments, the election shall be void.
- (ii) If the Beneficiary shall die after commencement of an optional form of payment but before the death of the retired Participant, such Participant shall continue to receive the income payable to that Participant in accordance with such election.
- (iii) If the Participant dies before the date the election of the option becomes effective, the election shall be void.
- (iv) Death benefits will be paid in accordance with Article VIII.

7.4 Distribution Limitation: Notwithstanding any other provision of this Plan, all distributions from this Plan shall conform to the regulations issued under Code §401(a)(9), applicable to Governmental Plans, as defined in Code §414(d), including the incidental death benefit provisions of Code §401(a)(9)(G). Further, such regulations shall override any plan provision that is inconsistent with Code § 401(a)(9).

7.5 Reemployment of a Retired Participant:

- (a) Benefits Cease: The retirement benefit payable from the Plan to any retired Participant shall cease as of the first date of reemployment, if such Participant is reemployed as an Employee. Retirement benefits shall resume as of the first day of the month following Termination of Employment. Such cessation or suspension of retirement benefit payable shall not affect the payment of retirement benefits after the death of a reemployed Participant under any optional form of payment which shall at that time be in effect.
- (b) Contribution Resume: Upon the reemployment of a retired Participant as an Employee, he shall be required to make Participant contributions toward a retirement benefit in accordance with the provisions of Section 3.2 hereof.
- (c) Benefits Redetermined: The amount of the retirement benefit to be paid upon the subsequent Termination of Employment of a Participant described in Section 7.5(a) shall be redetermined on the basis of the increased service, Age, and contributions. The Plan's formula for computing a retirement benefit in effect at the time of each Termination of Employment shall apply to determine each portion of the Participant's retirement benefit attributable to years of Benefit Accrual Service earned since the preceding Termination of Employment. In any case where the payment of a retirement benefit which was reduced on account of early retirement is suspended on account of reemployment, the amount of the retirement benefit to be paid on subsequent Termination of Employment shall also be determined so that the amount of reduction made for early retirement on the previous retirement date will be adjusted to reflect the duration of the period for which the benefit is suspended.

- (d) Part Time or Consultant Employment: If a Retired Participant is paid by the Employer in any fashion (including as a consultant) excluding severance, said Monthly Retirement Benefit shall be suspended as of the date of his return to service. For the purposes of this Subsection (d), a “return to service” occurs at the earlier of when a Retired Participant has received compensation of any sort for a period of six months or has been compensated in excess of 1,040 hours. The Retirement Benefit will then recommence the first of the month coincident with or following the termination of compensation.

7.6 Reemployment of a Terminated Participant Without Contributions in the Fund: If a Participant terminates employment with any Benefit Accrual Service, receives a lump sum distribution of his employee contributions without interest and later returns to service as an Employee of the Employer, then the Participant may repay the contributions, subject to the following in order to receive credit for prior service.

- (a) The period of time between the Participant’s termination of employment and his rehire is less than or equal to five years.
- (b) The individual must repay his total Participant contributions with interest at the rate of 5% per year, compounded annually from the date the distribution was made from the Plan until the date of repayment.
- (c) The individual must repay his total Participant contributions with interest within 12 months following his re-employment.

## ARTICLE VIII

### Death Benefits

- Section 8.1 Death Benefit While an Active Participant
- Section 8.2 Death Benefit after Termination of Employment
- Section 8.3 Designation of Beneficiary

8.1 Death Benefit While an Active Participant: If a Participant dies while an Employee, the Plan pays the death benefit explained below.

- (a) If the Participant was married at the time of their death and had completed ten years of Vesting Service, then the surviving spouse can elect one of the following benefits.
  - (i) If the Participant has met the requirements of Normal Retirement or unreduced Early Retirement under this Plan, (unreduced Early Retirement is for Police and Fire age 50 with a minimum of 20 years of service; age 55 with minimum of 25 years of service; or age 65 with a minimum of 10 years of service), the Plan pays the spouse a monthly annuity calculated at 100% spousal formula rate as in the living benefit. The benefit shall begin on the first of the month following the date of the Participant's death, with the provision that upon the death of the spouse, a lump sum is paid to the spouse's beneficiary equal to the amount, if any, by which the balance of the Participant contributions, with interest accrued to the date of death of the Participant at the rate of 4% per annum, exceeds the sum of the annuity payments previously made to the spouse.
  - (ii) If the Participant has not met the requirements of Normal Retirement under this Plan, a monthly annuity equal to 50% of the Participant's Accrued Benefit as of the date of the Participant's death payable to the spouse. The benefit shall begin on the first of the month coincident with or next following the later of the date the Participant would have reached age 55, with the provision that upon the death of the spouse, a lump sum is paid to the spouse's beneficiary equal to the amount, if any, by which the balance of the Participant contributions, with interest accrued to the date of death of the Participant at the rate of 4% per annum, exceeds the sum of the annuity payments previously made to the spouse.
  - (iii) A lump sum payment equal to the Participant contributions made by the Participant plus interest accrued until the date of the Participant's death at the rate of 4% per annum.
- (b) If the Participant's death occurs where a benefit is not payable under Subsection (a), the Participant's Beneficiary shall receive a lump sum payment equal to the Participant contributions made by the Participant plus interest accrued until the date of Participant's death at the rate of 4% per annum.

- 8.2 Death Benefit After Termination of Employment: If the Participant's death occurs after Termination of Employment but before benefit payments have begun, the Participant's Beneficiary shall receive a lump sum payment equal to the Participant contributions made by the Participant, plus interest accrued until the date of the Participant's death at the rate of 4% per annum.

If the Participant's death occurs after benefit payments have begun, the death benefit will be determined by the form of payment option in effect at the time of death.

- 8.3 Designation of Beneficiary: There is no requirement to designate a beneficiary prior to retirement. The Beneficiary is the Participant's spouse, if any. If there is no spouse any guaranteed payments which otherwise would be paid to a Beneficiary upon the death of the Participant will be discounted and paid in one sum to the executors or administrators of the Participant's estate. At retirement a participant may designate a Beneficiary other than their spouse only if electing a Period Certain benefit.

## ARTICLE IX

### Maximum Benefits

The maximum annual benefit payable to a Participant under the Plan shall be subject to the limitations set forth in Code §415 and any regulations issued thereunder. If for any year the foregoing plan limitation would be exceeded, the benefit provided under this Plan shall be reduced to the extent necessary to meet applicable limitations for the limitation year. For these purposes, the term “limitation year” is the calendar year, and any change to the limitation year must be accomplished through an amendment which designates a new 12-month limitation year that begins during the limitation year begin amended.



## ARTICLE X

### Administration of Plan

Section 10.1 Pension Committee

Section 10.2 Powers and Duties of Pension Committee

#### 10.1 Pension Committee:

- (a) The general administration of the Plan and the responsibility for carrying out the provisions of this division are hereby vested in a Pension Committee. The Pension Committee (or Committee) shall be composed of five members, three of whom shall be participating Employees whom shall be elected as follows: one from the Police and Fire Departments; one from the Gas, Electric and Water and Sewer Departments; and one) from the Community Development, Public Works, City Clerk, Garage, Parks and Recreation, Finance, and Administration Departments. The elected participating Employees shall serve six-year staggered terms or until their successors are elected. The other two members shall be the City manager and the City finance director whose terms shall be equivalent to their employment in those capacities. The Pension Committee for this Plan shall be identical to the Pension Committee for The City of Cartersville Pension Plan. An election for membership by the Committee will be held on the Tuesday after the first Monday in November of every year for one Committee member.
- (b) The Pension Committee shall elect a chairman from among its members. The Pension Committee shall also appoint a secretary who shall keep all records of its meetings and actions and execute in behalf of the Committee any paper or instrument when so required by the Pension Committee.
- (c) The members of the Pension Committee shall serve without pay but shall be entitled to reimbursement for all reasonable and necessary disbursements made or expenses incurred by them in the performance of their duties. The Pension Committee may be authorized to compensate the secretary in an amount approved by the mayor and City Council.
- (d) No member shall be personally liable by virtue of any contract, agreement, bond or other instrument or undertaking made or executed by him as a member of the Pension Committee, nor for honest mistakes of judgment, nor for any loss unless resulting from his own willful misconduct; and no member shall be liable for the act of neglect, omission or wrongdoing of any other member, or for those agents or counsel of the Pension Committee.
- (e) The City shall hold the Pension Committee harmless from and shall indemnify the members for the consequences of their acts or omissions and conduct in their official capacity, including the cost of litigation and counsel fees, except for such act, omissions or conduct for which such member is liable under Subsection (d).
- (f) Meetings of the Pension Committee shall be held at such times and places as the majority of the members shall from time to time determine. A majority of the

membership shall constitute a quorum, and all decisions, acts and resolutions of the Pension Committee shall be by an affirmative vote of at least three members.

- (g) When a vacancy occurs or exists on the Committee, the remaining members, provided that they are not less than three, are authorized to perform all functions of the Pension Committee. However, vacancies on the Pension Committee shall be filled as expeditiously as possible.
- (h) The City attorney or other attorney engaged by the Pension Committee is the legal advisor to the Pension Committee.

#### 10.2 Powers and Duties of Pension Committee:

- (a) The Pension Committee shall have the duties expressly provided or implied under the provisions of this division, and in addition thereto, the following to:
  - (i) Holding meetings upon, notice, as may from time to time be required;
  - (ii) Maintain adequate age, service and salary records on all Employees participating in the plan and any other related data that may be necessary in the administration of the Plan and in the effective operation thereof, such data to be furnished to the Committee by the City;
  - (iii) Pass upon applications for benefits, verify the qualifications of the applicants for benefits, and authorize the payment of benefits by the trustee;
  - (iv) Keep a detailed record of all benefit payments and other expenditures made pursuant to the provisions of the Plan to the persons qualifying for such payments, to ensure all financial transactions are properly accounted for;
  - (v) Make and enforce uniform nondiscriminatory rules and regulations for the efficient administration of the Plan and resolve any questions or interpretations that may arise in connection with the Plan; and
  - (vi) Employ actuarial, legal and other technical assistance necessary during the operation of the Plan in connection with the determination of cost and liabilities and to ensure the Plan retains its tax qualified status.
- (b) The Pension Committee shall pay the expenses for technical assistance as provided in Subsection (a)(6) and for expenses for the Fund established in Section 11.1, but in no case may the funds be diverted from investments for any use other than the Plan.
- (c) The Pension Committee shall establish any necessary rules and procedures for the administration of the Plan and the conduct of their meetings as they deem advisable. The decisions and rules of a majority shall be final and binding on all parties and shall not be subject to appeal.

- (d) The Pension Committee shall annually or as often as requested transmit to the City and the members a report showing the financial condition of the Plan.

## ARTICLE XI

### Administration of the Trust Fund

Section 11.1 Establishment of Employee Fund

Section 11.2 Investment of Trust Fund

- 11.1 Establishment of Employee Fund: The Pension Committee shall maintain a Fund into which the contributions of each Participant and of the employer shall be paid, which Fund shall comprise a trust fund held for and in behalf of all Participants and beneficiaries thereof. The Pension Committee shall designate a custodian to hold the Fund as the assets of the Plan by entering into a custodial agreement with the entity designated.
- 11.2 Investment of Trust Fund:
- (a) By the Pension Committee: All contributions made to the Fund pursuant to this Plan shall be paid to the custodian and, except as herein otherwise provided, shall be held, invested and reinvested without distinction between principal and income, in such securities or in such other property, real or personal, wherever situated, as the Pension Committee shall deem advisable, according to the Investment Policy Statement for the Plan established by the Committee. Such investment may include, but are not limited to, real property, shares of stock, common or preferred, whether or not listed on any exchange, mutual investment funds, bonds and mortgages, and other evidences of indebtedness or ownership. The custodian shall hold and retain all the property and assets of the Fund, including income from investments and from all other sources, for the exclusive benefit of the Participants and their beneficiaries, as provided herein, and for paying the costs and expenses of administering the Plan and Fund, to the extent that the same are not paid by the Employer.
  - (b) By Investment Manager: The Pension Committee may enter into one or more agreements for the appointment of one or more Investment Managers to supervise and direct the investment and reinvestment of a portion or all of the Fund in accordance with the provisions of this Plan and Subsection (a) in the same manner and with the same powers, duties, obligations, responsibilities and limitations as apply to the Pension Committee. As a condition to its appointment, an Investment Manager shall acknowledge in writing that it is a fiduciary with respect to the Fund. An Investment Manager so appointed shall be an Investment Advisor registered pursuant to the Investment Advisor's Act of 1940, a bank as defined in such Act or an insurance company which is qualified to manage the assets of employee benefit plans pursuant to the laws of more than one state. The custodian shall be bound by the supervision and direction of the Investment Manager, unless and until the Pension Committee amends or revokes the appointment or authority of the Investment Manager. An Investment Manager shall have sole investment responsibility for that portion of the Fund which it has been appointed to manage. An Investment Manager shall receive such reasonable compensation chargeable against the Fund as shall be agreed upon by the Pension Committee. The Pension Committee may revoke an agreement with the Investment Manager at any time by

30 days' written notice to the Investment Manager. Any Investment Manager may resign by 30 day's written notice to the Pension Committee.

ARTICLE XII

**Modification or Discontinuance of the Plan**

- Section 12.1 Right to Amend or Terminate
- Section 12.2 Frozen Plan
- Section 12.3 Residual Amounts

- 12.1 Right to Amend or Terminate: The City of Cartersville expects and intends to maintain the Plan in force indefinitely, but necessarily reserves the right to modify, discontinue or terminate the Plan at any time in any manner it deems appropriate.
- 12.2 Frozen Plan: In the event benefit accruals under the Plan is frozen, only Benefit Accrual Service, and not Compensation, may be frozen. In addition, freezing the Plan will eliminate the contribution requirements of Sections 3.1 and 3.2.
- 12.3 Residual Amounts: In no event shall the Employer receive any amounts from the Plan’s trust fund or custodial account upon termination of the Plan, except that, and notwithstanding any other provision of the Plan, the Employer may receive such amounts, if any, as may remain after the satisfaction of all liabilities of the Plan.

## ARTICLE XIII

### Miscellaneous

Section 13.1	Misstatement in Application for Retirement Benefit
Section 13.2	Missing Persons
Section 13.3	Non-Alienation of Benefits Exceptions
Section 13.4	Plan Not a Contract of Employment
Section 13.5	Payment to Minors and Incompetents
Section 13.6	Additional Participating Employers
Section 13.7	Initial Qualification

- 13.1 Misstatement in Application for Retirement Benefit: Upon discovering that an Employee or Participant has provided any incorrect information to the Pension Committee or has omitted to provide needed information to the Pension Committee, his contributions and retirement benefit shall be adjusted on the basis of the correct facts as the Pension Committee directs. The amount of any previous underpayments or overpayments to such Participant shall be adjusted by said Participant's succeeding payments.
- 13.2 Missing Persons: If the Pension Committee is unable to pay any benefit from the Fund because the identity or whereabouts of a Participant or Beneficiary cannot be ascertained, the Pension Committee may direct that such benefit and all further benefits with respect to such person shall be suspended until such person is located.
- 13.3 Non-Alienation of Benefits Exceptions: No benefits which shall be payable under the Plan shall be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, garnishment, encumbrance or charge, including without limitation any domestic relations order.
- 13.4 Plan Not a Contract of Employment: This Plan shall not be deemed to constitute a contract of employment. This Plan has no effect on a person's right to become an Employee. This Plan has no effect on an Employee's rights, duties or obligations related to his status as an Employee.
- 13.5 Payment to Minors and Incompetents: If a person who is entitled to any payment through this Plan is a minor or is incompetent, the Pension Committee shall direct said payments to be paid to the legal representative of the estate of the minor or incompetent person.
- 13.6 Additional Participating Employers:
- (a) If any entity is now or becomes associated with the Employer, the Pension Committee may include the employees of that entity in the membership of the Plan. In that event, the Pension Committee shall determine to what extent, if any, credit and benefits shall be granted for previous service with the entity, but subject to the continued qualification of the trust for the Plan as tax-exempt under the Code.

- (b) Any entity associated with the Employer may terminate its participation in the Plan upon appropriate action by it, in which event the funds of the Plan held on account of Participants in the employ of that entity shall be held as part of the Fund.

13.7 Initial Qualification. If the Plan and the related trust fail to receive the initial approval of the Internal Revenue Service as a qualified plan and trust, within one (1) year after the date of denial of qualification:

- (a) the contribution of the Employer after payment of all expenses will be returned to the Employer free of the Plan and trust;
- (b) contributions made by a Participant shall be returned to the Participant who made the contributions; and
- (c) the Plan and related trust shall thereupon terminate.





## CITY COUNCIL ITEM SUMMARY

<b>MEETING DATE:</b>	August 3, 2023
<b>SUBCATEGORY:</b>	Resolutions
<b>DEPARTMENT NAME:</b>	Administration
<b>AGENDA ITEM TITLE:</b>	178 W. Main Street Concept Plan
<b>DEPARTMENT SUMMARY RECOMMENDATION:</b>	Womack Brothers LLC is seeking approval of conceptual plans for City Overlook, a proposed townhome development located at 178 W. Main Street.
<b>LEGAL:</b>	Reviewed by Archer & Lovell

**RESOLUTION \_\_\_\_\_**

**RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF CARTERSVILLE REGARDING THE AGREEMENT BETWEEN J.B. HENDERSON PROPERTIES, INC. AND THE CITY OF CARTERSVILLE DATED FEBRUARY 16, 2023, ASSIGNED TO WOMACK BROTHERS, LLC ON JULY 6, 2023, APPROVING OF THE CONCEPT PLAN**

**WHEREAS**, the City of Cartersville and J.B. Henderson Properties, Inc. (hereinafter referred to as “Purchaser”) entered into an Agreement dated February 16, 2023 (hereinafter referred to as “Agreement”), said Agreement was assigned to Womack Brothers, LLC on July 6, 2023; and

**WHEREAS**, pursuant to Paragraph XI of said Agreement, Purchaser is required to submit concept plans to the Mayor and City Council for approval, a copy of which is attached hereto as Exhibit “A”.

**NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF CARTERSVILLE, IN THE STATE OF GEORGIA, AS FOLLOWS:**

That the Mayor and City Council of the City of Cartersville, approve the concept plans attached hereto as Exhibit “A”.

**BE IT AND IT IS HEREBY RESOLVED AND ADOPTED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF CARTERSVILLE, this \_\_\_\_ day of \_\_\_\_\_, 2023.**

ATTEST:

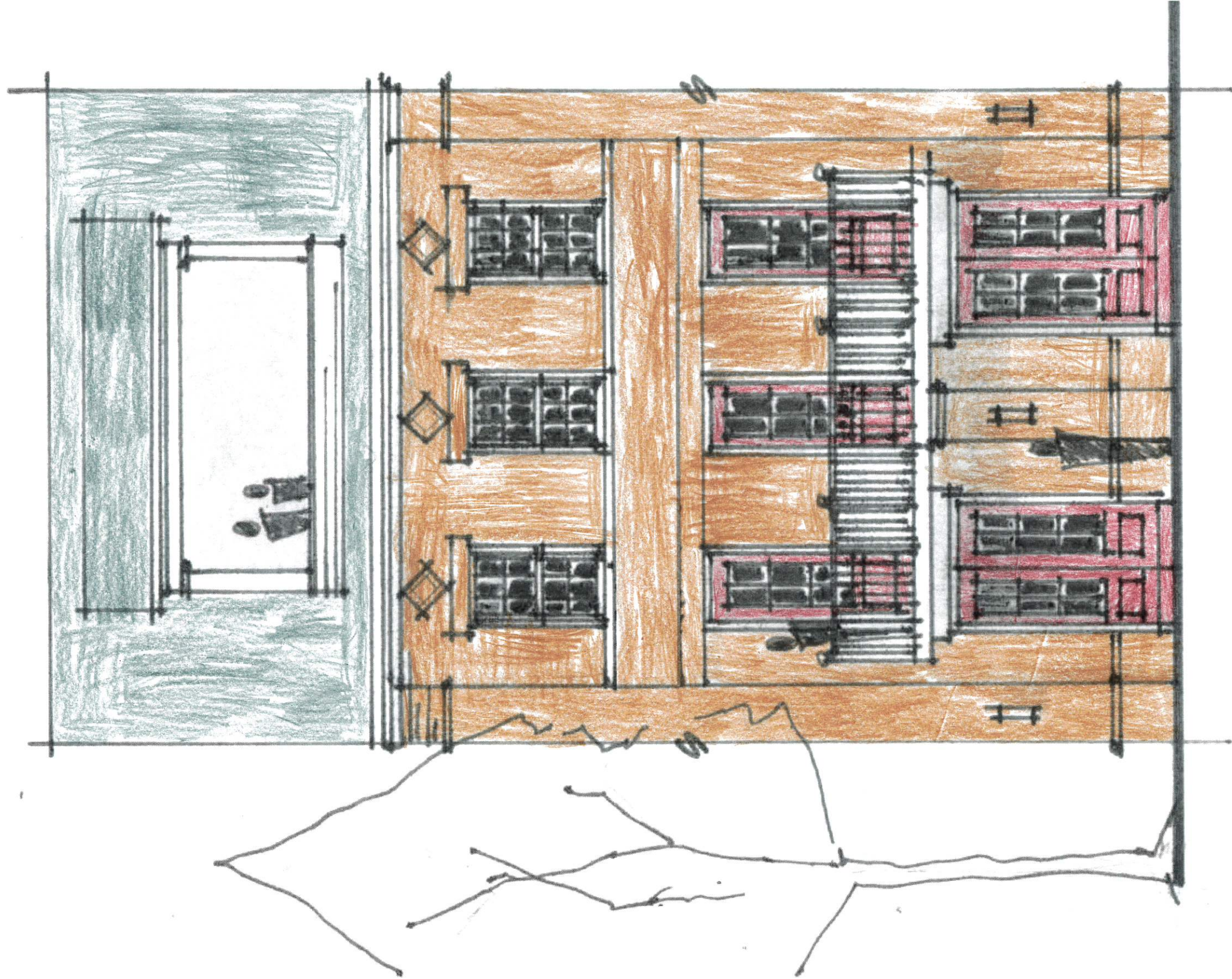
/s/\_\_\_\_\_  
Julia Drake, City Clerk  
City of Cartersville, Georgia

/s/\_\_\_\_\_  
Matthew J. Santini, Mayor  
City of Cartersville, Georgia









\* ALL RENDERINGS, FLOOR PLANS, AND SITE PLAN CONCEPTS ARE SUBJECT TO CHANGE



# BARTOW - MAIN CONCEPTS 26X38 UNIT







## CITY COUNCIL ITEM SUMMARY

<b>MEETING DATE:</b>	August 3, 2023
<b>SUBCATEGORY:</b>	First Reading of Ordinances
<b>DEPARTMENT NAME:</b>	Administration
<b>AGENDA ITEM TITLE:</b>	Amendment and Restatement of the 1967 Retirement Plan
<b>DEPARTMENT SUMMARY RECOMMENDATION:</b>	<p>This ordinance amendment and restatement will allow the city to move our plan assets for the 1967 Pension Plan to the Georgia Municipal Employees Benefit System (GMEBS) to allow them to manage our pension plan assets and provide the monthly benefits to city retirees. Moving to GMEBS is a win for the city as it reduces our costs to maintain the defined benefit plan offered to our employees hired before January 1, 2017. Upon second reading, I recommend approval of these amendments.</p>
<b>LEGAL:</b>	Reviewed by Archer & Lovell

**SERVICE CREDIT PURCHASE  
ADDENDUM TO THE  
GEORGIA MUNICIPAL EMPLOYEES BENEFIT SYSTEM  
DEFINED BENEFIT RETIREMENT PLAN  
ADOPTION AGREEMENT**

This is an Addendum to the Adoption Agreement completed by the City of Cartersville, Georgia. It modifies the Adoption Agreement to provide for service credit purchases for eligible Participants in the Retirement Plan for the Employees of the City of Cartersville, in accordance with and subject to the following requirements:

- (1) **Service Credit Purchase; Eligibility Requirements.** Subject to any conditions specified in Section 13.B. or 13.C. of the Adoption Agreement and in this Service Credit Purchase Addendum, Participants in this Plan who are actively employed on or after September 1, 2023, may purchase credit under this Plan for the Participant's full-time Service with the City during the participant's "waiting period" (i.e., from the Participant's date of hire as an Eligible Employee until the date on which the Participant commenced participation in the Plan). The purchase of prior service credit is permitted but not required under this Plan. Such purchases will be allowed to the extent permitted by law, subject to any conditions, proofs, or acceptance that the Pension Committee Secretary or GMEBS deem appropriate.
  
- (2) **Use of Purchased Service Credit.** Subject to any conditions or limitations provided in this Addendum, service credit purchased hereunder will be counted as Credited Service for purposes of (check all that apply):
  - computing the amount of benefits payable under the Plan;
  - meeting the minimum service requirements for vesting under the Plan;
  - meeting the minimum service requirements for benefit eligibility under the Plan.
  
- (3) **Application to Purchase Service Credit.** A Participant who meets the eligibility requirements specified in paragraph (1) above and who wishes to purchase eligible service credit as described in paragraph (1)

- above may apply for such purchase by completing and submitting to the Pension Committee Secretary an application form provided for that purpose. Participants will be responsible for providing the Pension Committee Secretary with any information or documentation that the Pension Committee Secretary deems necessary to establish that the Participant's service is eligible for purchase under paragraph (1) above.
- (4) **Window Period for Application.** In order to purchase service credit, eligible Participants may submit the service credit purchase application during the period of October 1, 2023 – November 30, 2023, and October 1, 2024 – November 30, 2024. If a Participant does not submit a completed application to purchase service credit within the designated window period, the Participant will not be permitted to purchase service credit. As a precondition for approval of his or her application, the Participant will be responsible for providing the Pension Committee Secretary with any additional information or documentation that the Pension Committee Secretary deems necessary to establish that the Participant's service is eligible for purchase under paragraph (1) above. Notwithstanding any provision herein to the contrary, no Participant may apply for or purchase prior service credit after his or her termination of employment.
- (5) **Review by Pension Committee Secretary.** Within 30 days after the end of the application period, the Pension Committee Secretary will review the Participant's application to purchase service credit and will determine whether the application should be accepted. Upon approval of an application by the Pension Committee Secretary, the Pension Committee Secretary will certify on the application the number of years and months of prior service that are eligible for purchase under paragraph (1) above.
- (6) **Fee for Cost Study.** As a precondition for approval of the application to purchase service credit, and prior to the commencement of any cost study, Participants may be required by the Employer to pay all or a portion of the GMEBS actuarial cost study fee(s) associated with determining the cost to purchase the Participant's eligible service credit. Any portion of the fee that the Participant is not required to pay will be paid by the Employer.
- (7) **Actuarial Study to Determine Cost of Purchase.** In the event that a cost study has not been undertaken prior to the Participant's submission of a

completed application to purchase service credit, if the Participant's application to purchase is approved by the Pension Committee Secretary, a cost study will be undertaken as soon as reasonably practicable after the application has been approved, in order to determine the actuarial cost relating to the Participant's prior service that is eligible for purchase.

- (8) **Lump Sum Payment Required Within 120 Days.** Upon completion of the cost study, the Pension Committee Secretary will notify the Participant of the lump sum amount required to purchase prior service credit, as reflected in the cost study. Within 120 days of receiving this notice or of receiving notice of the Pension Committee's approval of the Participant's application to purchase service credit, whichever is later, the Participant shall remit said lump sum amount in the form and manner required by paragraphs (9)-(11) below, the Pension Committee Secretary, and GMEBS. The Participant may remit less than the full lump amount necessary to purchase all of the prior service credit which is eligible for purchase, in which case the percentage of service credit awarded will be equal to the percentage of the full amount remitted. The Pension Committee Secretary shall have the authority to extend the 120-day time period for payment of lump sum amounts required to purchase service credit if, for reasons outside the control of the Participant, payment cannot be made within the 120-day period. However, the time limit for payment will not be extended any later than an additional 120 days and in no event may a Participant make such payment after his or her termination of employment.
- (9) **Method of Payment.** To the extent permitted by the Internal Revenue Code and regulations issued thereunder, the lump sum amount referred to in paragraph (8) above may be paid via one or more of the following sources: (1) a direct trustee-to-trustee transfer from a 401(a) qualified retirement plan, a governmental 457(b) deferred compensation plan or a 403(b) tax sheltered annuity; (2) a qualified rollover from a governmental 457(b) plan, 403(b) tax-sheltered annuity plan, 401(a) qualified plan, 403(a) annuity plan, or a 408(a) or 408(b) individual retirement account or annuity (traditional IRA); or (3) a lump sum contribution of after-tax funds. Participants shall be solely responsible for effecting the payment referred to herein. Participants will not be permitted to purchase credit via payroll deduction.



- (10) **Limitation on Amount of Lump Sum Payment.** If the lump sum amount referred to in paragraph (8) is paid via any method other than as described under paragraph (9)(1) or (9)(2) above, then the Participant shall not be permitted to contribute to the Plan in any calendar year an amount which exceeds any applicable limit specified in Internal Revenue Code Section 415.
- (11) **IRC 415, Other Limitations.** Notwithstanding any other provision of the Adoption Agreement or this Addendum to the contrary, the Plan will not accept and shall return without interest any contribution or portion of a contribution made to purchase service credit if such contribution would result in a violation of the applicable limitations established under Internal Revenue Code Section 415(b), (c), or (n) or any other provision of law or the Plan, or if it is later determined that the Participant's prior service is not eligible for purchase, and any prior service credit attributable to said contribution or portion of a contribution will be forfeited.
- (12) **Return of Contributions.** Contributions made to purchase prior service credit shall be used to fund retirement and death benefits payable under the Plan relating to such credit. Contributions shall not otherwise be refundable to the Participant or any other person, except as otherwise provided in this paragraph (12) or in Section 13.06 or 18.04 of the Master Plan Document (concerning failure to exhaust or termination of the Plan, respectively). Participants (check one):
- will not be permitted to withdraw contributions made to purchase prior service credit upon termination of employment (Participants must be vested to purchase prior service credit).
  - will not be permitted to withdraw contributions made to purchase prior service credit upon termination of employment, unless they are not vested upon termination (Participants are not required to be vested to purchase prior service credit).
  - will be permitted to withdraw contributions made to purchase service credit upon termination of employment, subject to the provisions of Section 13.03(c) of the Master Plan Document concerning the effect of withdrawal. For purposes of determining the amount of any refund of contributions made to purchase service credit, said contributions shall be credited with interest at

**0% (but see General Addendum subsection 16(i) concerning the rate of interest in the event of failure to exhaust), subject to any limitations on the crediting of interest in Section 13.03(c) of the Master Plan Document.**

- will be permitted to withdraw contributions made to purchase service credit upon termination of employment, subject to the following conditions for repayment (must describe):**

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**Note: Partial withdrawal of employee contributions is not permitted. If the Participant withdraws contributions made to purchase service credit, the Participant will forfeit any and all service credit and/or benefits attributable to such purchase for all purposes.**

**(13) Repayment Upon Reemployment. If the Participant returns to employment with the Employer after having withdrawn his contributions made to purchase prior service credit, the Participant (check one):**

- not applicable (withdrawal not permitted).**
- will not be permitted to re-purchase said service credit upon reemployment.**
- will be permitted to re-purchase said service credit upon reemployment, based on the actuarial cost of such service credit, taking into account the additional actuarial cost of any benefit enhancements adopted prior to reemployment pursuant to paragraph (14) below, provided that the Participant makes application for such re-purchase within [insert time limit] after reemployment and provided the Participant effects payment for such re-purchase in accordance with and subject to the provisions of this Addendum within [insert time limit] after the application is approved.**
- will be permitted to re-purchase said service credit upon reemployment, subject to the following conditions for repayment (must describe other repayment method): A Participant who returns to employment with the City after having withdrawn Contributions made to purchase prior**

**service credit shall be subject to the applicable provisions of Section 13.03(d) and (e) of the Master Plan concerning repayment of Employee Contributions for the purpose of restoring Credited Service under this Plan that was previously forfeited by virtue of the Participant's withdrawal of Employee Contributions, provided, that the period of time between the Participant's Termination of employment and the Participant's date of reemployment is less than or equal to five (5) years. If a Participant returns to employment more than five (5) years after his or her most recent Termination of employment, the Participant will not be eligible to repay withdrawn Employee Contributions or restore previously forfeited Credited Service under the Plan.**

- (14) **Definition of Actuarial Cost.** The cost to purchase qualifying prior service credit shall be determined based upon the actuarial cost of said prior service credit. In applying the provisions of the Adoption Agreement and this Service Credit Purchase Addendum, the term "actuarial cost of prior service credit" means:
- the actuarial accrued liability relating to such prior service as determined by the GMEBS actuary and calculated using the actuarial assumptions and methods established for this purpose in the funding policy adopted by the GMEBS Board of Trustees.
  - Other (must specify other method of determining actuarial cost for this purpose): \_\_\_\_\_.

The terms of the foregoing Service Credit Purchase Addendum to the Adoption Agreement are approved by the Mayor and Council of the City of Cartersville, Georgia this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Attest: CITY OF CARTERSVILLE, GEORGIA

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor

(SEAL)

Approved:

\_\_\_\_\_  
City Attorney

The terms of the foregoing Service Credit Purchase Addendum are approved by the Board of Trustees of the Georgia Municipal Employees Benefit System.

IN WITNESS WHEREOF, the Board of Trustees of the Georgia Municipal Employees Benefit System has caused its Seal and the signatures of its duly authorized officers to be affixed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Board of Trustees  
Georgia Municipal Employees  
Benefit System

(SEAL)

\_\_\_\_\_  
Secretary

**GENERAL ADDENDUM TO THE  
GEORGIA MUNICIPAL EMPLOYEES BENEFIT SYSTEM  
DEFINED BENEFIT RETIREMENT PLAN  
ADOPTION AGREEMENT**

**This is an Addendum to the Adoption Agreement completed by the City of Cartersville, Georgia, as follows (complete one or more sections, as applicable):**

**\*\*\*Item (1) of pre-approved Addendum - Not Applicable\*\*\***

**(2) Discontinuance of participation in the Plan by one or more Departments or classes of Employees (for amendment of Adoption Agreement only - see Section 9 of Adoption Agreement):**

- (a) Employees Initially Employed on or after January 1, 2017, Do Not Participate in DB Plan; Eligible Regular Employees Participating in This Plan before January 1, 2017, Remain in This Plan unless Later Reemployed - Eligible Regular Employees who were employed with the City and were participating in this Plan as of December 31, 2016, will remain in this Plan (“Cartersville GMEBS Plan I”), subject to the eligibility requirements of this Plan, and except as otherwise provided in subsections 2(b) and (c) and Section 14 below concerning the effect of becoming reemployed. Any Employee who is initially employed or reemployed by the City on or after January 1, 2017, will not participate in this Plan with respect to service on or after the date of such initial employment or reemployment.**
- (b) Eligible Regular Employees as of December 31, 2016; Effect of Later Termination & Reemployment - If an Eligible Regular Employee who is employed with the City as of December 31, 2016, later Terminates employment and becomes reemployed by the City on or after January 1, 2017, said Employee will not be eligible to participate in this Plan with respect to his/her service and earnings with the City on or after said reemployment date. In addition, the Employee’s eligibility for Retirement and pre-retirement death benefits and the amount of any benefits payable under this Plan with respect to the Employee’s Service with the City prior to said reemployment date will be determined in accordance with the applicable terms of this Plan in effect as of the Employee’s most recent Termination date preceding the date on which he or she is first reemployed on or after January 1, 2017, and the Employee’s Credited Service and Final Average Earnings with the City as of said Termination date. Service and earnings**

after said reemployment date will not be taken into account for any purpose under this Plan (e.g., for purposes of becoming Vested under this Plan, meeting benefit eligibility requirements, or computing amount of benefits payable under this Plan). See also Section 14 of this Addendum regarding Frozen Plan Provisions.

- (c) **Former Employees Reemployed on or after January 1, 2017** - If a former Employee of the City who was not employed with the City as of December 31, 2016, is reemployed by the City after December 31, 2016, the Employee will not be eligible to participate in this Plan with respect to his or her service and earnings with the City on or after the date on which he or she is reemployed. The Employee's eligibility for Retirement and pre-retirement benefits and the amount of any benefits payable under this Plan, if any, with respect to the Employee's Service with the City prior to said reemployment date will be determined in accordance with the applicable terms of this Plan in effect as of the date of the Employee's most recent Termination from the City preceding the date on which he or she is first reemployed on or after January 1, 2017, and the Employee's Credited Service and Final Average Earnings with the City as of said Termination date. Service and earnings with the City after said reemployment date will not be taken into account for any purpose under this Plan (e.g., for purposes of becoming Vested under this Plan, meeting benefit eligibility requirements, or computing amount of benefits payable under this Plan). See also Section 14 of this Addendum regarding Frozen Plan Provisions.

**\*\*\*Items (3) through (5) of pre-approved Addendum - Not Applicable\*\*\***

- (6) **Modified Definition of Earnings.** For purposes of determining any Employee contributions and Final Average Earnings, Earnings as defined in Section 2.26 of the Master Plan shall be modified as follows (check all that apply):

- (a) excluding overtime pay.
- (b) excluding bonuses.
- (c) excluding holiday pay (specify type of excluded earnings).
- (d) including perquisites or allowances for use of a car or house rent.

(e) including severance payments; provided that the following limitations shall apply (must specify):

\_\_\_\_\_.

(f) including \_\_\_\_\_ (specify type of included earnings).

**This definition of Earnings applies to (check one):**

All Participants.

**Only the following Participants (must specify): Overtime and bonus payments are excluded with respect to all Participants. Holiday pay is excluded with respect to police and fire personnel as defined in subsection 16(d) below.**

**NOTE: The Employer is responsible for providing any and all documentation to the Administrator relating to payments that are included in the definition of Earnings pursuant to this Section, including but not limited to the amount(s) paid and the date of such payment(s).**

**[Repeat above subsection as necessary for each applicable definition and Participant class covered under the Plan.]**

**(7) Modified Definition of Final Average Earnings. Final Average Earnings is defined as the monthly average of Earnings paid to a Participant by the Adopting Employer for the 36 (insert number not to exceed 60) consecutive months of (check one):  Credited Service,  employment, during the last 120 (insert number not to exceed 120) consecutive month period preceding the Participant's most recent Termination in which the Participant's Earnings were the highest, multiplied by 12. Note: GMEBS has prescribed forms for calculation of Final Average Earnings that must be used for this purpose.**

**This definition of Final Average Earnings applies to (check one):**

All Participants.

Only the following Participants (must specify):\_\_\_\_\_.

[Repeat above subsection as necessary.]

\*\*\*Items (8) through (13) of pre-approved Addendum - Not Applicable\*\*\*

(14) **Frozen Plan Provisions** (for amendment of Adoption Agreement only – see Section 9 of Adoption Agreement regarding Classes of Eligible Employees):

(a) **Plan Freeze** - The Plan is "frozen" effective as of January 1, 2017 (specify date). The Plan shall be subject to all provisions of the Adoption Agreement and Master Plan, except as otherwise provided herein, and the Employer shall continue to maintain the Plan's qualified status. The Plan shall be frozen, as follows (check as applicable):

(i) The Plan shall be frozen with respect to the following class(es) of Eligible Employees (one or more as applicable):  all Participants;  all Eligible Regular Employees;  Members of the Governing Authority;  Municipal Legal Officers;  other (must specify): All Regular Employees who are initially employed or become reemployed on or after January 1, 2017.

(ii) Active Participants in the affected class(es) of Eligible Employees as of the freeze effective date shall be vested in their normal retirement benefits accrued as of the effective date of the freeze to the extent funded notwithstanding any provision of the Adoption Agreement to the contrary.

(iii) Employees who are (check all that apply):  employed by the Employer or in office as of \_\_\_\_\_ (specify date),  first employed on or after January 1, 2017 (specify date),  first take office on or after \_\_\_\_\_ (specify date),  reemployed on or after January 1, 2017 (specify date),  return to office (following a vacation of office) on or after \_\_\_\_\_ (specify date), shall not be eligible to participate in the Plan on or after the date on which



they are initially employed or reemployed, as applicable (specify date).

(iv) With respect to Employees designated in paragraph (iii) above, earnings on or after the date on which they are initially employed or reemployed, as applicable (specify date) shall not be taken into account for purposes of the Plan.

(v) The Employees designated in paragraph (iii) above shall not be credited with Service for the Employer on or after the date on which they are initially employed or reemployed, as applicable (specify date) for purposes of (check all that apply):  computing the amount of benefits payable;  meeting minimum service requirements for participation and vesting;  meeting minimum service requirements for benefit eligibility under the Plan.

(vi) The following additional provisions shall apply as a result of the freeze (must specify): \_\_\_\_\_.

(b) Restoration Following Plan Freeze - The Plan has been "frozen" since \_\_\_\_\_ (specify freeze date). Effective \_\_\_\_\_ (specify date), the Plan shall be reactivated in accordance with and subject to the following provisions (check as applicable):

(i) The Plan shall cease to be frozen with respect to the following class(es) of Eligible Employees (one or more as applicable):  all Participants;  all Eligible Regular Employees;  Members of the Governing Authority;  Municipal Legal Officers;  other (must specify): \_\_\_\_\_.

(ii) Employees (check all that apply):  employed by the Employer and/or in office as of \_\_\_\_\_ (specify date),  first employed on or after \_\_\_\_\_ (specify date),  first took office on or after \_\_\_\_\_ (specify date),  reemployed on or \_\_\_\_\_

after \_\_\_\_\_ (specify date),  returned to office (following a vacation of office) on or after \_\_\_\_\_ (specify date), shall be eligible to commence or re-commence participation in the Plan (as applicable) with respect to Service on or after \_\_\_\_\_ (specify date), provided they otherwise meet the eligibility requirements for participation under the Plan.

(iii) With respect to the Employees designated in paragraph (ii) above, Earnings on or after \_\_\_\_\_ (specify date) shall be taken into account for purposes of the Plan.

(iv) The Employees designated in paragraph (ii) above shall receive credit for Service for the Employer on or after \_\_\_\_\_ (specify date) for purposes of (check all that apply):  computing the amount of benefits payable;  meeting minimum service requirements for participation and vesting;  meeting minimum service requirements for benefit eligibility under the Plan, provided the Employee met the minimum hour requirement and other eligibility requirements for recognition of Credited Service under the Plan.

(v) Former Employees who are reemployed and/or return to office as Eligible Employees after \_\_\_\_\_ (specify date) will receive credit for Service with the Employer on or after \_\_\_\_\_ (specify date) for purposes of (check all that apply):  computing the amount of benefits payable;  meeting minimum service requirements for participation and vesting;  meeting minimum service requirements for benefit eligibility under the Plan, provided the Employee meets the minimum hour requirement and other eligibility requirements for recognition of Credited Service with respect to said period under the Plan, and provided the

**Employee satisfies any applicable Plan requirements with respect to his break in Service.**

- (vi) The following additional provisions shall apply as a result of restoration following the freeze (must specify): \_\_\_\_\_.**

**\*\*\*Item (15) of pre-approved Addendum - Not Applicable\*\*\***

- (16) **Other** (May include, but shall not be limited to, provisions relating to Master Plan Sections 6.03, 6.06, 8.04, 8.06, 8.08, 8.09, 8.10, 8.12, 9.01, and 9.02) (must specify):
- (a) **Plan Background.** This is a continuation of the “City of Cartersville Pension Plan” (“Plan” or “Original Plan”), which originally became effective January 1, 1967, and has been amended from time to time. Effective September 1, 2023, the City of Cartersville transferred administration of the City of Cartersville Pension Plan and all assets in the trust fund of the City of Cartersville Pension Plan to GMEBS. All rights and benefits of Participants who Terminated employment prior to September 1, 2023, shall be determined solely by the provisions in effect as of their respective Termination dates unless otherwise specifically provided herein.
- (i) **Plan Freeze; Relationship with City of Cartersville 2017 Pension Plan.** Effective January 1, 2017, this Plan was frozen such that Employees initially employed or reemployed on or after such date were not permitted to participate in the Plan. Instead, such Employees participated in the “City of Cartersville 2017 Pension Plan” (“2017 Plan”), subject to the eligibility requirements and other conditions of said plan. Credited Service and Earnings under the 2017 Plan shall not count for the purpose of calculating benefits under the Original Plan but shall count for the purposes of satisfying the requirements for Vesting and benefit eligibility under the Original Plan.
- (ii) **Waiting Period prior to July 1, 2023.** Prior to July 1, 2023, each Employee who satisfied the eligibility requirements for participation in this Plan (i.e., any person initially employed or reemployed by the City on a regular full-time basis before January 1, 2017, who was not thereafter reemployed) became a Participant in the Plan after satisfying the Plan’s waiting period. On or after September 1, 2001, an employee became a Participant in the Plan on the first day of the month coinciding with or next following the date on which he or she had completed six (6) consecutive months of employment with the City, provided that such Employee

was at least 18 years of age. Prior to September 1, 2001, an employee became a Participant in the Plan on the first day of the month coinciding with or next following the date on which he or she had completed one year of employment with the City, provided that such Employee was at least 21 years of age. For purposes of this subparagraph, “employment” is deemed to have begun on the first day of the month if the Employee commenced working on or before the first non-holiday weekday of the month as indicated by the City’s employment policy. Participants described herein shall have a one-time opportunity to purchase Credited Service with respect to their service as an Employee during the waiting period. Otherwise, Participants will not receive Credited Service under the Plan for their employment during the waiting period (e.g., service during the waiting period will not otherwise count for the purpose of benefit computation). However, see subsection 16(e) below concerning determination of Vesting and benefit eligibility for Participants who commenced participation in the Plan prior to July 1, 2023. See also Service Credit Purchase Addendum.

- (b) **Transfer of Assets and Administration.** Administration of this Plan was transferred to GMEBS effective September 1, 2023, with the express intent that a minimum of 85% of Plan assets be transferred to GMEBS no later than September 11, 2023, with the remainder of the Plan’s assets, less the amount of any outstanding checks, to be transferred to GMEBS no later than October 10, 2023, to allow GMEBS to make Retirement benefit payments to Retired Participants (and their beneficiaries) on October 1, 2023, and each month thereafter. The trustee, custodian, fund administrator, third party administrator, and other employees or agents of the City of Cartersville who were responsible for the administration of the City's Plan immediately prior to September 1, 2023, are authorized and directed to take any and all reasonably necessary actions to effect the transfer of at least 85% of Retirement Plan assets to GMEBS by September 11, 2023, and the remainder (less the amount of any outstanding checks) by October 10, 2023.

- (i) **Required Data.** On or before September 1, 2023, the City of Cartersville will provide (or will ensure its employees or agents provide) GMEBS with records and information reasonably requested or necessary to facilitate the timely transfer of plan administration (plan administration will include the payment of current retirees and beneficiaries in pay status as of October 1, 2023). Information and records to be provided include, but are not limited to the following concerning active Participants, Terminated Vested Participants, Retired Participants and beneficiaries: name, address, social security number, birth date, years and months of credited service for Vesting and benefit eligibility purposes, years and months of credited service for benefit computation purposes, 36-month Earnings history, Employee Contribution history and equity account balances, accrued monthly Normal Retirement benefits, beneficiary designation forms, Retirement applications, and direct deposit forms, tax withholding forms, and 1099 tax reporting information for current retirees and beneficiaries.
- (ii) **Treatment of Terminated Vested Participants and Retired Participants.** In particular with respect to Vested Participants who Terminated prior to September 1, 2023, but had not Retired as of such date, the City will ensure GMEBS is provided with a listing indicating the amount of each such Terminated Vested Participant's accrued Normal Retirement benefit and Normal Retirement eligibility date. Retirement benefits for said Terminated Vested Participants will be paid based upon said information in accordance with the Retirement benefit payment options (including factors used to determine benefit reductions associated with survivor beneficiaries and/or early retirement benefits, and factors used to determine Actuarial Equivalent amounts) available under the GMEBS Master Plan or the City's pre-GMEBS plan document, as applicable, in effect as of each said Participant's effective Retirement date. See also subsection 16(c) below regarding treatment of Terminated Vested Participants.

- (iii) **Continuation of Benefits for Retirees (and Their Beneficiaries) in Pay Status as of September 1, 2023.** Benefits will continue be paid to Retired Participants (and their beneficiaries, if applicable) in pay status prior to September 1, 2023, in accordance with the form of benefit payment required or selected by the Retired Participant under the applicable terms of the retirement plan governing their Retirement benefits, and based upon the benefit payment amounts determined prior to September 1, 2023, and furnished to GMEBS.
- (iv) **Effect of Failure to Timely Transfer Assets.** Notwithstanding any provision to the contrary, the terms of this paragraph shall apply in the event the City fails to liquidate (or have liquidated) all assets invested in the City of Cartersville Pension Plan trust fund immediately prior to September 1, 2023, and transfer (or have transferred) at least 85% of such liquidated assets to the GMEBS Retirement Trust by September 11, 2023. In such event, the City (or its third-party administrator, as applicable), and not GMEBS, will be responsible for processing and distributing all October 1, 2023, benefit payments under the Plan to Participants (and their beneficiaries) in pay status as of such date. Thereafter, the City (or its third-party administrator, as applicable) shall remain responsible for processing benefit payments under the Plan until the first day of the first month that begins at least 20 days after the date on which at least 85% of the liquidated assets described in this paragraph 16(b)(iv) have been transferred to GMEBS. GMEBS shall otherwise be responsible for administering the Plan effective September 1, 2023, including but not limited to processing Retirement benefit applications and requests for death benefits and determining the amounts of any benefits newly payable under the Plan, and will notify the City of the amounts of any benefits which become newly payable after September 1, 2023, and until the date on which GMEBS assumes responsibility for processing benefit payments. The City (or its third-party administrator, as applicable) shall process

payments of any benefits which become newly payable after September 1, 2023, until the date GMEBS assumes responsibility for processing benefit payments (i.e., the first day of the first month that begins at least 20 days after the date on which at least 85% of the liquidated assets described in this paragraph 16(b)(iv) have been transferred to GMEBS) in accordance with the information provided by GMEBS.

- (v) **September 1, 2023, Benefit Payments.** Notwithstanding any provision to the contrary, the City, and not GMEBS, shall make Retirement benefit payments to Retired Participants (and their beneficiaries) on September 1, 2023, prior to the transfer of assets to the GMEBS Retirement Trust Fund. Further, the City, and not GMEBS shall issue any necessary tax forms (e.g., Form 1099-R) relating to benefits paid pursuant to the Plan from January 1, 2023 – September 1, 2023. GMEBS shall issue any necessary tax forms (e.g., Form 1099-R) relating to benefits paid pursuant to the Plan from October 1, 2023 – December 31, 2023.
  
- (c) **Administration of Benefits to Terminated Vested Participants Who Terminated Prior to September 1, 2023; Insufficient Information Relating to Calculation of Benefits under Prior Plan.** Recognizing that documentation by previous plan administrators of the accrued benefits of Participants who Terminated prior to September 1, 2023, may not provide adequate information relating to the computation of Retirement benefits under the Plan for GMEBS to accurately determine a Participant's Vested status, eligibility for benefits, or the amount of a Participant's monthly Retirement benefit, as applicable, the following provisions shall govern the administration of Retirement benefits with respect to a Participant who Terminated employment with the City prior to September 1, 2023 (i.e., the effective date of the City's first GMEBS Plan) and who applies for Retirement benefits on or after such date.
  - (i) GMEBS shall accept the City's determination regarding whether a Participant who Terminated prior to September 1, 2023, was deemed Terminated Vested as of such date,



provided, however, that in the event the City deemed such a Participant not Vested and information is subsequently presented suggesting that such Participant was Vested, GMEBS shall, in its sole discretion determine whether said Participant was Vested upon his or her Termination prior to September 1, 2023.

- (ii) Where sufficient information necessary for GMEBS to compute such a Participant's benefit is available, including applicable prior plan documents, GMEBS will compute the Participant's Retirement benefits in accordance with such plan documents and supporting information.
- (iii) Where sufficient information necessary to compute such a Participant's benefit is not available, if the accrued benefits of such a Participant were calculated by the plan administrator in place at the time of the Participant's termination, and GMEBS has written documentation of such calculation, GMEBS will administer Retirement benefits, as applicable, to the Participant in accordance with the greater of:
  - (A) The prior administrator's calculation of the Participant's Retirement benefits, applying the GMEBS Retirement factors and the Plan's Early Retirement factors (if applicable) in effect at the time of the Participant's Retirement to determine the monthly Retirement benefit amount payable to the Participant; or
  - (B) GMEBS's calculation of the Participant's Retirement benefits, using the terms of the GMEBS Plan in effect at the time of the Participant's Retirement, including the benefit formula, the definition of Final Average Earnings and any applicable factors.
- (iv) Where sufficient information necessary to compute such a Participant's benefits is not available and GMEBS does not have documentation of a prior administrator's calculation of the accrued benefits of such a Participant, GMEBS will apply the terms of the GMEBS Plan in effect at the time of

the Participant's application for Retirement benefits, including the benefit formula, the definition of Final Average Earnings and any applicable factors, to calculate the Participant's Retirement benefits.

- (v) In the event information relating to such a Participant's Earnings necessary to compute Retirement benefits is insufficient or unavailable, salary information obtained from the Social Security Administration, or other information provided by the City as Earnings, will be used as a proxy to determine the Participant's Final Average Earnings. The City and/or the Participant will be responsible for obtaining Earnings information necessary to compute Retirement benefits under the Plan and providing such information to GMEBS.
- (vi) In the event such a Participant dies before Retirement benefits commence, the Participant's designated beneficiary shall receive a lump sum payment equal to the Participant's Employee Contributions, plus interest accrued until the date of the Participant's death at the rate of 4% per annum. For purposes of this paragraph, the term "designated beneficiary shall mean the Participant's surviving Spouse, if any, and the term "surviving" shall mean surviving the Participant by at least 32 days. In the event there is no designated beneficiary, the aforementioned lump sum payment shall be made to the Participant's estate.
- (d) **Early Retirement for Vested Police and Fire Personnel.** A Participant with at least five (5) years of Credited Service as a Participant in this Plan while employed as police and fire personnel, who is Vested under the Plan, and is at least 50 years of age but has not attained 20 years of Total Credited Service may apply for Early Retirement based on the "50 & 20" Alternative Normal Retirement qualification in Section 14(C)(6) of the Adoption Agreement. Such a Participant's monthly Retirement benefit will be computed in the same manner as the monthly Normal Retirement benefit, but the benefit shall be reduced by seven percent (7%) a year for each year in which the Participant's Termination date precedes the date on which the Participant

would have attained 20 years of Total Credited Service. For purposes of this subsection 16(d), as well as Sections 14(A), 14(C)(6) and 19(1) of the Adoption Agreement, “police and fire personnel” shall mean an employee in the City’s police and/or fire department and “former police and fire personnel” shall mean a Participant who was previously employed in the City’s police and/or fire department. For the avoidance of doubt, such terms shall include, but shall not be limited to, employees who provide (or who provided) administrative services within the police and/or fire department.

- (e) **Determination of Credited Service for Purposes of Vesting and Benefit Eligibility.** Notwithstanding any provision to the contrary, Service with the City prior to September 1, 2023, shall count as Credited Service for the purposes of satisfying the requirements of Vesting and benefit eligibility in accordance with the applicable terms of the City’s Plan in effect prior to such date. The City shall determine whether such a Participant has satisfied the requirements for Vesting and benefit eligibility under the Plan and GMEBS is entitled to rely on such determination.
- (f) **Effect of Leave of Absence on Final Average Earnings.** The period during which a Participant is on a leave of absence (except for qualified military service), is not included in determining the Participant’s Final Average Earnings.
- (g) **Final Average Earnings for Calculating Late Retirement Benefit.** In the event of Late Retirement, the Final Average Earnings used to calculate a Participant’s Late Retirement benefit will be the greater of the Participant’s Final Average Earnings as of his or her Normal Retirement Date or the Participant’s Final Average Earnings as of the date of his or her Termination of employment.
- (h) **Repayment of Employee Contributions.**
  - (i) **Participants Reemployed on or after September 1, 2023.** A Participant in this Plan who Terminates (or Terminated) employment, withdraws (or withdrew) Employee Contributions made under this Plan, and becomes reemployed on or after September 1, 2023, shall be subject

to the applicable provisions of Section 13.03(d) and (e) of the Master Plan concerning repayment of Employee Contributions for the purpose of restoring any Credited Service under this Plan that was previously forfeited by virtue of the Participant's withdrawal of Employee Contributions (e.g., such Participants have six-months from the date of reemployment to repay all amounts previously withdrawn plus interest at the assumed actuarial rate of return for the GMEBS Retirement Fund established by the Board as of the date of repayment), provided that the period of time between the Participant's Termination of employment and the Participant's date of reemployment is less than or equal to five (5) years. If a Participant returns to employment more than five (5) years after his or her most recent Termination of employment, the Participant will not be eligible to repay withdrawn Employee Contributions or restore previously forfeited Credited Service under the Plan.

- (ii) Participants Reemployed prior to September 1, 2023. The following provisions shall apply with respect to Participants who previously Terminated employment and withdrew Employee Contributions but subsequently became reemployed in an Eligible Employee class of this Plan or of the 2017 Plan prior to September 1, 2023. Such a Participant was permitted to reinstate any service credit under this Plan he or she forfeited by virtue of his or her withdrawal of Employee Contributions provided that: 1) the period of time between the Participant's Termination of employment and the Participant's date of reemployment was less than or equal to five (5) years; 2) the Participant repaid (or repays) in a lump sum all amounts previously withdrawn plus 5% interest compounded annually from the date of the return of Contributions through the date of repayment; and 3) the amount due was (or is) paid in full within 12 months of his or her resumption of employment.

- (i) Interest in Event of Failure to Exhaust after Commencement of Retirement Benefit Payments. The provisions of Section 13.06 of the Master Plan shall apply in the event of failure to exhaust. For

purposes of a refund of Employee Contributions in the event of Failure to Exhaust only, interest on a Participant's Employee Contributions shall be deemed to have accrued at the rate of 4% per annum.

- (j) **Reservation of Rights.** The City of Cartersville, Georgia, expects and intends to maintain the Plan in force indefinitely, but necessarily reserves the right to change or discontinue the Plan at any time. Further, at any time and from time to time, the Plan may be changed in whole or in part, or the contributions of the Employer may be suspended.
- (k) **QDROs in Effect prior to September 1, 2023.** Notwithstanding the provisions of Article XIX of the Master Plan document, GMEBS will recognize qualified domestic relations orders ("QDROs") being paid or ordered before September 1, 2023, based on the understanding benefits being paid in accordance with said QDRO were not accrued under a Plan during a time in which it was subject to Chapter 5 of Title 47. However, pursuant to and in accordance with O.C.G.A. § 47-5-71, GMEBS will not recognize QDROs entered into or ordered on or after September 1, 2023.
- (l) **Reliance by GMEBS on Information Provided by City; Litigation over Transfer of Assets and Administration.** GMEBS is not responsible for errors in and is entitled to rely on all documents and information provided to GMEBS by the City, including but not limited to information required pursuant to subsection 16(b) of this Addendum. The City certifies that the information provided is true and correct to the best of its knowledge. Notwithstanding any provision to the contrary, the City of Cartersville, and not GMEBS, shall bear the cost of any litigation or other claims relating to the transfer of assets and administration to GMEBS.
- (m) **Portability Service with GMEBS Employers Not Applicable to Participants Who Terminated Prior to September 1, 2023** – Notwithstanding Section 9.05 of the Master Plan or any other provision to the contrary, Service with other GMEBS Employers shall not count as portability service under this Plan for Employees who Terminated employment with the City of

Cartersville prior to September 1, 2023, unless such Employees participate in this Plan or in the 2017 Plan on or after September 1, 2023.

- (n) **IRS Filings.** The City will complete at its expense any IRS filings (including payment of associated IRS filing fees and tax attorney fees) that GMEBS reasonably requests in order to protect the 401(a)-qualified status of the GMEBS volume submitter plan and/or to confirm the 401(a)-qualified status of the City's Adoption Agreement and Addendum.
- (o) **Reemployment after Retirement; Exception to Offset Following Reemployment after Retirement.** The provisions of Section 16(A) of the Adoption Agreement relating to Reemployment as an Eligible Employee after Normal Alternative Normal, or Early Retirement and Following Bona Fide Separation of Service shall apply to Participants who Retired under this Plan, return to Service with the City, and become Eligible Employees under the 2017 Plan (or who became Eligible Employees under this Plan, as applicable). The Retirement benefits under this Plan of such a Participant shall be suspended in accordance with Section 16(A) of the Adoption Agreement until such Participant again Terminates employment. Upon such Termination of employment, the Participant's Retirement benefit will recommence. Notwithstanding any provision of the Plan to the contrary, the Participant's Retirement benefit will not be reduced by the Actuarial Equivalent of any Retirement benefits received prior to such re-retirement.

The terms of the foregoing Addendum to the Adoption Agreement are approved by the \_\_\_\_\_ of the City of Cartersville, Georgia this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

Attest: **CITY OF CARTERSVILLE,**

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor

(SEAL)

Approved:

\_\_\_\_\_  
City Attorney

The terms of the foregoing Addendum are approved by the Board of Trustees of the Georgia Municipal Employees Benefit System.

IN WITNESS WHEREOF, the Board of Trustees of the Georgia Municipal Employees Benefit System has caused its Seal and the signatures of its duly authorized officers to be affixed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**Board of Trustees  
Georgia Municipal Employees  
Benefit System**

(SEAL)

\_\_\_\_\_  
Secretary

**GEORGIA MUNICIPAL EMPLOYEES**  
**BENEFIT SYSTEM**

**DEFINED BENEFIT RETIREMENT PLAN**

**AN ORDINANCE**  
**and**  
**ADOPTION AGREEMENT**  
**for**  
**Cartersville (Plan I)**

**Form Volume Submitter Adoption Agreement**  
**Amended and Restated as of January 1, 2013**  
**(With Amendments Taking Effect on or Before January 1, 2017)**



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## **I. AN ORDINANCE**

An Ordinance to amend and restate the Retirement Plan for the Employees of the City of Cartersville, Georgia in accordance with and subject to the terms and conditions set forth in the attached Adoption Agreement, any Addendum to the Adoption Agreement, the Georgia Municipal Employees Benefit System (GMEBS) Master Plan Document, and the GMEBS Trust Agreement. When accepted by the authorized officers of the City and GMEBS, the foregoing shall constitute a Contract between the City and GMEBS, all as authorized and provided by O.C.G.A. § 47-5-1 et seq.

BE IT ORDAINED by the Mayor and Council of the City of Cartersville, Georgia, and it is hereby ordained by the authority thereof:

**Section 1.** The Retirement Plan for the Employees of the City of Cartersville, Georgia is hereby amended and restated as set forth in and subject to the terms and conditions stated in the following Adoption Agreement, any Addendum to the Adoption Agreement, the Georgia Municipal Employees Benefit System (GMEBS) Master Plan Document, and the GMEBS Trust Agreement.

**Ordinance continued on page 37**

**II. GMEBS DEFINED BENEFIT RETIREMENT PLAN**  
**ADOPTION AGREEMENT**

**1. ADMINISTRATOR**

Georgia Municipal Employees Benefit System  
201 Pryor Street, SW  
Atlanta, Georgia 30303  
Telephone: 404-688-0472  
Facsimile: 404-577-6663

**2. ADOPTING EMPLOYER**

Name: **City of Cartersville, Georgia**

**3. GOVERNING AUTHORITY**

Name: **Mayor and City Council**  
Address: **P.O. Box 1390, 1 N. Erwin Street, Cartersville, Georgia 30120**  
Phone: **770-387-5616**  
Facsimile:

**4. PLAN REPRESENTATIVE**

**[To represent Governing Authority in all communications with GMEBS and Employees]**  
**(See Section 2.49 of Master Plan)**

Name: **City Manager**  
Address: **P.O. Box 1390, 1 N. Erwin Street, Cartersville, Georgia 30120**  
Phone: **770-387-5616**  
Facsimile:

### 5. PENSION COMMITTEE

[Please designate members by position. If not, members of Pension Committee shall be determined in accordance with Article XIV of Master Plan]

The Pension Committee shall be composed of five members, three of whom shall be participating Eligible Regular Employees who shall be elected as follows: one from the Police and Fire Departments; one from the Gas, Electric and Water and Sewer Departments; and one from the Community Development, Public Works, City Clerk, Garage, Parks and Recreation, Finance, and Administration Departments. The elected members of the Pension Committee shall serve three-year staggered terms or until their successors are elected. The other two members shall be the City Manager and the City Finance Director, whose terms shall be equivalent to their employment in those capacities. An election for membership shall be held on the Tuesday after the first Monday in November of every year for one Committee member.

Pension Committee Secretary: Assistant City Manager  
Address: P.O. Box 1390, 1 N. Erwin Street, Cartersville, Georgia 30120  
Phone: 770-387-5616  
Facsimile:

### 6. TYPE OF ADOPTION

This Adoption Agreement is for the following purpose (check one):

- This is a new defined benefit plan adopted by the Adopting Employer for its Employees. This plan does not replace or restate an existing defined benefit plan.
- This is an amendment and restatement of the Adopting Employer's preexisting non-GMEBS defined benefit plan.
- This is an amendment and restatement of the Adoption Agreement previously adopted by the Employer, as follows (check one or more as applicable):
  - To update the Plan to comply with PPA, HEART, WRERA, and other applicable federal laws and guidance.
  - To make the following amendments to the Adoption Agreement (must specify below revisions made in this Adoption Agreement; all provisions must be completed in a manner that satisfies the definite written program requirement of Treasury Regulation 1.401-1(a)(2) and the definitely determinable requirement of Treasury Regulation 1.401-1(b)(1)(i)): \_\_\_\_\_.

### 7. EFFECTIVE DATE

NOTE: This Adoption Agreement and any Addendum, with the accompanying Master Plan Document, is designed to comply with Internal Revenue Code Section 401(a), as applicable to a governmental qualified defined benefit plan, and is part of the GMEBS Defined Benefit Retirement Plan. Plan provisions designed to comply with certain provisions of the Pension Protection Act of 2006 ("PPA"); the Heroes Earnings Assistance and Relief Tax Act of 2008 ("HEART"); and the Worker, Retiree, and Employer Recovery Act of 2008 ("WRERA"); and Plan provisions designed to comply with certain provisions of additional changes in federal law and guidance from the Internal Revenue Service under Internal Revenue Service Notice 2012-76 (the 2012 Cumulative List) are effective as of the applicable effective dates set forth in the Adoption Agreement and Master Plan Document. By adopting this Adoption Agreement, with its accompanying Master Plan Document, the Adopting Employer is adopting a plan document intended to comply with Internal Revenue Code Section 401(a), as updated by PPA, HEART, WRERA, and the 2012 Cumulative List with the applicable effective dates.

- (1) Complete this item (1) only if this is a new defined benefit plan which does not replace or restate an existing defined benefit plan.

The effective date of this Plan is \_\_\_\_\_.  
(insert effective date of this Adoption Agreement not earlier than January 1, 2013).

- (2) Complete this item (2) only if this Plan is being adopted to replace a non-GMEBS defined benefit plan.

Except as otherwise specifically provided in the Master Document or in this Adoption Agreement, the effective date of this restatement shall be **September 1, 2023** (insert effective date of this Adoption Agreement not earlier than January 1, 2013). This Plan is intended to replace and serve as an amendment and restatement of the Employer's preexisting plan, which became effective on **January 1, 1967** (insert original effective date of preexisting plan).

- (3) Complete this item (3) only if this is an amendment and complete restatement of the Adopting Employer's existing GMEBS defined benefit plan.

Except as otherwise specifically provided in the Master Document or in this Adoption Agreement, the effective date of this restatement shall be \_\_\_\_\_ (insert effective date of this Adoption Agreement not earlier than January 1, 2013).

This Plan is adopted as an amendment and restatement of the Employer's preexisting GMEBS Adoption Agreement, which became effective on \_\_\_\_\_ (insert effective date of most recent Adoption Agreement preceding this Adoption Agreement).

The Employer's first Adoption Agreement became effective \_\_\_\_\_ (insert effective date of Employer's first GMEBS Adoption Agreement). The Employer's GMEBS Plan was originally effective \_\_\_\_\_ (insert effective date of Employer's original GMEBS Plan). (If the Employer's Plan was originally a non-GMEBS Plan, then the Employer's

non-GMEBS Plan was originally effective \_\_\_\_\_ (if applicable, insert effective date of Employer's original non-GMEBS Plan).

### 8. PLAN YEAR

Plan Year means (check one):

- Calendar Year
- Employer Fiscal Year commencing July 1.
- Other (must specify month and day commencing): \_\_\_\_\_.

### 9. CLASSES OF ELIGIBLE EMPLOYEES

Only Employees of the Adopting Employer who meet the Master Plan's definition of "Employee" may be covered under the Adoption Agreement. Eligible Employees shall not include non-governmental employees, independent contractors, leased employees, nonresident aliens, or any other ineligible individuals, and this Section 9 must not be completed in a manner that violates the "exclusive benefit rule" of Internal Revenue Code Section 401(a)(2).

#### A. Eligible Regular Employees

Regular Employees include Employees, other than elected or appointed members of the Governing Authority or Municipal Legal Officers, who are regularly employed in the services of the Adopting Employer. Subject to the other conditions of the Master Plan and the Adoption Agreement, the following Regular Employees are eligible to participate in the Plan (check one):

- ALL** - All Regular Employees, provided they satisfy the minimum hour and other requirements specified under "Eligibility Conditions" below.
- ALL REGULAR EMPLOYEES EXCEPT** for the following employees (must specify; specific positions are permissible; specific individuals may not be named): Eligible Regular Employees initially employed or reemployed on or after January 1, 2017.

#### B. Elected or Appointed Members of the Governing Authority

An Adopting Employer may elect to permit participation in the Plan by elected or appointed members of the Governing Authority and/or Municipal Legal Officers, provided they otherwise meet the Master Plan's definition of "Employee" and provided they satisfy any other requirements specified by the Adopting Employer. Municipal Legal Officers to be covered must be specifically identified by position. Subject to the above conditions, the Employer hereby elects the following treatment for elected and appointed officials:

##### (1) Elected or Appointed Members of the Governing Authority (check one):

- ARE NOT** eligible to participate in the Plan.
- ARE** eligible to participate in the Plan.

Please specify any limitations on eligibility to participate here (e.g., service on or after certain date, or special waiting period provision): \_\_\_\_\_.

**(2) Municipal Legal Officers (check one):**

- ARE NOT** eligible to participate in the Plan.
- ARE** eligible to participate in the Plan. The term "Municipal Legal Officer" shall include only the following positions (**must specify - specific positions are permissible; specific individuals may not be named**): \_\_\_\_\_.

Please specify any limitations on eligibility to participate here (e.g., service on or after certain date) (**must specify in a manner that satisfies the definite written program requirement of Treasury Regulation 1.401-1(a)(2) and the definitely determinable requirement of Treasury Regulation 1.401-1(b)(1)(i)**) : \_\_\_\_\_.

**10. ELIGIBILITY CONDITIONS**

**A. Hours Per Week (Regular Employees)**

The Adopting Employer may specify a minimum number of work hours per week which are required to be scheduled by Regular Employees in order for them to become and remain "Eligible Regular Employees" under the Plan. **It is the responsibility of the Adopting Employer to determine whether these requirements are and continue to be satisfied.** The Employer hereby elects the following minimum hour requirement for Regular Employees:

- No minimum
- 20 hours/week (regularly scheduled)
- 30 hours/week (regularly scheduled)
- Other: **32 hours/week (regularly scheduled)** (must not exceed 40 hours/week regularly scheduled)

**Exceptions:** If a different minimum hour requirement applies to a particular class or classes of Regular Employees, please specify below the classes to whom the different requirement applies and indicate the minimum hour requirement applicable to them.

Class(es) of Regular Employees to whom exception applies (**must specify - specific positions are permissible; specific individuals may not be named**): \_\_\_\_\_.

Minimum hour requirement applicable to excepted Regular Employees:

- No minimum
- 20 hours/week (regularly scheduled)
- 30 hours/week (regularly scheduled)
- Other: \_\_\_\_\_ (must not exceed 40 hours/week regularly scheduled)

**B. Months Per Year (Regular Employees)**



The Adopting Employer may specify a minimum number of work months per year which are required to be scheduled by Regular Employees in order for them to become and remain "Eligible Employees" under the Plan. **It is the responsibility of the Adopting Employer to determine whether these requirements are and continue to be satisfied.** The Employer hereby elects the following minimum requirement for Regular Employees:

- No minimum
- At least **12** months per year (regularly scheduled)

**Exceptions:** If different months per year requirements apply to a particular class or classes of Regular Employees, the Employer must specify below the classes to whom the different requirements apply and indicate below the requirements applicable to them.

Regular Employees to whom exception applies (**must specify - specific positions are permissible; specific individuals may not be named**): \_\_\_\_\_.

The months to year requirement for excepted class(es) are:

- No minimum
- At least \_\_\_\_\_ months per year (regularly scheduled)

### 11. WAITING PERIOD

Except as otherwise provided in Section 4.02(b) of the Master Plan, Eligible Regular Employees shall not have a waiting period before participating in the Plan. Likewise, elected or appointed members of the Governing Authority and Municipal Legal Officers, if eligible to participate in the Plan, shall not have a waiting period before participating in the Plan.

### 12. ESTABLISHING PARTICIPATION IN THE PLAN

Participation in the Plan is considered mandatory for all Eligible Employees who satisfy the eligibility conditions specified in the Adoption Agreement, except as provided in Section 4.03(e) of the Master Plan. However, the Employer may specify below that participation is optional for certain classes of Eligible Employees, including Regular Employees, elected or appointed members of the Governing Authority, Municipal Legal Officers, City Managers, and/or Department Heads. If participation is optional for an Eligible Employee, then in order to become a Participant, he must make a written election to participate within 120 days after employment, election or appointment to office, or if later, the date he first becomes eligible to participate in the Plan. The election is irrevocable, and the failure to make the election within the 120 day time limit shall be deemed an irrevocable election not to participate in the Plan.

Classes for whom participation is optional (**check one**):

- None (Participation is mandatory for all Eligible Employees except as provided in Section 4.03(e) of the Master Plan).
- Participation is optional for the following Eligible Employees (**must specify - specific positions are permissible; specific individuals may not be named; all positions or classes specified must be Eligible Employees**): City Manager.

### 13. CREDITED SERVICE

In addition to Current Credited Service the Adopting Employer may include as Credited Service the following types of service:

#### A. Credited Past Service with Adopting Employer

Credited Past Service means the number of years and complete months of Service with the Adopting Employer prior to the date an Eligible Employee becomes a Participant which are treated as credited service under the Plan.

##### (1) **Eligible Employees Employed on Original Effective Date of GMEBS Plan.**

With respect to Eligible Employees who are employed by the Adopting Employer on the original Effective Date of the Employer's GMEBS Plan, Service with the Adopting Employer prior to the date the Eligible Employee becomes a Participant (including any Service prior to the Effective Date of the Plan) shall be treated as follows (**check one**):

- All Service prior to the date the Eligible Employee becomes a Participant shall be credited (as Credited Past Service).
- All Service prior to the date the Eligible Employee becomes a Participant shall be credited (as Credited Past Service), except for Service rendered prior to \_\_\_\_\_ (**insert date**).
- All Service prior to the date the Eligible Employee becomes a Participant shall be credited (as Credited Past Service), except as follows (**must specify other limitation in a manner that satisfies the definite written program requirement of Treasury Regulation 1.401-1(a)(2) and the definitely determinable requirement of Treasury Regulation 1.401-1(b)(1)(i): All Service as a participant in the City’s pre-GMEBS plan (“Original Plan”) in effect prior to the date the Eligible Employee becomes a Participant in the City’s GMEBS Plan, which took effect September 1, 2023, shall be credited. Service with the City that was not credited under the City’s pre-GMEBS plan in effect on August 31, 2023, will not be credited; provided, however, that such a Participant shall have an opportunity to purchase Credited Service for service during the pre-GMEBS plan’s waiting period (as described in subparagraph 16(a)(ii) of the General Addendum), in accordance with and subject to the provisions of the Service Credit Purchase Addendum to this Adoption Agreement.**
- No Service prior to the date the Eligible Employee becomes a Participant shall be credited (as Credited Past Service).

##### (2) **Previously Employed, Returning to Service after Original Effective Date.**

If an Eligible Employee is not employed on the original Effective Date of the Employer's GMEBS Plan, but he returns to Service with the Adopting Employer sometime after the Effective Date, his Service prior to the date he becomes a Participant (including any Service prior the Effective Date) shall be treated as follows (**check one**):

- All Service prior to the date the Eligible Employee becomes a Participant shall be credited (as Credited Past Service), subject to any limitations imposed above with respect to Eligible Employees employed on the Effective Date.
- All Service prior to the date the Eligible Employee becomes a Participant shall be credited (as Credited Past Service), provided that after his return to employment, the Eligible Employee performs Service equal to the period of the break in Service or one (1) year, whichever is less. Any limitations imposed above with respect to Eligible Employees employed on the Effective Date shall also apply.
- No Service prior to the date the Eligible Employee becomes a Participant shall be credited (as Credited Past Service).

Other limitation(s) on Recognition of Credited Past Service **(must specify in a manner that satisfies the definite written program requirement of Treasury Regulation 1.401-1(a)(2) and the definitely determinable requirement of Treasury Regulation 1.401-1(b)(1)(i): Participants will have an opportunity pursuant to the provisions of the Service Credit Purchase Addendum, to purchase Credited Service under the Plan with respect to their service as an "Employee" (as described in subparagraph 16(a)(ii) of the General Addendum) before they satisfied the waiting period as described in subparagraph 16(a)(ii) of the General Addendum. A Participant who does not purchase said Credited Service during the window described in the Service Credit Purchase Addendum will not receive Credited Service with respect to their service with the City during the waiting period, notwithstanding any provision to the contrary.**

**(3) Eligible Employees Initially Employed After Effective Date.** If an Eligible Employee's initial employment date is after the original Effective Date of the Employer's GMEBS Plan, his Credited Past Service shall include only the number of years and complete months of Service from his initial employment date to the date he becomes a Participant in the Plan.

**(4) Newly Eligible Classes of Employees.** If a previously ineligible class of Employees becomes eligible to participate in the Plan, the Employer must specify in an addendum to this Adoption Agreement whether and to what extent said Employees' prior service with the Employer shall be treated as Credited Past Service under the Plan.

**B. Prior Military Service**

**Note: This Section does not concern military service required to be credited under USERRA – See Section 3.02 of the Master Plan for rules on the crediting of USERRA Military Service.**

**(1) Credit for Prior Military Service.**

The Adopting Employer may elect to treat military service rendered prior to a Participant's initial employment date or reemployment date as Credited Service under the Plan. Unless otherwise specified by the Employer under "Other Conditions" below, the term "Military Service" shall be as defined in the Master Plan. Except as otherwise required by federal or state law or under

"Other Conditions" below, Military Service shall not include service which is credited under any other local, state, or federal retirement or pension plan.

Military Service credited under this Section shall not include any service which is otherwise required to be credited under the Plan by federal or state law. Prior Military Service shall be treated as follows (**check one**):

- Prior Military Service is **not** creditable under the Plan (**if checked, skip to Section 13.C. – Prior Governmental Service**).
- Prior Military Service shall be counted as Credited Service for the following purposes (check one or more as applicable):
  - Computing amount of benefits payable.
  - Meeting minimum service requirements for vesting.
  - Meeting minimum service requirements for benefit eligibility.

**(2) Maximum Credit for Prior Military Service.**

Credit for Prior Military Service shall be limited to a maximum of \_\_\_\_\_ years (**insert number**).

**(3) Rate of Accrual for Prior Military Service.**

Credit for Prior Military Service shall accrue at the following rate (**check one**):

- One month of military service credit for every \_\_\_\_\_ month(s) (**insert number**) of Credited Service with the Adopting Employer.
- One year of military service credit for every \_\_\_\_\_ year(s) (**insert number**) of Credited Service with the Adopting Employer.
- All military service shall be creditable (subject to any caps imposed above) after the Participant has completed \_\_\_\_\_ years (**insert number**) of Credited Service with the Employer.
- Other requirement (**must specify in a manner that satisfies the definite written program requirement of Treasury Regulation 1.401-1(a)(2) and the definitely determinable requirement of Treasury Regulation 1.401-1(b)(1)(i)**): \_\_\_\_\_.

**(4) Payment for Prior Military Service Credit(check one):**

- Participants shall **not** be required to pay for military service credit.
- Participants shall be required to pay for military service credit as follows:
  - The Participant must pay \_\_\_\_\_% of the actuarial cost of the service credit (as defined below).
  - The Participant must pay an amount equal to (**must specify in a manner that satisfies the definite written program requirement of Treasury**

**Regulation 1.401-1(a)(2) and the definitely determinable requirement of Treasury Regulation 1.401-1(b)(1)(i): \_\_\_\_\_.**

Other Conditions for Award of Prior Military Service Credit (**must specify in a manner that satisfies the definite written program requirement of Treasury Regulation 1.401-1(a)(2) and the definitely determinable requirement of Treasury Regulation 1.401-1(b)(1)(i): \_\_\_\_\_.**

**(5) Limitations on Service Credit Purchases.** Unless otherwise specified in an Addendum to the Adoption Agreement, for purposes of this Section and Section 13.C. concerning prior governmental service credit, the term "actuarial cost of service credit" is defined as set forth in the Service Credit Purchase Addendum. In the case of a service credit purchase, the Participant shall be required to comply with any rules and regulations established by the GMEBS Board of Trustees concerning said purchases.

**C. Prior Governmental Service**

**Note:** A Participant's prior service with other GMEBS employers shall be credited for purposes of satisfying the minimum service requirements for Vesting and eligibility for Retirement and pre-retirement death benefits as provided under Section 9.05 of the Master Plan, relating to portability service. This Section 13(C) does not need to be completed in order for Participants to receive this portability service credit pursuant to Section 9.05 of the Master Plan.

**(1) Credit for Prior Governmental Service.**

The Adopting Employer may elect to treat governmental service rendered prior to a Participant's initial employment date or reemployment date as creditable service under the Plan. Subject to any limitations imposed by law, the term "prior governmental service" shall be as defined by the Adopting Employer below. The Employer elects to treat prior governmental service as follows (**check one**):

- Prior governmental service is **not** creditable under the Plan (**if checked, skip to Section 13.D. – Unused Sick/Vacation Leave**).
- Prior governmental service shall be counted as Credited Service for the following purposes under the Plan (**check one or more as applicable**):
  - Computing amount of benefits payable.
  - Meeting minimum service requirements for vesting.
  - Meeting minimum service requirements for benefit eligibility.

**(2) Definition of Prior Governmental Service.**

Prior governmental service shall be defined as follows: (**must specify in a manner that satisfies the definite written program requirement of Treasury Regulation 1.401-1(a)(2) and the definitely determinable requirement of Treasury Regulation 1.401-1(b)(1)(i): \_\_\_\_\_.**

Unless otherwise specified above, prior governmental service shall include only full-time service (minimum hour requirement same as that applicable to Eligible Regular Employees).

**(3) Maximum Credit for Prior Governmental Service.**

Credit for prior governmental service shall be limited to a maximum of \_\_\_\_\_ years (**insert number**).

**(4) Rate of Accrual for Prior Governmental Service Credit.**

Credit for prior governmental service shall accrue at the following rate (**check one**):

- One month of prior governmental service credit for every \_\_\_\_\_ month(s) (**insert number**) of Credited Service with the Adopting Employer.
- One year of prior governmental service credit for every \_\_\_\_\_ year(s) (**insert number**) of Credited Service with the Adopting Employer.
- All prior governmental service shall be creditable (subject to any caps imposed above) after the Participant has completed \_\_\_\_\_ years (**insert number**) of Credited Service with the Adopting Employer.
- Other requirement (**must specify in a manner that satisfies the definite written program requirement of Treasury Regulation 1.401-1(a)(2) and the definitely determinable requirement of Treasury Regulation 1.401-1(b)(1)(i)**): \_\_\_\_\_.

**(5) Payment for Prior Governmental Service Credit.**

- Participants shall **not** be required to pay for governmental service credit.
- Participants shall be required to pay for governmental service credit as follows:
  - The Participant must pay \_\_\_\_% of the actuarial cost of the service credit.
  - The Participant must pay an amount equal to (**must specify in a manner that satisfies the definite written program requirement of Treasury Regulation 1.401-1(a)(2) and the definitely determinable requirement of Treasury Regulation 1.401-1(b)(1)(i)**): \_\_\_\_\_.

Other Conditions for Award of Prior Governmental Service Credit (**must specify in a manner that satisfies the definite written program requirement of Treasury Regulation 1.401-1(a)(2) and the definitely determinable requirement of Treasury Regulation 1.401-1(b)(1)(i)**): \_\_\_\_\_.

**D. Leave Conversion for Unused Paid Time Off (e.g., Sick, Vacation, or Personal Leave)**

**(1) Credit for Unused Paid Time Off.**

Subject to the limitations in Section 3.01 of the Master Plan, an Adopting Employer may elect to treat accumulated days of unused paid time off for a terminated Participant, for which the Participant is not paid, as Credited Service. The only type of leave permitted to be credited under this provision is leave from a paid time off plan which qualifies as a bona fide sick and vacation leave plan (which may include sick, vacation or personal leave) and which the Participant may take as paid leave without regard to whether the leave is due to illness or incapacity. The Credited Service resulting from the conversion of unused paid time off must not be the only Credited Service applied toward the accrual of a normal retirement benefit under the Plan. The Pension Committee shall be responsible to certify to GMEBS the total amount of unused paid time off that is creditable hereunder.

**Important Note:** Leave cannot be converted to Credited Service in lieu of receiving a cash payment. If the Employer elects treating unused paid time off as Credited Service, the conversion to Credited Service will be automatic, and the Participant cannot request a cash payment for the unused paid time off.

The Employer elects the following treatment of unused paid time off:

- Unused paid time off shall **not** be treated as Credited Service **(if checked, skip to Section 14 – Retirement Eligibility)**.
- The following types of unused paid time off for which the Participant is not paid shall be treated as Credited Service under the Plan **(check one or more as applicable)**:
  - Unused sick leave
  - Unused vacation leave
  - Unused personal leave
  - Other paid time off **(must specify in a manner that satisfies the definite written program requirement of Treasury Regulation 1.401-1(a)(2) and the definitely determinable requirement of Treasury Regulation 1.401-1(b)(1)(i))**: \_\_\_\_\_.

**(2) Minimum Service Requirement.**

In order to receive credit for unused paid time off, a Participant must meet the following requirement at termination **(check one)**:

- The Participant must be 100% vested in a normal retirement benefit.
- The Participant must have at least \_\_\_\_\_ years **(insert number)** of Total Credited Service (not including leave otherwise creditable under this Section).
- Other **(must specify in a manner that satisfies the definite written program requirement of Treasury Regulation 1.401-1(a)(2) and the definitely determinable requirement of Treasury Regulation 1.401-1(b)(1)(i))**: \_\_\_\_\_.

**(3) Use of Unused Paid Time Off Credit.** Unused paid time off for which the Participant is not paid shall count as Credited Service for the following purposes under the Plan **(check one or more as applicable)**:

- Computing amount of benefits payable.
- Meeting minimum service requirements for vesting.
- Meeting minimum service requirements for benefit eligibility.

**(4) Maximum Credit for Unused Paid Time Off.**

Credit for unused paid time off for which the Participant is not paid shall be limited to a maximum of \_\_\_\_ months (insert number).

**(5) Computation of Unused Paid Time Off.**

Unless otherwise specified by the Adopting Employer under "Other Conditions" below, each twenty (20) days of creditable unused paid time off shall constitute one (1) complete month of Credited Service under the Plan. Partial months shall not be credited.

**(6) Other Conditions (please specify, subject to limitations in Section 3.01 of Master Plan; must specify in a manner that satisfies the definite written program requirement of Treasury Regulation 1.401-1(a)(2) and the definitely determinable requirement of Treasury Regulation 1.401-1(b)(1)(i): \_\_\_\_\_.**

**14. RETIREMENT ELIGIBILITY**

**A. Early Retirement Qualifications**

Early retirement qualifications are (check one or more as applicable):

- Attainment of age **55** (insert number)
- Completion of **10** years (insert number) of Total Credited Service

**Exceptions:** If different early retirement eligibility requirements apply to a particular class or classes of Eligible Employees, the Employer must specify below the classes to whom the different requirements apply and indicate below the requirements applicable to them.

Eligible Employees to whom exception applies (must specify - specific positions are permissible; specific individuals may not be named): **Vested police and fire personnel as defined in General Addendum subsection 16(d). See also General Addendum subsection 16(d) regarding Early Retirement based on the 50 & 20 Alternative Normal Retirement qualification for Vested police and fire personnel and Vested former police and fire personnel.**

Early retirement qualifications for excepted class(es) are (check one or more as applicable):

- Attainment of age **50** (insert number)
- Completion of **5** years (insert number) of Total Credited Service as a Participant in this Plan while employed as police and/or fire personnel



**B. Normal Retirement Qualifications**

**Note: Please complete this Section and also list "Alternative" Normal Retirement Qualifications, if any, in Section 14.C.**

**(1) Regular Employees**

Normal retirement qualifications for Regular Employees are (**check one or more as applicable**):

- Attainment of age **65** (insert number)
- Completion of **10** years (insert number) of Total Credited Service **See General Addendum subsection 16(e) regarding calculation of Total Credited Service for benefit eligibility purposes.**
- In-Service Distribution to Eligible Employees permitted (*i.e.*, a qualifying Participant may commence receiving retirement benefits while in service without first incurring a Bona Fide Separation from Service), if Participant meets minimum age and service requirements specified immediately above and is at least age 62 (unless a lower safe-harbor age is permitted under applicable federal law), subject to applicable Plan provisions concerning recalculation and offset applied at re-retirement to account for the value of benefits received prior to re-retirement. This rule shall apply to (**check one**):  all Participants  only the following class(es) of Participants (**must specify - specific positions are permissible; specific individuals may not be named**): \_\_\_\_\_.

**Exceptions:** If different normal retirement qualifications apply to a particular class or classes of Regular Employees, the Employer must specify below the classes to whom the different requirements apply and indicate below the requirements applicable to them.

Class(es) of Regular Employees to whom exception applies (**must specify - specific positions are permissible; specific individuals may not be named**): \_\_\_\_\_.

Normal retirement qualifications for excepted class(es) are (**check one or more as applicable**):

- Attainment of age \_\_\_\_\_ (insert number)
- Completion of \_\_\_\_\_ years (insert number) of Total Credited Service
- In-Service Distribution to Eligible Employees permitted (*i.e.*, a qualifying Participant may commence receiving retirement benefits while in service without first incurring a Bona Fide Separation from Service), if Participant meets minimum age and service requirements specified immediately above and is at least age 62 (unless a lower safe-harbor age is permitted under applicable federal law), subject to applicable Plan provisions concerning recalculation and offset applied at re-retirement to account for the value of benefits received prior to re-retirement. This rule shall apply to (**check one**):  all Participants  only the

following class(es) of Participants (**must specify - specific positions are permissible; specific individuals may not be named**): \_\_\_\_\_.

**(2) Elected or Appointed Members of Governing Authority**

**Complete this Section only if elected or appointed members of the Governing Authority or Municipal Legal Officers are permitted to participate in the Plan.** Normal retirement qualifications for this class are (**check one or more as applicable**):

- Attainment of age \_\_\_\_\_ (**insert number**)
- Completion of \_\_\_\_\_ years (**insert number**) of Total Credited Service
- In-Service Distribution to Eligible Employees permitted (*i.e.*, a qualifying Participant may commence receiving retirement benefits while in service without first incurring a Bona Fide Separation from Service), if Participant meets minimum age and service requirements specified immediately above and is at least age 62 (unless a lower safe-harbor age is permitted under applicable federal law), subject to applicable Plan provisions concerning recalculation and offset applied at re-retirement to account for the value of benefits received prior to re-retirement. This rule shall apply to (**check one**):  all Participants  only the following class(es) of Participants (**must specify - specific positions are permissible; specific individuals may not be named**): \_\_\_\_\_.

**Exceptions:** If different normal retirement qualifications apply to particular elected or appointed members of the Governing Authority or Municipal Legal Officers, the Employer must specify below to whom the different requirements apply and indicate below the requirements applicable to them.

Particular elected or appointed members of the Governing Authority or Municipal Legal Officers to whom exception applies (**must specify - specific positions are permissible; specific individuals may not be named**): \_\_\_\_\_.

Normal retirement qualifications for excepted elected or appointed members of the Governing Authority or Municipal Legal Officers are (**check one or more as applicable**):

- Attainment of age \_\_\_\_\_ (**insert number**)
- Completion of \_\_\_\_\_ years (**insert number**) of Total Credited Service
- In-Service Distribution to Eligible Employees permitted (*i.e.*, a qualifying Participant may commence receiving retirement benefits while in service without first incurring a Bona Fide Separation from Service), if Participant meets minimum age and service requirements specified immediately above and is at least age 62 (unless a lower safe-harbor age is permitted under applicable federal law), subject to applicable Plan provisions concerning recalculation and offset applied at re-retirement to account for the value of benefits received prior to re-retirement. This rule shall apply to (**check one**):  all Participants  only the

following class(es) of Participants (**must specify - specific positions are permissible; specific individuals may not be named**): \_\_\_\_\_.

**C. Alternative Normal Retirement Qualifications**

The Employer may elect to permit Participants to retire with unreduced benefits after they satisfy service and/or age requirements other than the regular normal retirement qualifications specified above. The Employer hereby adopts the following alternative normal retirement qualifications:

**Alternative Normal Retirement Qualifications (check one or more, as applicable):**

(1)  Not applicable (the Adopting Employer does not offer alternative normal retirement benefits under the Plan).

(2)  **Alternative Minimum Age & Service Qualifications (if checked, please complete one or more items below, as applicable):**

Attainment of age 55 (insert number)

Completion of 25 years (insert number) of Total Credited Service **See General Addendum subsection 16(e) regarding calculation of Total Credited Service for benefit eligibility purposes.**

In-Service Distribution to Eligible Employees permitted (*i.e.*, a qualifying Participant may commence receiving retirement benefits while in service without first incurring a Bona Fide Separation from Service), if Participant meets minimum age and service requirements specified immediately above and is at least age 62 (unless a lower safe-harbor age is permitted under applicable federal law), subject to applicable Plan provisions concerning recalculation and offset applied at re-retirement to account for the value of benefits received prior to re-retirement. This rule shall apply to (**check one**):  all Participants  only the following class(es) of Participants (**must specify - specific positions are permissible; specific individuals may not be named**): \_\_\_\_\_.

This alternative normal retirement benefit is available to:

All Participants who qualify.

Only the following Participants (**must specify - specific positions are permissible; specific individuals may not be named**): \_\_\_\_\_.

A Participant (**check one**):  is required  is not required to be in the service of the Employer at the time he satisfies the above qualifications in order to qualify for this alternative normal retirement benefit.

Other eligibility requirement (**must specify in a manner that satisfies the definite written program requirement of Treasury Regulation 1.401-1(a)(2)**)

and the definitely determinable requirement of Treasury Regulation 1.401-1(b)(1)(i): \_\_\_\_\_.

- (3)  **Rule of \_\_\_\_\_ (insert number).** The Participant's combined Total Credited Service and age must equal or exceed this number. Please complete additional items below:

To qualify for this alternative normal retirement benefit, the Participant (**check one or more items below, as applicable**):

- Must have attained at least age \_\_\_\_\_ (**insert number**)
- Must not satisfy any minimum age requirement
- In-Service Distribution to Eligible Employees permitted (*i.e.*, a qualifying Participant may commence receiving retirement benefits while in service without first incurring a Bona Fide Separation from Service), if the Participant meets the minimum age and service requirements specified immediately above and is at least age 62 (unless a lower safe-harbor age is permitted under applicable federal law), subject to applicable Plan provisions concerning recalculation and offset applied at re-retirement to account for the value of benefits received prior to re-retirement. This rule shall apply to (**check one**):  all Participants  only the following class(es) of Participants (**must specify - specific positions are permissible; specific individuals may not be named**): \_\_\_\_\_.

This alternative normal retirement benefit is available to:

- All Participants who qualify.
- Only the following Participants (**must specify - specific positions are permissible; specific individuals may not be named**): \_\_\_\_\_.

A Participant (**check one**):  is required  is not required to be in the service of the Employer at the time he satisfies the Rule in order to qualify for this alternative normal retirement benefit.

Other eligibility requirement (**must specify in a manner that satisfies the definite written program requirement of Treasury Regulation 1.401-1(a)(2) and the definitely determinable requirement of Treasury Regulation 1.401-1(b)(1)(i)**): \_\_\_\_\_.

- (4)  **Alternative Minimum Service.** A Participant is eligible for an alternative normal retirement benefit if he has at least \_\_\_\_\_ years (**insert number**) of Total Credited Service, regardless of the Participant's age.

- In-Service Distribution to Eligible Employees permitted (*i.e.*, a qualifying Participant may commence receiving retirement benefits while in service

without first incurring a Bona Fide Separation from Service), if the Participant meets the minimum service requirement specified immediately above and is at least age 62 (unless a lower safe-harbor age is permitted under applicable federal law), subject to applicable Plan provisions concerning recalculation and offset applied at re-retirement to account for the value of benefits received prior to re-retirement. This rule shall apply to **(check one)**:  all Participants  only the following class(es) of Participants **(must specify - specific positions are permissible; specific individuals may not be named)**: \_\_\_\_\_.

This alternative normal retirement benefit is available to:

- All Participants who qualify.
- Only the following Participants **(must specify - specific positions are permissible; specific individuals may not be named)**: \_\_\_\_\_.

A Participant **(check one)**:  is required  is not required to be in the service of the Employer at the time he satisfies the qualifications for this alternative normal retirement benefit.

Other eligibility requirement **(must specify in a manner that satisfies the definite written program requirement of Treasury Regulation 1.401-1(a)(2) and the definitely determinable requirement of Treasury Regulation 1.401-1(b)(1)(i))**: \_\_\_\_\_.

**(5)  Other Alternative Normal Retirement Benefit.**

**Must specify qualifications (in a manner that satisfies the definite written program requirement of Treasury Regulation 1.401-1(a)(2) and the definitely determinable requirement of Treasury Regulation 1.401-1(b)(1)(i))**: \_\_\_\_\_.

- In-Service Distribution to Eligible Employees permitted (*i.e.*, a qualifying Participant may commence receiving retirement benefits while in service without first incurring a Bona Fide Separation from Service), if the Participant meets minimum age and service requirements specified immediately above and is at least age 62 (unless a lower safe-harbor age is permitted under applicable federal law), subject to applicable Plan provisions concerning recalculation and offset applied at re-retirement to account for the value of benefits received prior to re-retirement. This rule shall apply to **(check one)**:  all Participants  only the following class(es) of Participants **(must specify - specific positions are permissible; specific individuals may not be named)**: \_\_\_\_\_.

This alternative normal retirement benefit is available to:

- All Participants who qualify.

- Only the following Participants (**must specify - specific positions are permissible; specific individuals may not be named**): \_\_\_\_\_.

A Participant (**check one**):  is required  is not required to be in the service of the Employer at the time he satisfies the qualifications for this alternative normal retirement benefit.

Other eligibility requirement (**must specify in a manner that satisfies the definite written program requirement of Treasury Regulation 1.401-1(a)(2) and the definitely determinable requirement of Treasury Regulation 1.401-1(b)(1)(i)**): \_\_\_\_\_.

(6)  **Other Alternative Normal Retirement Benefit for Public Safety Employees Only.**

**Must specify qualifications (in a manner that satisfies the definite written program requirement of Treasury Regulation 1.401-1(a)(2) and the definitely determinable requirement of Treasury Regulation 1.401-1(b)(1)(i): Attainment of age 50 and completion of at least 20 years of Total Credited Service. See General Addendum subsection 16(e) regarding calculation of Total Credited Service for benefit eligibility purposes.**

- In-Service Distribution to Eligible Employees who are Public Safety Employees permitted (i.e., a qualifying Participant may commence receiving retirement benefits while in service without first incurring a Bona Fide Separation from Service), if the Participant meets minimum age and service requirements specified immediately above and is at least age 50 (unless a lower safe-harbor age is permitted under applicable federal law), subject to applicable Plan provisions concerning recalculation and offset applied at re-retirement to account for the value of benefits received prior to re-retirement. This rule shall apply to (**check one**):  all Participants  only the following class(es) of Participants (**must specify - specific positions are permissible; specific individuals may not be named**): \_\_\_\_\_.

This alternative normal retirement benefit is available to:

- All public safety employee Participants who qualify.
- Only the following public safety employee Participants (**must specify - specific positions are permissible; specific individuals may not be named**): **Vested Police and fire personnel and Vested former police and fire personnel, as defined in General Addendum subsection 16(d), provided they have at least five (5) years of Credited Service as a Participant in this Plan while employed as police and fire personnel.**

A public safety employee Participant (**check one**):  is required  is not required to be in the service of the Employer at the time he satisfies the qualifications for this alternative normal retirement benefit.

Other eligibility requirement (**must specify in a manner that satisfies the definite written program requirement of Treasury Regulation 1.401-1(a)(2) and the definitely determinable requirement of Treasury Regulation 1.401-1(b)(1)(i)**): \_\_\_\_\_.

**Note:** "Public safety employees" are defined under the Internal Revenue Code for this purpose as employees of a State or political subdivision of a State who provide police protection, firefighting services, or emergency medical services for any area within the jurisdiction of such State or political subdivision.

**D. Disability Benefit Qualifications**

Subject to the other terms and conditions of the Master Plan and except as otherwise provided in an Addendum to this Adoption Agreement, disability retirement qualifications are based upon Social Security Administration award criteria or as otherwise provided under Section 2.23 of the Master Plan. The Disability Retirement benefit shall commence as of the Participant's Disability Retirement Date under Section 2.24 of the Master Plan.

To qualify for a disability benefit, a Participant must have the following minimum number of years of Total Credited Service (**check one**):

- Not applicable (the Adopting Employer does not offer disability retirement benefits under the Plan).
- No minimum.
- 10** years (**insert number**) of Total Credited Service.

Other eligibility requirement (**must specify in a manner that satisfies the definite written program requirement of Treasury Regulation 1.401-1(a)(2) and the definitely determinable requirement of Treasury Regulation 1.401-1(b)(1)(i)**): \_\_\_\_\_.

**15. RETIREMENT BENEFIT COMPUTATION**

**A. Maximum Total Credited Service**

The number of years of Total Credited Service which may be used to calculate a benefit is (**check one or all that apply**):

- not limited.
- limited to \_\_\_\_\_ years for all Participants.
- limited to \_\_\_\_\_ years for the following classes of Eligible Regular Employees:

- All Eligible Regular Employees.
- Only the following Eligible Regular Employees: \_\_\_\_\_.
- limited to \_\_\_\_\_ years as an elected or appointed member of the Governing Authority.
- limited to \_\_\_\_\_ years as a Municipal Legal Officer.
- Other (must specify in a manner that satisfies the definite written program requirement of Treasury Regulation 1.401-1(a)(2) and the definitely determinable requirement of Treasury Regulation 1.401-1(b)(1)(i)): \_\_\_\_\_.

**B. Monthly Normal Retirement Benefit Amount**

**(1) Regular Employee Formula**

The monthly normal retirement benefit for Eligible Regular Employees shall be 1/12 of (check and complete one or more as applicable):

- (a) **Flat Percentage Formula. 2% (insert percentage) of Final Average Earnings multiplied by years of Total Credited Service as an Eligible Regular Employee. See General Addendum paragraph 16(a)(ii) concerning service during the waiting period.**

This formula applies to:

- All Participants who are Regular Employees.
- Only the following Participants (must specify - specific positions are permissible; specific individuals may not be named): \_\_\_\_\_.
- (b) **Alternative Flat Percentage Formula. \_\_\_\_\_% (insert percentage) of Final Average Earnings multiplied by years of Total Credited Service as an Eligible Regular Employee. This formula applies to the following Participants (must specify - specific positions are permissible; specific individuals may not be named): \_\_\_\_\_.**
- (c) **Split Final Average Earnings Formula. \_\_\_\_\_% (insert percentage) of Final Average Earnings up to the amount of Covered Compensation (see subsection (2) below for definition of Covered Compensation), plus \_\_\_\_\_% (insert percentage) of Final Average Earnings in excess of said Covered Compensation, multiplied by years of Total Credited Service as an Eligible Regular Employee.**

This formula applies to:

- All Participants who are Regular Employees.
- Only the following Participants (must specify - specific positions are permissible; specific individuals may not be named): \_\_\_\_\_.



- (d) **Alternative Split Final Average Earnings Formula.** \_\_\_\_\_ % (insert percentage) of Final Average Earnings up to the amount of **Covered Compensation** (see subsection (2) below for definition of **Covered Compensation**), plus \_\_\_\_\_% (insert percentage) of Final Average Earnings in excess of said Covered Compensation, multiplied by years of Total Credited Service as an Eligible Regular Employee.

This formula applies to:

- All Participants.
- Only the following Participants (**must specify - specific positions are permissible; specific individuals may not be named**): \_\_\_\_\_.

[Repeat above subsections as necessary for each applicable benefit formula and Participant class covered under the Plan.]

**(2) Covered Compensation (complete only if Split Formula(s) is checked above):**

Covered Compensation is defined as (check one or more as applicable):

- (a) **A.I.M.E. Covered Compensation** as defined in Section 2.18 of the Master Plan. This definition of Covered Compensation shall apply to (**check one**):
  - All Participants who are Regular Employees.
  - Only the following Participants (**must specify - specific positions are permissible; specific individuals may not be named**): \_\_\_\_\_.
  
- (b) **Dynamic Break Point** Covered Compensation as defined in Section 2.19 of the Master Plan. This definition of Covered Compensation shall apply to (**check one**):
  - All Participants who are Regular Employees.
  - Only the following Participants (**must specify - specific positions are permissible; specific individuals may not be named**): \_\_\_\_\_.
  
- (c) **Table Break Point** Covered Compensation as defined in Section 2.20 of the Master Plan. This definition of Covered Compensation shall apply to (**check one**):
  - All Participants who are Regular Employees.
  - Only the following class(es) of Participants (**must specify - specific positions are permissible; specific individuals may not be named**): \_\_\_\_\_.
  
- (d) **Covered Compensation** shall mean a Participant's annual Earnings that do not exceed \$\_\_\_\_\_ (**specify amount**). This definition shall apply to (**check one**):

- All Participants who are Regular Employees.
- Only the following Participants (**must specify - specific positions are permissible; specific individuals may not be named**):\_\_\_\_\_.

**(3) Final Average Earnings**

Unless otherwise specified in an Addendum to the Adoption Agreement, Final Average Earnings is defined as the monthly average of Earnings paid to a Participant by the Adopting Employer for the \_\_\_\_\_ (**insert number not to exceed 60**) consecutive months of Credited Service preceding the Participant's most recent Termination in which the Participant's Earnings were the highest, multiplied by 12. Note: GMEBS has prescribed forms for calculation of Final Average Earnings that must be used for this purpose. **See General Addendum Section 7.**

This definition of Final Average Earnings applies to:

- All Participants who are Regular Employees.
- Only the following Participants (**must specify - specific positions are permissible; specific individuals may not be named**): \_\_\_\_\_.

**[Repeat above subsection as necessary for each applicable definition and Participant class covered under the Plan.]**

**(4) Formula for Elected or Appointed Members of the Governing Authority**

The monthly normal retirement benefit for members of this class shall be as follows (**check one**):

- Not applicable (elected or appointed members of the Governing Authority or Municipal Legal Officers are not permitted to participate in the Plan).
- \$\_\_\_\_\_ (**insert dollar amount**) per month for each year of Total Credited Service as an elected or appointed member of the Governing Authority or Municipal Legal Officer or major fraction thereof (6 months and 1 day).

This formula applies to:

- All elected or appointed members of the Governing Authority or Municipal Legal Officers eligible to participate.
- Only the following elected or appointed members of the Governing Authority or Municipal Legal Officers eligible to participate (**must specify - specific positions are permissible; specific individuals may not be named**): \_\_\_\_\_.

**[Repeat above subsection as necessary for each applicable formula for classes of elected or appointed members covered under the Plan.]**

**C. Monthly Early Retirement Benefit Amount**

**Check and complete one or more as applicable:**

- (1) **Standard Early Retirement Reduction Table.** The monthly Early Retirement benefit shall be computed in the same manner as the monthly Normal Retirement benefit, but the benefit shall be reduced on an Actuarially Equivalent basis in accordance with Section 12.01 of the Master Plan to account for early commencement of benefits. This provision shall apply to:
  - All Participants.
  - Only the following Participants (**must specify - specific positions are permissible; specific individuals may not be named**):\_\_\_\_\_.
  
- (2) **Alternative Early Retirement Reduction Table.** The monthly Early Retirement benefit shall be computed in the same manner as the monthly Normal Retirement benefit, but the benefit shall be reduced to account for early commencement of benefits based on the following table. This table shall apply to:
  - All Participants.
  - Only the following Participants (**must specify - specific positions are permissible; specific individuals may not be named**): Participants who Retire early using the 55 & 10 Early Retirement qualification in Section 14(A) above. See also General Addendum subsection 16(d) regarding the reduction applicable to Participants who have at least five (5) years of Credited Service while employed as police and fire personnel or former police and fire personnel and apply for Early Retirement based on the 50 & 20 Alternative Normal Retirement qualification.

**Alternative Early Retirement Reduction Table**

<b><u>Number of Years Before Age 65</u></b> (check as applicable)	<b><u>Percentage of Normal Retirement Benefit*</u></b> (complete as applicable)
<input checked="" type="checkbox"/> 0	1.000
<input checked="" type="checkbox"/> 1	0.970
<input checked="" type="checkbox"/> 2	0.940
<input checked="" type="checkbox"/> 3	0.910
<input checked="" type="checkbox"/> 4	0.880
<input checked="" type="checkbox"/> 5	0.850
<input checked="" type="checkbox"/> 6	0.790
<input checked="" type="checkbox"/> 7	0.730
<input checked="" type="checkbox"/> 8	0.670
<input checked="" type="checkbox"/> 9	0.610
<input checked="" type="checkbox"/> 10	0.550
<input type="checkbox"/> 11	0.____
<input type="checkbox"/> 12	0.____
<input type="checkbox"/> 13	0.____
<input type="checkbox"/> 14	0.____
<input type="checkbox"/> 15	0.____

\*Interpolate for whole months

**D. Monthly Late Retirement Benefit Amount (check one):**

- (1) The monthly Late Retirement benefit shall be computed in the same manner as the Normal Retirement Benefit, based upon the Participant's Accrued Benefit as of his Late Retirement Date.
- (2) The monthly Late Retirement benefit shall be the greater of: (1) the monthly retirement benefit accrued as of the Participant's Normal Retirement Date, actuarially increased in accordance with the actuarial table contained in Section 12.05 of the Master Plan; or (2) the monthly retirement benefit accrued as of the Participant's Late Retirement Date, without further actuarial adjustment under Section 12.06 of the Master Plan.

**E. Monthly Disability Benefit Amount**

The amount of the monthly Disability Benefit shall be computed in the same manner as the Normal Retirement benefit, based upon the Participant's Accrued Benefit as of his Disability Retirement Date.

**Minimum Disability Benefit.** The Adopting Employer may set a minimum Disability Benefit. The Employer elects the following minimum Disability benefit (**check one**):

- Not applicable (the Adopting Employer does not offer disability retirement benefits under the Plan).
- No minimum is established.
- No less than **(check one):**  20%  10%  \_\_\_\_% **(if other than 20% or 10% insert percentage amount)** of the Participant's average monthly Earnings for the 12 calendar month period (excluding any period of unpaid leave of absence) immediately preceding his Termination of Employment as a result of a Disability. (Unless otherwise specified in an Addendum to the Adoption Agreement, no minimum will apply to elected or appointed members of the Governing Authority or Municipal Legal Officers.)
- No less than **(check one):**  66 2/3 %  \_\_\_\_\_% **(if other than 66 2/3%, insert percentage amount)** of the Participant's average monthly Earnings for the 12 calendar month period (excluding any period of unpaid leave of absence) immediately preceding his Termination of Employment as a result of a Disability, less any monthly benefits paid from federal Social Security benefits as a result of disability as reported by the Employer. (Unless otherwise specified in an Addendum to the Adoption Agreement, no minimum will apply to elected or appointed members of the Governing Authority or Municipal Legal Officers.)

**Note:** The Adopting Employer is responsible for reporting to GMEBS any amounts to be used in an offset.

**F. Minimum/Maximum Benefit For Elected Officials**

In addition to any other limitations imposed by federal or state law, the Employer may impose a cap on the monthly benefit amount that may be received by elected or appointed members of the Governing Authority. The Employer elects **(check one)**:

- Not applicable (elected or appointed members of the Governing Authority do not participate in the Plan).
- No minimum or maximum applies.
- Monthly benefit for Service as an elected or appointed member of the Governing Authority may not exceed 100% of the Participant's final salary as an elected or appointed member of the Governing Authority.
- Other minimum or maximum **(must specify in a manner that satisfies the definite written program requirement of Treasury Regulation 1.401-1(a)(2) and the definitely determinable requirement of Treasury Regulation 1.401-1(b)(1)(i)):** \_\_\_\_\_.

## 16. SUSPENSION OF BENEFITS FOLLOWING BONA FIDE SEPARATION OF SERVICE; COLA

### A. Re-Employment as Eligible Employee After Normal, Alternative Normal, or Early Retirement and Following Bona Fide Separation of Service (see Master Plan Section 6.06(c) Regarding Re-Employment as an Ineligible Employee and Master Plan Section 6.06(e) and (f) Regarding Re-Employment After Disability Retirement)

(1) **Reemployment After Normal or Alternative Normal Retirement.** In the event that a Retired Participant 1) is reemployed with the Employer as an Eligible Employee (as defined in the Plan) after his Normal or Alternative Normal Retirement Date and after a Bona Fide Separation from Service, or 2) is reemployed with the Employer in an Ineligible Employee class, and subsequently again becomes an Eligible Employee (as defined in the Plan) due to the addition of such class to the Plan after his Normal or Alternative Normal Retirement Date, the following rule shall apply (**check one**):

- (a) The Participant's benefit shall be suspended in accordance with Section 6.06(a)(1) of the Master Plan for as long as the Participant remains employed.
- (b) The Participant may continue to receive his retirement benefit in accordance with Section 6.06(b) of the Master Plan. This rule shall apply to (**check one**):  all Retired Participants  only the following classes of Retired Participants (**must specify (specific positions are permissible; specific individuals may not be named) - benefits of those Retired Participants not listed shall be suspended in accordance with Section 6.06(a) of the Master Plan if they return to work with the Employer**): \_\_\_\_\_.

(2) **Reemployment After Early Retirement.** In the event a Participant Retires with an Early Retirement benefit after a Bona Fide Separation from Service 1) is reemployed with the Employer as an Eligible Employee before his Normal Retirement Date; or 2) is reemployed with the Employer in an Ineligible Employee class, and subsequently again becomes an Eligible Employee (as defined in the Plan) before his Normal Retirement Date due to the addition of such class to the Plan, the following rule shall apply (**check one or more as applicable**):

- (a)  The Participant's Early Retirement benefit shall be suspended in accordance with Section 6.06(a)(1) of the Master Plan for as long as the Participant remains employed.

This rule shall apply to (**check one**):  all Retired Participants;  only the following classes of Retired Participants (**must specify - specific positions are permissible; specific individuals may not be named**): \_\_\_\_\_.

- (b)  The Participant's Early Retirement benefit shall be suspended in accordance with Section 6.06(a)(1) of the Master Plan. However, the

Participant may begin receiving benefits after he satisfies the qualifications for Normal Retirement or Alternative Normal Retirement, as applicable, and after satisfying the minimum age parameters of Section 6.06(a)(3) of the Master Plan, in accordance with Section 6.06(b)(2)(B)(i) of the Master Plan.

This rule shall apply to (check one):  all Retired Participants;  only the following classes of Retired Participants (must specify - specific positions are permissible; specific individuals may not be named):

\_\_\_\_\_.

- (c)  The Participant's Early Retirement benefit shall continue in accordance with Section 6.06(b)(2)(B)(ii) of the Master Plan.

This rule shall apply to (check one):  all Retired Participants;  only the following classes of Retired Participants (must specify - specific positions are permissible; specific individuals may not be named):

\_\_\_\_\_.

**B. Cost Of Living Adjustment**

The Employer may elect to provide for an annual cost-of-living adjustment (COLA) in the amount of benefits being received by Retired Participants and Beneficiaries, which shall be calculated and paid in accordance with the terms of the Master Plan. The Employer hereby elects the following (check one):

- (1) No cost-of-living adjustment.
- (2) Variable Annual cost-of-living adjustment not to exceed \_\_\_\_\_% (insert percentage).
- (3) Fixed annual cost-of-living adjustment equal to \_\_\_\_\_% (insert percentage).

The above cost-of-living adjustment shall apply with respect to the following Participants (and their Beneficiaries) (check one):

- All Participants (and their Beneficiaries).
- Participants (and their Beneficiaries) who terminate employment on or after \_\_\_\_\_ (insert date).
- Other (must specify in a manner that satisfies the definite written program requirement of Treasury Regulation 1.401-1(a)(2) and the definitely determinable requirement of Treasury Regulation 1.401-1(b)(1)(i)); specific positions are permissible; specific individuals may not be named): \_\_\_\_\_.

The Adjustment Date for the above cost-of-living adjustment shall be (if not specified, the Adjustment Date shall be January 1): \_\_\_\_\_.

### 17. TERMINATION OF EMPLOYMENT BEFORE RETIREMENT; VESTING

#### A. Eligible Regular Employees

Subject to the terms and conditions of the Master Plan, a Participant who is an Eligible Regular Employee and whose employment is terminated for any reason other than death or retirement shall earn a vested right in his accrued retirement benefit in accordance with the following schedule (**check one**):

- No vesting schedule (immediate vesting).**
- Cliff Vesting Schedule.** Benefits shall be 100% vested after the Participant has a minimum of **10** years (**insert number not to exceed 10**) of Total Credited Service. Benefits remain 0% vested until the Participant satisfies this minimum. (**See General Addendum subsection 16(e) regarding calculation of Total Credited Service for Vesting purposes**)
- Graduated Vesting Schedule.** Benefits shall become vested in accordance with the following schedule (**insert percentages**):

<u>COMPLETED YEARS OF TOTAL CREDITED SERVICE</u>	<u>VESTED PERCENTAGE</u>
1	%
2	%
3	%
4	%
5	%
6	%
7	%
8	%
9	%
10	%

**Exceptions:** If a vesting schedule other than that specified above applies to a special class(es) of Regular Employees, the Employer must specify the different vesting schedule below and the class(es) to whom the different vesting schedule applies.

Regular Employees to whom exception applies (**must specify - specific positions are permissible; specific individuals may not be named**): \_\_\_\_\_.

Vesting Schedule for excepted class (**must specify in a manner that satisfies the definite written program requirement of Treasury Regulation 1.401-1(a)(2) and the definitely determinable requirement of Treasury Regulation 1.401-1(b)(1)(i)**): \_\_\_\_\_.



**B. Elected or Appointed Members of the Governing Authority**

Subject to the terms and conditions of the Master Plan, a Participant who is an elected or appointed member of the Governing Authority or a Municipal Legal Officer shall earn a vested right in his accrued retirement benefit for Credited Service in such capacity in accordance with the following schedule (**check one**):

- Not applicable (elected or appointed members of the Governing Authority are not permitted to participate in the Plan).
- No vesting schedule (immediate vesting).
- Other vesting schedule (**must specify in a manner that satisfies the definite written program requirement of Treasury Regulation 1.401-1(a)(2) and the definitely determinable requirement of Treasury Regulation 1.401-1(b)(1)(i)**): \_\_\_\_\_.

**18. PRE-RETIREMENT DEATH BENEFITS**

**A. In-Service Death Benefit**

Subject to the terms and conditions of the Master Plan, the Employer hereby elects the following in-service death benefit, to be payable in the event that an eligible Participant's employment with the Employer is terminated by reason of the Participant's death prior to Retirement (**check and complete one**):

- (1)  **Auto A Death Benefit.** A monthly benefit payable to the Participant's Pre-Retirement Beneficiary, equal to the decreased monthly retirement benefit that would have otherwise been payable to the Participant, had he elected a 100% joint and survivor benefit under Section 7.03 of the Master Plan. In order to be eligible for this benefit, a Participant must meet the following requirements (**check one**):
  - The Participant must be vested in a normal retirement benefit.
  - The Participant must have \_\_\_\_\_ years (**insert number**) of Total Credited Service.
  - The Participant must be eligible for Early or Normal Retirement.
  - Other eligibility requirement (**must specify in a manner that satisfies the definite written program requirement of Treasury Regulation 1.401-1(a)(2) and the definitely determinable requirement of Treasury Regulation 1.401-1(b)(1)(i)**): \_\_\_\_\_.
- (2)  **Actuarial Reserve Death Benefit.** A monthly benefit payable to the Participant's Pre-Retirement Beneficiary, actuarially equivalent to the reserve required for the

Participant's anticipated Normal Retirement benefit, provided the Participant meets the following eligibility conditions (**check one**):

- The Participant shall be eligible upon satisfying the eligibility requirements of Section 8.02(c) of the Master Plan.
- The Participant must have \_\_\_\_\_ years (**insert number**) of Total Credited Service.
- Other eligibility requirement (**must specify in a manner that satisfies the definite written program requirement of Treasury Regulation 1.401-1(a)(2) and the definitely determinable requirement of Treasury Regulation 1.401-1(b)(1)(i)**): \_\_\_\_\_.

**Imputed Service.** For purposes of computing the actuarial reserve death benefit, the Participant's Total Credited Service shall include (**check one**):

- Total Credited Service accrued prior to the date of the Participant's death.
- Total Credited Service accrued prior to the date of the Participant's death, plus (**check one**):  one-half (1/2)  \_\_\_\_\_ (**insert other fraction**) of the Service between such date of death and what would otherwise have been the Participant's Normal Retirement Date. (**See Master Plan Section 8.02(b) regarding 10-year cap on additional Credited Service.**)

Minimum In-Service Death Benefit for Vested Employees Equal to Terminated Vested Death Benefit. Unless otherwise specified under "Exceptions" below, if a Participant's employment is terminated by reason of the Participant's death prior to Retirement, and if as of the date of death the Participant is vested but he does not qualify for the in-service death benefit, then the Auto A Death Benefit will be payable, provided the Auto A Death Benefit is made available to terminated vested employees under the Adoption Agreement (see "Terminated Vested Death Benefit" below).

**(3) Exceptions:** If an in-service death benefit other than that specified above applies to one or more classes of Participants, the Employer must specify below the death benefit payable, the class(es) to whom the different death benefit applies, and the eligibility conditions for said death benefit.

Alternative Death Benefit (**must specify formula that satisfies the definite written program and definitely determinable requirements of Treasury Regulations Sections 1.401-1(a)(2) and 1.401-1(b)(1)(i) and does not violate limits applicable to governmental plans under Code Sections 401(a)(17) and 415**): \_\_\_\_\_.

Participants to whom alternative death benefit applies (**must specify - specific positions are permissible; specific individuals may not be named**): \_\_\_\_\_.

Eligibility conditions for alternative death benefit (must specify in a manner that satisfies the definite written program requirement of Treasury Regulation 1.401-1(a)(2) and the definitely determinable requirement of Treasury Regulation 1.401-1(b)(1)(i)): \_\_\_\_\_.

**B. Terminated Vested Death Benefit**

**(1) Complete this Section only if the Employer offers a terminated vested death benefit.** The Employer may elect to provide a terminated vested death benefit, to be payable in the event that a Participant who is vested dies after termination of employment but before Retirement benefits commence. Subject to the terms and conditions of the Master Plan, the Employer hereby elects the following terminated vested death benefit (check one):

- Auto A Death Benefit.** A monthly benefit payable to the Participant's Pre-Retirement Beneficiary, equal to the decreased monthly retirement benefit that would have otherwise been payable to the Participant had he elected a 100% joint and survivor benefit under Section 7.03 of the Master Plan.
- Accrued Retirement Benefit.** A monthly benefit payable to the Participant's Pre-Retirement Beneficiary which shall be actuarially equivalent to the Participant's Accrued Normal Retirement Benefit determined as of the date of death.

**(2) Exceptions:** If a terminated vested death benefit other than that specified above applies to one or more classes of Participants, the Employer must specify below the death benefit payable, the class(es) to whom the different death benefit applies, and the eligibility conditions for said death benefit.

Alternative Death Benefit (must specify formula that satisfies the definite written program and definitely determinable requirements of Treasury Regulations Sections 1.401-1(a)(2) and 1.401-1(b)(1)(i) and does not violate limits applicable to governmental plans under Code Sections 401(a)(17) and 415): \_\_\_\_\_.

Participants to whom alternative death benefit applies (must specify - specific positions are permissible; specific individuals may not be named): \_\_\_\_\_.

Eligibility conditions for alternative death benefit (must specify in a manner that satisfies the definite written program requirement of Treasury Regulation 1.401-1(a)(2) and the definitely determinable requirement of Treasury Regulation 1.401-1(b)(1)(i)): \_\_\_\_\_.

### 19. EMPLOYEE CONTRIBUTIONS

**(1) Employee contributions (check one):**

- Are not required.
- Are required in the amount of \_\_\_\_% (insert percentage) of Earnings for all Participants.
- Are required in the amount of **3.1%** (insert percentage) of Earnings for Participants in the following classes (must specify - specific positions are permissible; specific individuals may not be named): **All Participants except police and fire personnel or former police and fire personnel as defined in General Addendum subsection 16(d).**
- Are required in the amount of **4.1%** (insert percentage) of Earnings for Participants in the following classes (must specify - specific positions are permissible; specific individuals may not be named): **All Participants who are police and fire personnel or former police and fire personnel as defined in General Addendum subsection 16(d).**

**[Repeat above subsection as necessary if more than one contribution rate applies.]**

**(2) Pre-Tax Treatment of Employee Contributions.** If Employee Contributions are required in Subsection (1) above, an Adopting Employer may elect to "pick up" Employee Contributions to the Plan in accordance with IRC Section 414(h). In such case, Employee Contributions shall be made on a pre-tax rather than a post-tax basis, provided the requirements of IRC Section 414(h) are met. If the Employer elects to pick up Employee Contributions, it is the Employer's responsibility to ensure that Employee Contributions are paid and reported in accordance with IRC Section 414(h). The Adopting Employer must not report picked up contributions as wages subject to federal income tax withholding.

The Employer hereby elects (check one):

- To pick up Employee Contributions. By electing to pick up Employee Contributions, the Adopting Employer specifies that the contributions, although designated as Employee Contributions, are being paid by the Employer in lieu of Employee Contributions. The Adopting Employer confirms that the executor of this Adoption Agreement is duly authorized to take this action as required to pick up contributions. This pick-up of contributions applies prospectively, and it is evidenced by this contemporaneous written document. On and after the date of the pick-up of contributions, a Participant does not have a cash or deferred election right (within the meaning of Treasury Regulation Section 1.401(k)-1(a)(3)) with respect to the designated Employee Contributions, which includes not having the option of receiving the amounts directly instead of having them paid to the Plan.
- Not to pick up Employee Contributions.

**(3) Interest on Employee Contributions.** The Adopting Employer may elect to pay interest on any refund of Employee Contributions.

- Interest shall not be paid. **But see General Addendum subsection 16(i) concerning rate of interest in the event of failure to exhaust or pre-retirement death.**
  - Interest shall be paid on a refund of Employee Contributions at a rate established by GMEBS from time to time.
  - Other rate of interest **(must specify rate in a manner that satisfies the definite written program requirement of Treasury Regulation 1.401-1(a)(2) and the definitely determinable requirement of Treasury Regulation 1.401-1(b)(1)(i)):**
- 

## **20. MODIFICATION OF THE TERMS OF THE ADOPTION AGREEMENT**

If an Adopting Employer desires to amend any of its elections contained in this Adoption Agreement (or any Addendum), the Governing Authority by official action must adopt an amendment of the Adoption Agreement (or any Addendum) or a new Adoption Agreement (or Addendum) must be adopted and forwarded to the Board for approval. The amendment of the new Adoption Agreement (or Addendum) is not effective until approved by the Board and other procedures required by the Plan have been implemented.

The Administrator will timely inform the Adopting Employer of any amendments made by the Board to the Plan.

## **21. TERMINATION OF THE ADOPTION AGREEMENT**

This Adoption Agreement (and any Addendum) may be terminated only in accordance with the Plan. The Administrator will inform the Adopting Employer in the event the Board should decide to discontinue this volume submitter program.

## **22. EMPLOYER ADOPTION AND AUTHORIZATION FOR AMENDMENTS**

**Adoption.** The Adopting Employer hereby adopts the terms of the Adoption Agreement and any Addendum, which is attached hereto and made a part of this ordinance. The Adoption Agreement (and, if applicable, the Addendum) sets forth the Employees to be covered by the Plan, the benefits to be provided by the Adopting Employer under the Plan, and any conditions imposed by the Adopting Employer with respect to, but not inconsistent with, the Plan. The Adopting Employer reserves the right to amend its elections under the Adoption Agreement and any Addendum, so long as the amendment is not inconsistent with the Plan or the Internal Revenue Code or other applicable law and is approved by the Board of Trustees of GMEBS.

The Adopting Employer acknowledges that it may not be able to rely on the volume submitter advisory letter if it makes certain elections under the Adoption Agreement or the Addendum.

The Adopting Employer hereby agrees to abide by the Master Plan, Trust Agreement, and rules and regulations adopted by the Board of Trustees of GMEBS, as each may be amended from time to time, in all matters pertaining to the operation and administration of the Plan. It is intended that the Act creating the Board of Trustees of GMEBS, this Plan, and the rules and regulations of the Board are to be construed in harmony with each other. In the event of a conflict between the provisions of any of the foregoing, they shall govern in the following order:

- (1) The Act creating the Board of Trustees of The Georgia Municipal Employees' Benefit System, O.C.G.A. Section 47-5-1 *et seq.* (a copy of which is included in the Appendix to the Master Defined Benefit Plan Document) and any other applicable provisions of O.C.G.A. Title 47;
- (2) The Master Defined Benefit Plan Document and Trust Agreement;
- (3) This Ordinance and Adoption Agreement (and any Addendum); and
- (4) The rules and regulations of the Board.

In the event that any section, subsection, sentence, clause or phrase of this Plan shall be declared or adjudged invalid or unconstitutional, such adjudication shall in no manner affect the previously existing provisions or the other section or sections, subsections, sentences, clauses or phrases of this Plan, which shall remain in full force and effect, as if the section, subsection, sentence, clause or phrase so declared or adjudicated invalid or unconstitutional were not originally a part hereof. The Governing Authority hereby declares that it would have passed the remaining parts of this Plan or retained the previously existing provisions if it had known that such part or parts hereof would be declared or adjudicated invalid or unconstitutional.

This Adoption Agreement (and any Addendum) may only be used in conjunction with Georgia Municipal Employees Benefit System Master Defined Benefit Retirement Plan Document approved by the Internal Revenue Service under advisory letter J501718a dated March 30, 2018. The Adopting Employer understands that failure to properly complete this Adoption Agreement (or any Addendum), or to operate and maintain the Plan and Trust in accordance with the terms of the completed Adoption Agreement (and any Addendum), Master Plan Document and Trust, may result in disqualification of the Adopting Employer's Plan under the Internal Revenue Code. Inquiries regarding the adoption of the Plan, the meaning of Plan provisions, or the effect of the IRS advisory letter should be directed to the Administrator. The Administrator is Georgia Municipal Employees Benefit System, with its primary business offices located at: 201 Pryor Street, SW, Atlanta, Georgia, 30303. The business telephone number is: (404) 688-0472. The primary person to contact is: GMEBS Legal Counsel.

**Authorization for Amendments.** Effective on and after February 17, 2005, the Adopting Employer hereby authorizes the volume submitter practitioner who sponsors the Plan on behalf of GMEBS to prepare amendments to the Plan, for approval by the Board, on its behalf as provided under Revenue Procedure 2005-16, as superseded by Revenue Procedure 2015-36, Revenue Procedure 2011-49, and Announcement 2005-37. Effective January 1, 2013,

Georgia Municipal Association, Inc., serves as the volume submitter practitioner for the Plan. Employer notice and signature requirements were met for the Adopting Employer before the effective date of February 17, 2005. The Adopting Employer understands that the implementing amendment reads as follows:

On and after February 17, 2005, the Board delegates to the Practitioner the authority to advise and prepare amendments to the Plan, for approval by the Board, on behalf of all Adopting Employers, including those Adopting Employers who have adopted the Plan prior to the January 1, 2013, restatement of the Plan, for changes in the Code, the regulations thereunder, revenue rulings, other statements published by Internal Revenue Service, including model, sample, or other required good faith amendments (but only if their adoption will not cause such Plan to be individually designed), and for corrections of prior approved plans. These amendments shall be applied to all Adopting Employers. Employer notice and signature requirements have been met for all Adopting Employers before the effective date of February 17, 2005. In any event, any amendment prepared by the Practitioner and approved by the Board will be provided by the Administrator to Adopting Employers.

Notwithstanding the foregoing paragraph, no amendment to the Plan shall be prepared on behalf of any Adopting Employer as of either:

- the date the Internal Revenue Service requires the Adopting Employer to file Form 5300 as an individually designed plan as a result of an amendment by the Adopting Employer to incorporate a type of Plan not allowable in a volume submitter plan as described in Revenue Procedure 2015-36; or
- as of the date the Plan is otherwise considered an individually designed plan due to the nature and extent of the amendments.

If the Adopting Employer is required to obtain a determination letter for any reason in order to maintain reliance on the advisory letter, the Practitioner's authority to amend the Plan on behalf of the Adopting Employer is conditioned on the Plan receiving a favorable determination letter.

The Adopting Employer further understands that, if it does not give its authorization hereunder or, in the alternative, adopt another pre-approved plan, its Plan will become an individually designed plan and will not be able to rely on the volume submitter advisory letter.

**AN ORDINANCE (continued from page 1)**

**Section 2.** Except as otherwise specifically required by law or by the terms of the Master Plan or Adoption Agreement (or any Addendum), the rights and obligations under the Plan with respect to persons whose employment with the City was terminated or who vacated his office with the City for any reason whatsoever prior to the effective date of this Ordinance are fixed and shall be governed by such Plan, if any, as it existed and was in effect at the time of such termination.

**Section 3.** The effective date of this Ordinance shall be the date of its approval.

**Section 4.** All Ordinances and parts of ordinances in conflict herewith are expressly repealed.

Approved by the Mayor and Council of the City of \_\_\_\_\_, Georgia this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Attest:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor

(SEAL)

Approved:

\_\_\_\_\_  
City Attorney

The terms of the foregoing Adoption Agreement are approved by the Board of Trustees of Georgia Municipal Employees Benefit System.

IN WITNESS WHEREOF, the Board of Trustees of Georgia Municipal Employees Benefit System has caused its Seal and the signatures of its duly authorized officers to be affixed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Board of Trustees  
Georgia Municipal Employees  
Benefit System

(SEAL)

\_\_\_\_\_  
Secretary





## CITY COUNCIL ITEM SUMMARY

<b>MEETING DATE:</b>	August 3, 2023
<b>SUBCATEGORY:</b>	First Reading of Ordinances
<b>DEPARTMENT NAME:</b>	Administration
<b>AGENDA ITEM TITLE:</b>	Amendment and Restatement of the 2017 Retirement Plan
<b>DEPARTMENT SUMMARY RECOMMENDATION:</b>	<p>This ordinance amendment and restatement will allow the city to move our plan assets for the 2017 Pension Plan to the Georgia Municipal Employees Benefit System (GMEBS) to allow them to manage our pension plan assets and provide the monthly benefits to city retirees. Moving to GMEBS has allowed us to increase the pension plan benefit multiplier to 2%, which helps us retain and recruit new employees. This plan is for employees hired on or after January 1, 2017. Upon second reading, I recommend approval of these amendments.</p>
<b>LEGAL:</b>	Reviewed by Archer & Lovell

**GEORGIA MUNICIPAL EMPLOYEES**  
**BENEFIT SYSTEM**

**DEFINED BENEFIT RETIREMENT PLAN**

**AN ORDINANCE**  
**and**  
**ADOPTION AGREEMENT**  
**for**  
**Cartersville (Plan II)**

**Form Volume Submitter Adoption Agreement**  
**Amended and Restated as of January 1, 2013**  
**(With Amendments Taking Effect on or Before January 1, 2017)**

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## **I. AN ORDINANCE**

An Ordinance to amend and restate the Retirement Plan for the Employees of the City of Cartersville, Georgia (“City of Cartersville 2017 Pension Plan”) in accordance with and subject to the terms and conditions set forth in the attached Adoption Agreement, any Addendum to the Adoption Agreement, the Georgia Municipal Employees Benefit System (GMEBS) Master Plan Document, and the GMEBS Trust Agreement. When accepted by the authorized officers of the City and GMEBS, the foregoing shall constitute a Contract between the City and GMEBS, all as authorized and provided by O.C.G.A. § 47-5-1 et seq.

BE IT ORDAINED by the Mayor and Council of the City of Cartersville, Georgia, and it is hereby ordained by the authority thereof:

**Section 1.** The Retirement Plan for the Employees of the City of Cartersville, Georgia (“City of Cartersville 2017 Pension Plan”) is hereby amended and restated as set forth in and subject to the terms and conditions stated in the following Adoption Agreement, any Addendum to the Adoption Agreement, the Georgia Municipal Employees Benefit System (GMEBS) Master Plan Document, and the GMEBS Trust Agreement.

**Ordinance continued on page 37**

**II. GMEBS DEFINED BENEFIT RETIREMENT PLAN**  
**ADOPTION AGREEMENT**

**1. ADMINISTRATOR**

Georgia Municipal Employees Benefit System  
201 Pryor Street, SW  
Atlanta, Georgia 30303  
Telephone: 404-688-0472  
Facsimile: 404-577-6663

**2. ADOPTING EMPLOYER**

Name: **City of Cartersville, Georgia**

**3. GOVERNING AUTHORITY**

Name: **Mayor and City Council**  
Address: **P.O. Box 1390, 1 N. Erwin Street, Cartersville, Georgia 30120**  
Phone: **770-387-5616**  
Facsimile:

**4. PLAN REPRESENTATIVE**

**[To represent Governing Authority in all communications with GMEBS and Employees]**  
**(See Section 2.49 of Master Plan)**

Name: **City Manager**  
Address: **P.O. Box 1390, 1 N. Erwin St., Cartersville, Georgia 30120**  
Phone: **770-387-5616**  
Facsimile:

### 5. PENSION COMMITTEE

[Please designate members by position. If not, members of Pension Committee shall be determined in accordance with Article XIV of Master Plan]

The Pension Committee shall be composed of five members, three of whom shall be participating Eligible Regular Employees who shall be elected as follows: one from the Police and Fire Departments; one from the Gas, Electric and Water and Sewer Departments; and one from the Community Development, Public Works, City Clerk, Garage, Parks and Recreation, Finance, and Administration Departments. The elected members of the Pension Committee shall serve three-year staggered terms or until their successors are elected. The other two members shall be the City Manager and the City Finance Director, whose terms shall be equivalent to their employment in those capacities. An election for membership shall be held on the Tuesday after the first Monday in November of every year for one Committee member.

Pension Committee Secretary: Assistant City Manager  
Address: P.O. Box 1390, 1 N. Erwin St., Cartersville, Georgia 30120  
Phone: 770-387-5616  
Facsimile:

### 6. TYPE OF ADOPTION

This Adoption Agreement is for the following purpose (check one):

- This is a new defined benefit plan adopted by the Adopting Employer for its Employees. This plan does not replace or restate an existing defined benefit plan.
- This is an amendment and restatement of the Adopting Employer's preexisting non-GMEBS defined benefit plan.
- This is an amendment and restatement of the Adoption Agreement previously adopted by the Employer, as follows (check one or more as applicable):
  - To update the Plan to comply with PPA, HEART, WRERA, and other applicable federal laws and guidance.
  - To make the following amendments to the Adoption Agreement (must specify below revisions made in this Adoption Agreement; all provisions must be completed in a manner that satisfies the definite written program requirement of Treasury Regulation 1.401-1(a)(2) and the definitely determinable requirement of Treasury Regulation 1.401-1(b)(1)(i)): \_\_\_\_\_.

### 7. EFFECTIVE DATE

NOTE: This Adoption Agreement and any Addendum, with the accompanying Master Plan Document, is designed to comply with Internal Revenue Code Section 401(a), as applicable to a governmental qualified defined benefit plan, and is part of the GMEBS Defined Benefit Retirement Plan. Plan provisions designed to comply with certain provisions of the Pension Protection Act of 2006 ("PPA"); the Heroes Earnings Assistance and Relief Tax Act of 2008 ("HEART"); and the Worker, Retiree, and Employer Recovery Act of 2008 ("WRERA"); and Plan provisions designed to comply with certain provisions of additional changes in federal law and guidance from the Internal Revenue Service under Internal Revenue Service Notice 2012-76 (the 2012 Cumulative List) are effective as of the applicable effective dates set forth in the Adoption Agreement and Master Plan Document. By adopting this Adoption Agreement, with its accompanying Master Plan Document, the Adopting Employer is adopting a plan document intended to comply with Internal Revenue Code Section 401(a), as updated by PPA, HEART, WRERA, and the 2012 Cumulative List with the applicable effective dates.

- (1) Complete this item (1) only if this is a new defined benefit plan which does not replace or restate an existing defined benefit plan.

The effective date of this Plan is \_\_\_\_\_.  
(insert effective date of this Adoption Agreement not earlier than January 1, 2013).

- (2) Complete this item (2) only if this Plan is being adopted to replace a non-GMEBS defined benefit plan.

Except as otherwise specifically provided in the Master Document or in this Adoption Agreement, the effective date of this restatement shall be **September 1, 2023** (insert effective date of this Adoption Agreement not earlier than January 1, 2013). This Plan is intended to replace and serve as an amendment and restatement of the Employer's preexisting plan, which became effective on **January 1, 2017** (insert original effective date of preexisting plan).

- (3) Complete this item (3) only if this is an amendment and complete restatement of the Adopting Employer's existing GMEBS defined benefit plan.

Except as otherwise specifically provided in the Master Document or in this Adoption Agreement, the effective date of this restatement shall be \_\_\_\_\_ (insert effective date of this Adoption Agreement not earlier than January 1, 2013).

This Plan is adopted as an amendment and restatement of the Employer's preexisting GMEBS Adoption Agreement, which became effective on \_\_\_\_\_ (insert effective date of most recent Adoption Agreement preceding this Adoption Agreement).

The Employer's first Adoption Agreement became effective \_\_\_\_\_ (insert effective date of Employer's first GMEBS Adoption Agreement). The Employer's GMEBS Plan was originally effective \_\_\_\_\_ (insert effective date of Employer's original GMEBS Plan). (If the Employer's Plan was originally a non-GMEBS Plan, then the Employer's



non-GMEBS Plan was originally effective \_\_\_\_\_ (if applicable, insert effective date of Employer's original non-GMEBS Plan).

8. PLAN YEAR

Plan Year means (check one):

- Calendar Year
[X] Employer Fiscal Year commencing July 1.
[ ] Other (must specify month and day commencing):

9. CLASSES OF ELIGIBLE EMPLOYEES

Only Employees of the Adopting Employer who meet the Master Plan's definition of "Employee" may be covered under the Adoption Agreement. Eligible Employees shall not include non-governmental employees, independent contractors, leased employees, nonresident aliens, or any other ineligible individuals, and this Section 9 must not be completed in a manner that violates the "exclusive benefit rule" of Internal Revenue Code Section 401(a)(2).

A. Eligible Regular Employees

Regular Employees include Employees, other than elected or appointed members of the Governing Authority or Municipal Legal Officers, who are regularly employed in the services of the Adopting Employer. Subject to the other conditions of the Master Plan and the Adoption Agreement, the following Regular Employees are eligible to participate in the Plan (check one):

- [ ] ALL - All Regular Employees, provided they satisfy the minimum hour and other requirements specified under "Eligibility Conditions" below.
[X] ALL REGULAR EMPLOYEES EXCEPT for the following employees (must specify; specific positions are permissible; specific individuals may not be named): All Eligible Regular Employees except those initially employed prior to January 1, 2017, who are not reemployed on or after January 1, 2017.

B. Elected or Appointed Members of the Governing Authority

An Adopting Employer may elect to permit participation in the Plan by elected or appointed members of the Governing Authority and/or Municipal Legal Officers, provided they otherwise meet the Master Plan's definition of "Employee" and provided they satisfy any other requirements specified by the Adopting Employer. Municipal Legal Officers to be covered must be specifically identified by position. Subject to the above conditions, the Employer hereby elects the following treatment for elected and appointed officials:

(1) Elected or Appointed Members of the Governing Authority (check one):

- [X] ARE NOT eligible to participate in the Plan.
[ ] ARE eligible to participate in the Plan.

Please specify any limitations on eligibility to participate here (e.g., service on or after certain date, or special waiting period provision): \_\_\_\_\_.

**(2) Municipal Legal Officers (check one):**

- ARE NOT** eligible to participate in the Plan.
- ARE** eligible to participate in the Plan. The term "Municipal Legal Officer" shall include only the following positions (**must specify - specific positions are permissible; specific individuals may not be named**): The City Attorney in such position on or after September 1, 2023, provided said City Attorney is a common law employee of the City and meets the eligibility requirements of the Plan that are applicable to Eligible Regular Employees.

Please specify any limitations on eligibility to participate here (e.g., service on or after certain date) (**must specify in a manner that satisfies the definite written program requirement of Treasury Regulation 1.401-1(a)(2) and the definitely determinable requirement of Treasury Regulation 1.401-1(b)(1)(i)**): The City Attorney will be treated as an Eligible Regular Employee under the Plan (and not as an elected or appointed member of the Governing Authority) for all purposes, notwithstanding any other provision in the Master Plan or Adoption Agreement to the contrary, provided said City Attorney meets the eligibility conditions for Eligible Regular Employees applicable under the Plan. No provisions in the Plan relating to Municipal Legal Officers other than this Section 9(B)(2), including but not limited to provisions relating to participation, Vesting, benefit eligibility or benefit computation for Municipal Legal Officers, shall apply with respect to the City Attorney in such position on or after September 1, 2023.

**10. ELIGIBILITY CONDITIONS**

**A. Hours Per Week (Regular Employees)**

The Adopting Employer may specify a minimum number of work hours per week which are required to be scheduled by Regular Employees in order for them to become and remain "Eligible Regular Employees" under the Plan. **It is the responsibility of the Adopting Employer to determine whether these requirements are and continue to be satisfied.** The Employer hereby elects the following minimum hour requirement for Regular Employees:

- No minimum
- 20 hours/week (regularly scheduled)
- 30 hours/week (regularly scheduled)
- Other: 32 hours/week (regularly scheduled) (must not exceed 40 hours/week regularly scheduled)

**Exceptions:** If a different minimum hour requirement applies to a particular class or classes of Regular Employees, please specify below the classes to whom the different requirement applies and indicate the minimum hour requirement applicable to them.

Class(es) of Regular Employees to whom exception applies (**must specify - specific positions are permissible; specific individuals may not be named**): \_\_\_\_\_.

Minimum hour requirement applicable to excepted Regular Employees:

- No minimum
- 20 hours/week (regularly scheduled)
- 30 hours/week (regularly scheduled)
- Other: \_\_\_\_\_ (must not exceed 40 hours/week regularly scheduled)

**B. Months Per Year (Regular Employees)**

The Adopting Employer may specify a minimum number of work months per year which are required to be scheduled by Regular Employees in order for them to become and remain "Eligible Employees" under the Plan. **It is the responsibility of the Adopting Employer to determine whether these requirements are and continue to be satisfied.** The Employer hereby elects the following minimum requirement for Regular Employees:

- No minimum
- At least 12 months per year (regularly scheduled)

**Exceptions:** If different months per year requirements apply to a particular class or classes of Regular Employees, the Employer must specify below the classes to whom the different requirements apply and indicate below the requirements applicable to them.

Regular Employees to whom exception applies (**must specify - specific positions are permissible; specific individuals may not be named**): \_\_\_\_\_.

The months to year requirement for excepted class(es) are:

- No minimum
- At least \_\_\_\_\_ months per year (regularly scheduled)

**11. WAITING PERIOD**

Except as otherwise provided in Section 4.02(b) of the Master Plan, Eligible Regular Employees shall not have a waiting period before participating in the Plan. Likewise, elected or appointed members of the Governing Authority and Municipal Legal Officers, if eligible to participate in the Plan, shall not have a waiting period before participating in the Plan.

**12. ESTABLISHING PARTICIPATION IN THE PLAN**

Participation in the Plan is considered mandatory for all Eligible Employees who satisfy the eligibility conditions specified in the Adoption Agreement, except as provided in Section 4.03(e) of the Master Plan. However, the Employer may specify below that participation is optional for certain classes of Eligible Employees, including Regular Employees, elected or appointed members of the Governing Authority, Municipal Legal Officers, City Managers, and/or Department Heads. If participation is optional for an Eligible Employee, then in order to

become a Participant, he must make a written election to participate within 120 days after employment, election or appointment to office, or if later, the date he first becomes eligible to participate in the Plan. The election is irrevocable, and the failure to make the election within the 120 day time limit shall be deemed an irrevocable election not to participate in the Plan.

Classes for whom participation is optional (**check one**):

- None (Participation is mandatory for all Eligible Employees except as provided in Section 4.03(e) of the Master Plan).
- Participation is optional for the following Eligible Employees (**must specify - specific positions are permissible; specific individuals may not be named; all positions or classes specified must be Eligible Employees**): \_\_\_\_\_.

### 13. CREDITED SERVICE

In addition to Current Credited Service the Adopting Employer may include as Credited Service the following types of service:

#### A. Credited Past Service with Adopting Employer

Credited Past Service means the number of years and complete months of Service with the Adopting Employer prior to the date an Eligible Employee becomes a Participant which are treated as credited service under the Plan.

##### (1) **Eligible Employees Employed on Original Effective Date of GMEBS Plan.**

With respect to Eligible Employees who are employed by the Adopting Employer on the original Effective Date of the Employer's GMEBS Plan, Service with the Adopting Employer prior to the date the Eligible Employee becomes a Participant (including any Service prior to the Effective Date of the Plan) shall be treated as follows (**check one**):

- All Service prior to the date the Eligible Employee becomes a Participant shall be credited (as Credited Past Service).
- All Service prior to the date the Eligible Employee becomes a Participant shall be credited (as Credited Past Service), except for Service rendered prior to \_\_\_\_\_ (**insert date**).
- All Service prior to the date the Eligible Employee becomes a Participant shall be credited (as Credited Past Service), except as follows (**must specify other limitation in a manner that satisfies the definite written program requirement of Treasury Regulation 1.401-1(a)(2) and the definitely determinable requirement of Treasury Regulation 1.401-1(b)(1)(i)**): All Service as a participant in the City's pre-GMEBS version of this Plan ("2017 Plan") in effect prior to the date the Eligible Employee becomes a Participant in the City's GMEBS version of this Plan, which took effect September 1, 2023, shall be credited. Service with the City that was not credited under the City's pre-GMEBS version of this Plan in effect on August 31, 2023, will not be credited; provided, however, that such a Participant shall have an

**opportunity to purchase Credited Service for service during the pre-GMEBS Plan’s waiting period (as described in subparagraph 16(a)(ii) of the General Addendum), in accordance with and subject to the provisions of the Service Credit Purchase Addendum to this Adoption Agreement.**

- No Service prior to the date the Eligible Employee becomes a Participant shall be credited (as Credited Past Service).

**(2) Previously Employed, Returning to Service after Original Effective Date.** If an Eligible Employee is not employed on the original Effective Date of the Employer's GMEBS Plan, but he returns to Service with the Adopting Employer sometime after the Effective Date, his Service prior to the date he becomes a Participant (including any Service prior the Effective Date) shall be treated as follows (**check one**):

- All Service prior to the date the Eligible Employee becomes a Participant shall be credited (as Credited Past Service), subject to any limitations imposed above with respect to Eligible Employees employed on the Effective Date.
- All Service prior to the date the Eligible Employee becomes a Participant shall be credited (as Credited Past Service), provided that after his return to employment, the Eligible Employee performs Service equal to the period of the break in Service or one (1) year, whichever is less. Any limitations imposed above with respect to Eligible Employees employed on the Effective Date shall also apply.
- No Service prior to the date the Eligible Employee becomes a Participant shall be credited (as Credited Past Service).

Other limitation(s) on Recognition of Credited Past Service (**must specify in a manner that satisfies the definite written program requirement of Treasury Regulation 1.401-1(a)(2) and the definitely determinable requirement of Treasury Regulation 1.401-1(b)(1)(i): Participants who were initially employed or reemployed on or after January 1, 2017, but before July 1, 2023, and were subject to the waiting period described in subparagraph 16(a)(ii) of the General Addendum will have a one-time opportunity pursuant to the provisions of the Service Credit Purchase Addendum, to purchase Credited Service under the Plan with respect to their service as an “Employee” (as described in subparagraph 16(a)(ii) of the General Addendum) before they satisfied the waiting period for participating in the Plan. A Participant who does not purchase said Credited Service during the one-time window described in the Service Credit Purchase Addendum will not receive Credited Service with respect to their service with the City during the waiting period, notwithstanding any provision to the contrary.**

**(3) Eligible Employees Initially Employed After Effective Date.** If an Eligible Employee's initial employment date is after the original Effective Date of the Employer's GMEBS Plan, his Credited Past Service shall include only the number of years and complete months of Service from his initial employment date to the date he becomes a Participant in the Plan.

**(4) Newly Eligible Classes of Employees.** If a previously ineligible class of Employees becomes eligible to participate in the Plan, the Employer must specify in an addendum to this Adoption Agreement whether and to what extent said Employees' prior service with the Employer shall be treated as Credited Past Service under the Plan.

**B. Prior Military Service**

**Note:** This Section does not concern military service required to be credited under USERRA – See Section 3.02 of the Master Plan for rules on the crediting of USERRA Military Service.

**(1) Credit for Prior Military Service.**

The Adopting Employer may elect to treat military service rendered prior to a Participant's initial employment date or reemployment date as Credited Service under the Plan. Unless otherwise specified by the Employer under "Other Conditions" below, the term "Military Service" shall be as defined in the Master Plan. Except as otherwise required by federal or state law or under "Other Conditions" below, Military Service shall not include service which is credited under any other local, state, or federal retirement or pension plan.

Military Service credited under this Section shall not include any service which is otherwise required to be credited under the Plan by federal or state law. Prior Military Service shall be treated as follows (**check one**):

- Prior Military Service is **not** creditable under the Plan (**if checked, skip to Section 13.C. – Prior Governmental Service**).
- Prior Military Service shall be counted as Credited Service for the following purposes (check one or more as applicable):
  - Computing amount of benefits payable.
  - Meeting minimum service requirements for vesting.
  - Meeting minimum service requirements for benefit eligibility.

**(2) Maximum Credit for Prior Military Service.**

Credit for Prior Military Service shall be limited to a maximum of \_\_\_\_\_ years (**insert number**).

**(3) Rate of Accrual for Prior Military Service.**

Credit for Prior Military Service shall accrue at the following rate (**check one**):

- One month of military service credit for every \_\_\_\_\_ month(s) (**insert number**) of Credited Service with the Adopting Employer.
- One year of military service credit for every \_\_\_\_\_ year(s) (**insert number**) of Credited Service with the Adopting Employer.

All military service shall be creditable (subject to any caps imposed above) after the Participant has completed \_\_\_\_\_ years (**insert number**) of Credited Service with the Employer.

Other requirement (**must specify in a manner that satisfies the definite written program requirement of Treasury Regulation 1.401-1(a)(2) and the definitely determinable requirement of Treasury Regulation 1.401-1(b)(1)(i)**): \_\_\_\_\_.

**(4) Payment for Prior Military Service Credit(check one):**

Participants shall **not** be required to pay for military service credit.

Participants shall be required to pay for military service credit as follows:

The Participant must pay \_\_\_\_% of the actuarial cost of the service credit (as defined below).

The Participant must pay an amount equal to (**must specify in a manner that satisfies the definite written program requirement of Treasury Regulation 1.401-1(a)(2) and the definitely determinable requirement of Treasury Regulation 1.401-1(b)(1)(i)**): \_\_\_\_\_.

Other Conditions for Award of Prior Military Service Credit (**must specify in a manner that satisfies the definite written program requirement of Treasury Regulation 1.401-1(a)(2) and the definitely determinable requirement of Treasury Regulation 1.401-1(b)(1)(i)**): \_\_\_\_\_.

**(5) Limitations on Service Credit Purchases.** Unless otherwise specified in an Addendum to the Adoption Agreement, for purposes of this Section and Section 13.C. concerning prior governmental service credit, the term "actuarial cost of service credit" is defined as set forth in the Service Credit Purchase Addendum. In the case of a service credit purchase, the Participant shall be required to comply with any rules and regulations established by the GMEBS Board of Trustees concerning said purchases.

**C. Prior Governmental Service**

**Note:** A Participant's prior service with other GMEBS employers shall be credited for purposes of satisfying the minimum service requirements for Vesting and eligibility for Retirement and pre-retirement death benefits as provided under Section 9.05 of the Master Plan, relating to portability service. This Section 13(C) does not need to be completed in order for Participants to receive this portability service credit pursuant to Section 9.05 of the Master Plan.

**(1) Credit for Prior Governmental Service.**

The Adopting Employer may elect to treat governmental service rendered prior to a Participant's initial employment date or reemployment date as creditable service under the Plan. Subject to any limitations imposed by law, the term "prior governmental service" shall be as defined by the Adopting Employer below. The Employer elects to treat prior governmental service as follows (**check one**):

- Prior governmental service is **not** creditable under the Plan (**if checked, skip to Section 13.D. – Unused Sick/Vacation Leave**).
- Prior governmental service shall be counted as Credited Service for the following purposes under the Plan (**check one or more as applicable**):
  - Computing amount of benefits payable.
  - Meeting minimum service requirements for vesting.
  - Meeting minimum service requirements for benefit eligibility.

**(2) Definition of Prior Governmental Service.**

Prior governmental service shall be defined as follows: **(must specify in a manner that satisfies the definite written program requirement of Treasury Regulation 1.401-1(a)(2) and the definitely determinable requirement of Treasury Regulation 1.401-1(b)(1)(i)):** \_\_\_\_\_.

Unless otherwise specified above, prior governmental service shall include only full-time service (minimum hour requirement same as that applicable to Eligible Regular Employees).

**(3) Maximum Credit for Prior Governmental Service.**

Credit for prior governmental service shall be limited to a maximum of \_\_\_\_\_ years (**insert number**).

**(4) Rate of Accrual for Prior Governmental Service Credit.**

Credit for prior governmental service shall accrue at the following rate (**check one**):

- One month of prior governmental service credit for every \_\_\_\_\_ month(s) (**insert number**) of Credited Service with the Adopting Employer.
- One year of prior governmental service credit for every \_\_\_\_\_ year(s) (**insert number**) of Credited Service with the Adopting Employer.
- All prior governmental service shall be creditable (subject to any caps imposed above) after the Participant has completed \_\_\_\_\_ years (**insert number**) of Credited Service with the Adopting Employer.
- Other requirement (**must specify in a manner that satisfies the definite written program requirement of Treasury Regulation 1.401-1(a)(2) and the definitely determinable requirement of Treasury Regulation 1.401-1(b)(1)(i)):** \_\_\_\_\_.

**(5) Payment for Prior Governmental Service Credit.**

- Participants shall **not** be required to pay for governmental service credit.
- Participants shall be required to pay for governmental service credit as follows:
  - The Participant must pay \_\_\_\_\_% of the actuarial cost of the service credit.



- The Participant must pay an amount equal to **(must specify in a manner that satisfies the definite written program requirement of Treasury Regulation 1.401-1(a)(2) and the definitely determinable requirement of Treasury Regulation 1.401-1(b)(1)(i))**: \_\_\_\_\_.

Other Conditions for Award of Prior Governmental Service Credit **(must specify in a manner that satisfies the definite written program requirement of Treasury Regulation 1.401-1(a)(2) and the definitely determinable requirement of Treasury Regulation 1.401-1(b)(1)(i))**: \_\_\_\_\_.

**D. Leave Conversion for Unused Paid Time Off (e.g., Sick, Vacation, or Personal Leave)**

**(1) Credit for Unused Paid Time Off.**

Subject to the limitations in Section 3.01 of the Master Plan, an Adopting Employer may elect to treat accumulated days of unused paid time off for a terminated Participant, for which the Participant is not paid, as Credited Service. The only type of leave permitted to be credited under this provision is leave from a paid time off plan which qualifies as a bona fide sick and vacation leave plan (which may include sick, vacation or personal leave) and which the Participant may take as paid leave without regard to whether the leave is due to illness or incapacity. The Credited Service resulting from the conversion of unused paid time off must not be the only Credited Service applied toward the accrual of a normal retirement benefit under the Plan. The Pension Committee shall be responsible to certify to GMEBS the total amount of unused paid time off that is creditable hereunder.

**Important Note:** Leave cannot be converted to Credited Service in lieu of receiving a cash payment. If the Employer elects treating unused paid time off as Credited Service, the conversion to Credited Service will be automatic, and the Participant cannot request a cash payment for the unused paid time off.

The Employer elects the following treatment of unused paid time off:

- Unused paid time off shall **not** be treated as Credited Service **(if checked, skip to Section 14 – Retirement Eligibility)**.
- The following types of unused paid time off for which the Participant is not paid shall be treated as Credited Service under the Plan **(check one or more as applicable)**:
  - Unused sick leave
  - Unused vacation leave
  - Unused personal leave
  - Other paid time off **(must specify in a manner that satisfies the definite written program requirement of Treasury Regulation 1.401-1(a)(2) and the definitely determinable requirement of Treasury Regulation 1.401-1(b)(1)(i))**: \_\_\_\_\_.

**(2) Minimum Service Requirement.**

In order to receive credit for unused paid time off, a Participant must meet the following requirement at termination (**check one**):

- The Participant must be 100% vested in a normal retirement benefit.
- The Participant must have at least \_\_\_\_\_ years (**insert number**) of Total Credited Service (not including leave otherwise creditable under this Section).
- Other (**must specify in a manner that satisfies the definite written program requirement of Treasury Regulation 1.401-1(a)(2) and the definitely determinable requirement of Treasury Regulation 1.401-1(b)(1)(i)**): \_\_\_\_\_.

**(3) Use of Unused Paid Time Off Credit.** Unused paid time off for which the Participant is not paid shall count as Credited Service for the following purposes under the Plan (**check one or more as applicable**):

- Computing amount of benefits payable.
- Meeting minimum service requirements for vesting.
- Meeting minimum service requirements for benefit eligibility.

**(4) Maximum Credit for Unused Paid Time Off.**

Credit for unused paid time off for which the Participant is not paid shall be limited to a maximum of \_\_\_\_ months (**insert number**).

**(5) Computation of Unused Paid Time Off.**

Unless otherwise specified by the Adopting Employer under "Other Conditions" below, each twenty (20) days of creditable unused paid time off shall constitute one (1) complete month of Credited Service under the Plan. Partial months shall not be credited.

**(6) Other Conditions (please specify, subject to limitations in Section 3.01 of Master Plan; must specify in a manner that satisfies the definite written program requirement of Treasury Regulation 1.401-1(a)(2) and the definitely determinable requirement of Treasury Regulation 1.401-1(b)(1)(i): \_\_\_\_\_.**

**14. RETIREMENT ELIGIBILITY**

**A. Early Retirement Qualifications**

Early retirement qualifications are (**check one or more as applicable**):

- Attainment of age **55** (**insert number**)
- Completion of **10** years (**insert number**) of Total Credited Service

**Exceptions:** If different early retirement eligibility requirements apply to a particular class or classes of Eligible Employees, the Employer must specify below the classes to whom the different requirements apply and indicate below the requirements applicable to them.

Eligible Employees to whom exception applies (must specify - specific positions are permissible; specific individuals may not be named): Vested police and fire personnel and Vested former police and fire personnel, as defined in General Addendum subsection 16(d). See also General Addendum subsection 16(d) regarding Early Retirement based on the 50 & 20 Alternative Normal Retirement qualification for Vested police and fire personnel and Vested former police and fire personnel.

Early retirement qualifications for excepted class(es) are (check one or more as applicable):

- Attainment of age 50 (insert number)
- Completion of 5 years (insert number) of Total Credited Service as a Participant in this Plan while serving as police and/or fire personnel.

**B. Normal Retirement Qualifications**

**Note:** Please complete this Section and also list "Alternative" Normal Retirement Qualifications, if any, in Section 14.C.

**(1) Regular Employees**

Normal retirement qualifications for Regular Employees are (check one or more as applicable):

- Attainment of age 65 (insert number)
- Completion of 10 years (insert number) of Total Credited Service **See General Addendum subsection 16(e) regarding calculation of Total Credited Service for benefit eligibility purposes for Participants who commenced Participation in the Plan prior to July 1, 2023.**
- In-Service Distribution to Eligible Employees permitted (i.e., a qualifying Participant may commence receiving retirement benefits while in service without first incurring a Bona Fide Separation from Service), if Participant meets minimum age and service requirements specified immediately above and is at least age 62 (unless a lower safe-harbor age is permitted under applicable federal law), subject to applicable Plan provisions concerning recalculation and offset applied at re-retirement to account for the value of benefits received prior to re-retirement. This rule shall apply to (check one):  all Participants  only the following class(es) of Participants (must specify - specific positions are permissible; specific individuals may not be named): \_\_\_\_\_.

**Exceptions:** If different normal retirement qualifications apply to a particular class or classes of Regular Employees, the Employer must specify below the classes to whom the different requirements apply and indicate below the requirements applicable to them.

Class(es) of Regular Employees to whom exception applies (**must specify - specific positions are permissible; specific individuals may not be named**): \_\_\_\_\_.

Normal retirement qualifications for excepted class(es) are (**check one or more as applicable**):

- Attainment of age \_\_\_\_\_ (**insert number**)
- Completion of \_\_\_\_\_ years (**insert number**) of Total Credited Service
- In-Service Distribution to Eligible Employees permitted (i.e., a qualifying Participant may commence receiving retirement benefits while in service without first incurring a Bona Fide Separation from Service), if Participant meets minimum age and service requirements specified immediately above and is at least age 62 (unless a lower safe-harbor age is permitted under applicable federal law), subject to applicable Plan provisions concerning recalculation and offset applied at re-retirement to account for the value of benefits received prior to re-retirement. This rule shall apply to (**check one**):  all Participants  only the following class(es) of Participants (**must specify - specific positions are permissible; specific individuals may not be named**): \_\_\_\_\_.

**(2) Elected or Appointed Members of Governing Authority**

**Complete this Section only if elected or appointed members of the Governing Authority or Municipal Legal Officers are permitted to participate in the Plan.** Normal retirement qualifications for this class are (**check one or more as applicable**):

- Attainment of age \_\_\_\_\_ (**insert number**)
- Completion of \_\_\_\_\_ years (**insert number**) of Total Credited Service
- In-Service Distribution to Eligible Employees permitted (i.e., a qualifying Participant may commence receiving retirement benefits while in service without first incurring a Bona Fide Separation from Service), if Participant meets minimum age and service requirements specified immediately above and is at least age 62 (unless a lower safe-harbor age is permitted under applicable federal law), subject to applicable Plan provisions concerning recalculation and offset applied at re-retirement to account for the value of benefits received prior to re-retirement. This rule shall apply to (**check one**):  all Participants  only the following class(es) of Participants (**must specify - specific positions are permissible; specific individuals may not be named**): \_\_\_\_\_.

**Exceptions:** If different normal retirement qualifications apply to particular elected or appointed members of the Governing Authority or Municipal Legal Officers, the Employer must specify below to whom the different requirements apply and indicate below the requirements applicable to them.

Particular elected or appointed members of the Governing Authority or Municipal Legal Officers to whom exception applies (**must specify - specific positions are permissible; specific individuals may not be named**): \_\_\_\_\_.

Normal retirement qualifications for excepted elected or appointed members of the Governing Authority or Municipal Legal Officers are (**check one or more as applicable**):

- Attainment of age \_\_\_\_\_ (**insert number**)
- Completion of \_\_\_\_\_ years (**insert number**) of Total Credited Service
- In-Service Distribution to Eligible Employees permitted (*i.e.*, a qualifying Participant may commence receiving retirement benefits while in service without first incurring a Bona Fide Separation from Service), if Participant meets minimum age and service requirements specified immediately above and is at least age 62 (unless a lower safe-harbor age is permitted under applicable federal law), subject to applicable Plan provisions concerning recalculation and offset applied at re-retirement to account for the value of benefits received prior to re-retirement. This rule shall apply to (**check one**):  all Participants  only the following class(es) of Participants (**must specify - specific positions are permissible; specific individuals may not be named**): \_\_\_\_\_.

**C. Alternative Normal Retirement Qualifications**

The Employer may elect to permit Participants to retire with unreduced benefits after they satisfy service and/or age requirements other than the regular normal retirement qualifications specified above. The Employer hereby adopts the following alternative normal retirement qualifications:

**Alternative Normal Retirement Qualifications (check one or more, as applicable):**

- (1)  Not applicable (the Adopting Employer does not offer alternative normal retirement benefits under the Plan).
- (2)  **Alternative Minimum Age & Service Qualifications (if checked, please complete one or more items below, as applicable):**
  - Attainment of age **55** (**insert number**)
  - Completion of **25** years (**insert number**) of Total Credited Service **See General Addendum subsection 16(e) regarding calculation of Total Credited Service for benefit eligibility purposes for Participants who commenced Participation in the Plan prior to July 1, 2023.**
  - In-Service Distribution to Eligible Employees permitted (*i.e.*, a qualifying Participant may commence receiving retirement benefits while in service without first incurring a Bona Fide Separation from Service), if Participant meets minimum age and service requirements specified immediately above and is at least age 62 (unless a lower safe-harbor age is permitted

under applicable federal law), subject to applicable Plan provisions concerning recalculation and offset applied at re-retirement to account for the value of benefits received prior to re-retirement. This rule shall apply to **(check one)**:  all Participants  only the following class(es) of Participants **(must specify - specific positions are permissible; specific individuals may not be named)**: \_\_\_\_\_.

This alternative normal retirement benefit is available to:

- All Participants who qualify.
- Only the following Participants **(must specify - specific positions are permissible; specific individuals may not be named)**: \_\_\_\_\_.

A Participant **(check one)**:  is required  is not required to be in the service of the Employer at the time he satisfies the above qualifications in order to qualify for this alternative normal retirement benefit.

Other eligibility requirement **(must specify in a manner that satisfies the definite written program requirement of Treasury Regulation 1.401-1(a)(2) and the definitely determinable requirement of Treasury Regulation 1.401-1(b)(1)(i))**: \_\_\_\_\_.

- (3)  **Rule of \_\_\_\_\_ (insert number).** The Participant's combined Total Credited Service and age must equal or exceed this number. Please complete additional items below:

To qualify for this alternative normal retirement benefit, the Participant **(check one or more items below, as applicable)**:

- Must have attained at least age \_\_\_\_\_ **(insert number)**
- Must not satisfy any minimum age requirement
- In-Service Distribution to Eligible Employees permitted (*i.e.*, a qualifying Participant may commence receiving retirement benefits while in service without first incurring a Bona Fide Separation from Service), if the Participant meets the minimum age and service requirements specified immediately above and is at least age 62 (unless a lower safe-harbor age is permitted under applicable federal law), subject to applicable Plan provisions concerning recalculation and offset applied at re-retirement to account for the value of benefits received prior to re-retirement. This rule shall apply to **(check one)**:  all Participants  only the following class(es) of Participants **(must specify - specific positions are permissible; specific individuals may not be named)**: \_\_\_\_\_.

This alternative normal retirement benefit is available to:

- All Participants who qualify.
- Only the following Participants (**must specify - specific positions are permissible; specific individuals may not be named**): \_\_\_\_\_.

A Participant (**check one**):  is required  is not required to be in the service of the Employer at the time he satisfies the Rule in order to qualify for this alternative normal retirement benefit.

Other eligibility requirement (**must specify in a manner that satisfies the definite written program requirement of Treasury Regulation 1.401-1(a)(2) and the definitely determinable requirement of Treasury Regulation 1.401-1(b)(1)(i)**): \_\_\_\_\_.

- (4)  **Alternative Minimum Service.** A Participant is eligible for an alternative normal retirement benefit if he has at least \_\_\_\_\_ years (**insert number**) of Total Credited Service, regardless of the Participant's age.

- In-Service Distribution to Eligible Employees permitted (*i.e.*, a qualifying Participant may commence receiving retirement benefits while in service without first incurring a Bona Fide Separation from Service), if the Participant meets the minimum service requirement specified immediately above and is at least age 62 (unless a lower safe-harbor age is permitted under applicable federal law), subject to applicable Plan provisions concerning recalculation and offset applied at re-retirement to account for the value of benefits received prior to re-retirement. This rule shall apply to (**check one**):  all Participants  only the following class(es) of Participants (**must specify - specific positions are permissible; specific individuals may not be named**): \_\_\_\_\_.

This alternative normal retirement benefit is available to:

- All Participants who qualify.
- Only the following Participants (**must specify - specific positions are permissible; specific individuals may not be named**): \_\_\_\_\_.

A Participant (**check one**):  is required  is not required to be in the service of the Employer at the time he satisfies the qualifications for this alternative normal retirement benefit.

Other eligibility requirement (**must specify in a manner that satisfies the definite written program requirement of Treasury Regulation 1.401-1(a)(2) and the definitely determinable requirement of Treasury Regulation 1.401-1(b)(1)(i)**): \_\_\_\_\_.

- (5)  **Other Alternative Normal Retirement Benefit.**

**Must specify qualifications (in a manner that satisfies the definite written program requirement of Treasury Regulation 1.401-1(a)(2) and the definitely determinable requirement of Treasury Regulation 1.401-1(b)(1)(i)): \_\_\_\_\_.**

- In-Service Distribution to Eligible Employees permitted (i.e., a qualifying Participant may commence receiving retirement benefits while in service without first incurring a Bona Fide Separation from Service), if the Participant meets minimum age and service requirements specified immediately above and is at least age 62 (unless a lower safe-harbor age is permitted under applicable federal law), subject to applicable Plan provisions concerning recalculation and offset applied at re-retirement to account for the value of benefits received prior to re-retirement. This rule shall apply to **(check one)**:  all Participants  only the following class(es) of Participants **(must specify - specific positions are permissible; specific individuals may not be named)**: \_\_\_\_\_.

This alternative normal retirement benefit is available to:

- All Participants who qualify.
- Only the following Participants **(must specify - specific positions are permissible; specific individuals may not be named)**: \_\_\_\_\_.

A Participant **(check one)**:  is required  is not required to be in the service of the Employer at the time he satisfies the qualifications for this alternative normal retirement benefit.

Other eligibility requirement **(must specify in a manner that satisfies the definite written program requirement of Treasury Regulation 1.401-1(a)(2) and the definitely determinable requirement of Treasury Regulation 1.401-1(b)(1)(i))**: \_\_\_\_\_.

**(6)  Other Alternative Normal Retirement Benefit for Public Safety Employees Only.**

**Must specify qualifications (in a manner that satisfies the definite written program requirement of Treasury Regulation 1.401-1(a)(2) and the definitely determinable requirement of Treasury Regulation 1.401-1(b)(1)(i)): Attainment of age 50 and completion of at least 20 years of Total Credited Service. See General Addendum subsection 16(e) regarding calculation of Total Credited Service for benefit eligibility purposes for Participants who commenced Participation in the Plan prior to July 1, 2023.**

- In-Service Distribution to Eligible Employees who are Public Safety Employees permitted (i.e., a qualifying Participant may commence receiving retirement benefits while in service without first incurring a Bona Fide Separation from Service), if the Participant meets minimum age and service requirements specified immediately above and is at least age



50 (unless a lower safe-harbor age is permitted under applicable federal law), subject to applicable Plan provisions concerning recalculation and offset applied at re-retirement to account for the value of benefits received prior to re-retirement. This rule shall apply to (check one):  all Participants  only the following class(es) of Participants (must specify - specific positions are permissible; specific individuals may not be named): \_\_\_\_\_.

This alternative normal retirement benefit is available to:

- All public safety employee Participants who qualify.
- Only the following public safety employee Participants (must specify - specific positions are permissible; specific individuals may not be named): Vested Police and fire personnel and Vested former police and fire personnel, as defined in General Addendum subsection 16(d), provided they have at least five (5) years of Credited Service as a Participant in this Plan while employed as police and fire personnel or former police and fire personnel.

A public safety employee Participant (check one):  is required  is not required to be in the service of the Employer at the time he satisfies the qualifications for this alternative normal retirement benefit.

Other eligibility requirement (must specify in a manner that satisfies the definite written program requirement of Treasury Regulation 1.401-1(a)(2) and the definitely determinable requirement of Treasury Regulation 1.401-1(b)(1)(i)): \_\_\_\_\_.

**Note:** "Public safety employees" are defined under the Internal Revenue Code for this purpose as employees of a State or political subdivision of a State who provide police protection, firefighting services, or emergency medical services for any area within the jurisdiction of such State or political subdivision.

**D. Disability Benefit Qualifications**

Subject to the other terms and conditions of the Master Plan and except as otherwise provided in an Addendum to this Adoption Agreement, disability retirement qualifications are based upon Social Security Administration award criteria or as otherwise provided under Section 2.23 of the Master Plan. The Disability Retirement benefit shall commence as of the Participant's Disability Retirement Date under Section 2.24 of the Master Plan.

To qualify for a disability benefit, a Participant must have the following minimum number of years of Total Credited Service (check one):

- Not applicable (the Adopting Employer does not offer disability retirement benefits under the Plan).
- No minimum.

- 10** years (insert number) of Total Credited Service.

Other eligibility requirement (must specify in a manner that satisfies the definite written program requirement of Treasury Regulation 1.401-1(a)(2) and the definitely determinable requirement of Treasury Regulation 1.401-1(b)(1)(i)): \_\_\_\_\_.

## 15. RETIREMENT BENEFIT COMPUTATION

### A. Maximum Total Credited Service

The number of years of Total Credited Service which may be used to calculate a benefit is (check one or all that apply):

- not limited.
- limited to \_\_\_\_\_ years for all Participants.
- limited to \_\_\_\_\_ years for the following classes of Eligible Regular Employees:
  - All Eligible Regular Employees.
  - Only the following Eligible Regular Employees: \_\_\_\_\_.
- limited to \_\_\_\_\_ years as an elected or appointed member of the Governing Authority.
- limited to \_\_\_\_\_ years as a Municipal Legal Officer.
- Other (must specify in a manner that satisfies the definite written program requirement of Treasury Regulation 1.401-1(a)(2) and the definitely determinable requirement of Treasury Regulation 1.401-1(b)(1)(i)): \_\_\_\_\_.

### B. Monthly Normal Retirement Benefit Amount

#### (1) Regular Employee Formula

The monthly normal retirement benefit for Eligible Regular Employees shall be 1/12 of (check and complete one or more as applicable):

- (a) **Flat Percentage Formula.** 2% (insert percentage) of Final Average Earnings multiplied by years of Total Credited Service as an Eligible Regular Employee. **See General Addendum paragraph 16(a)(ii) concerning service during the waiting period, if applicable.**

This formula applies to:

- All Participants who are Regular Employees.

- Only the following Participants **(must specify - specific positions are permissible; specific individuals may not be named):** \_\_\_\_\_.
- (b) **Alternative Flat Percentage Formula.** \_\_\_\_\_% **(insert percentage)** of Final Average Earnings multiplied by years of Total Credited Service as an Eligible Regular Employee. This formula applies to the following Participants **(must specify - specific positions are permissible; specific individuals may not be named):** \_\_\_\_\_.
- (c) **Split Final Average Earnings Formula.** \_\_\_\_\_% **(insert percentage)** of Final Average Earnings up to the amount of **Covered Compensation (see subsection (2) below for definition of Covered Compensation)**, plus \_\_\_\_\_% **(insert percentage)** of Final Average Earnings in excess of said Covered Compensation, multiplied by years of Total Credited Service as an Eligible Regular Employee.

This formula applies to:

- All Participants who are Regular Employees.
- Only the following Participants **(must specify - specific positions are permissible; specific individuals may not be named):**\_\_\_\_\_.
- (d) **Alternative Split Final Average Earnings Formula.** \_\_\_\_\_% **(insert percentage)** of Final Average Earnings up to the amount of **Covered Compensation (see subsection (2) below for definition of Covered Compensation)**, plus \_\_\_\_\_% **(insert percentage)** of Final Average Earnings in excess of said Covered Compensation, multiplied by years of Total Credited Service as an Eligible Regular Employee.

This formula applies to:

- All Participants.
- Only the following Participants **(must specify - specific positions are permissible; specific individuals may not be named):** \_\_\_\_\_.

**[Repeat above subsections as necessary for each applicable benefit formula and Participant class covered under the Plan.]**

**(2) Covered Compensation (complete only if Split Formula(s) is checked above):**

Covered Compensation is defined as (check one or more as applicable):

- (a) **A.I.M.E. Covered Compensation** as defined in Section 2.18 of the Master Plan. This definition of Covered Compensation shall apply to **(check one):**
  - All Participants who are Regular Employees.

- Only the following Participants **(must specify - specific positions are permissible; specific individuals may not be named)**: \_\_\_\_\_.
- (b) **Dynamic Break Point** Covered Compensation as defined in Section 2.19 of the Master Plan. This definition of Covered Compensation shall apply to **(check one)**:
  - All Participants who are Regular Employees.
  - Only the following Participants **(must specify - specific positions are permissible; specific individuals may not be named)**:\_\_\_\_\_.
- (c) **Table Break Point** Covered Compensation as defined in Section 2.20 of the Master Plan. This definition of Covered Compensation shall apply to **(check one)**:
  - All Participants who are Regular Employees.
  - Only the following class(es) of Participants **(must specify - specific positions are permissible; specific individuals may not be named)**: \_\_\_\_\_.
- (d) **Covered Compensation** shall mean a Participant's annual Earnings that do not exceed \$\_\_\_\_\_ **(specify amount)**. This definition shall apply to **(check one)**:
  - All Participants who are Regular Employees.
  - Only the following Participants **(must specify - specific positions are permissible; specific individuals may not be named)**:\_\_\_\_\_.

**(3) Final Average Earnings**

Unless otherwise specified in an Addendum to the Adoption Agreement, Final Average Earnings is defined as the monthly average of Earnings paid to a Participant by the Adopting Employer for the \_\_\_\_\_ **(insert number not to exceed 60)** consecutive months of Credited Service preceding the Participant's most recent Termination in which the Participant's Earnings were the highest, multiplied by 12. Note: GMEBS has prescribed forms for calculation of Final Average Earnings that must be used for this purpose. **See General Addendum Sections 6 and 7 and subsections 16(f) and (g).**

This definition of Final Average Earnings applies to:

- All Participants who are Regular Employees.
- Only the following Participants **(must specify - specific positions are permissible; specific individuals may not be named)**: \_\_\_\_\_.

**[Repeat above subsection as necessary for each applicable definition and Participant class covered under the Plan.]**

**(4) Formula for Elected or Appointed Members of the Governing Authority**

The monthly normal retirement benefit for members of this class shall be as follows (**check one**):

- Not applicable (elected or appointed members of the Governing Authority or Municipal Legal Officers are not permitted to participate in the Plan).
- \$\_\_\_\_\_ (**insert dollar amount**) per month for each year of Total Credited Service as an elected or appointed member of the Governing Authority or Municipal Legal Officer or major fraction thereof (6 months and 1 day).

This formula applies to:

- All elected or appointed members of the Governing Authority or Municipal Legal Officers eligible to participate.
- Only the following elected or appointed members of the Governing Authority or Municipal Legal Officers eligible to participate (**must specify - specific positions are permissible; specific individuals may not be named**): \_\_\_\_\_.

**[Repeat above subsection as necessary for each applicable formula for classes of elected or appointed members covered under the Plan.]**

**C. Monthly Early Retirement Benefit Amount**

**Check and complete one or more as applicable:**

- (1) **Standard Early Retirement Reduction Table.** The monthly Early Retirement benefit shall be computed in the same manner as the monthly Normal Retirement benefit, but the benefit shall be reduced on an Actuarially Equivalent basis in accordance with Section 12.01 of the Master Plan to account for early commencement of benefits. This provision shall apply to:
  - All Participants.
  - Only the following Participants (**must specify - specific positions are permissible; specific individuals may not be named**):\_\_\_\_\_.
- (2) **Alternative Early Retirement Reduction Table.** The monthly Early Retirement benefit shall be computed in the same manner as the monthly Normal Retirement benefit, but the benefit shall be reduced to account for early commencement of benefits based on the following table. This table shall apply to:
  - All Participants.
  - Only the following Participants (**must specify - specific positions are permissible; specific individuals may not be named**): Participants who Retire early using the 55 & 10 Early Retirement qualification in Section 14(A) above. See also

**General Addendum subsection 16(d) regarding the reduction applicable to Participants who have at least five (5) years of Credited Service while employed as police and fire personnel or former police and fire personnel and apply for Early Retirement based on the 50 & 20 Alternative Normal Retirement qualification.**

**Alternative Early Retirement Reduction Table**

<b><u>Number of Years Before Age 65 (check as applicable)</u></b>	<b><u>Percentage of Normal Retirement Benefit* (complete as applicable)</u></b>
<input checked="" type="checkbox"/> 0	1.000
<input checked="" type="checkbox"/> 1	0.970
<input checked="" type="checkbox"/> 2	0.940
<input checked="" type="checkbox"/> 3	0.910
<input checked="" type="checkbox"/> 4	0.880
<input checked="" type="checkbox"/> 5	0.850
<input checked="" type="checkbox"/> 6	0.790
<input checked="" type="checkbox"/> 7	0.730
<input checked="" type="checkbox"/> 8	0.670
<input checked="" type="checkbox"/> 9	0.610
<input checked="" type="checkbox"/> 10	0.550
<input type="checkbox"/> 11	0.____
<input type="checkbox"/> 12	0.____
<input type="checkbox"/> 13	0.____
<input type="checkbox"/> 14	0.____
<input type="checkbox"/> 15	0.____

\*Interpolate for whole months

**D. Monthly Late Retirement Benefit Amount (check one):**

- (1) The monthly Late Retirement benefit shall be computed in the same manner as the Normal Retirement Benefit, based upon the Participant's Accrued Benefit as of his Late Retirement Date. **See General Addendum subsection 16(g).**
- (2) The monthly Late Retirement benefit shall be the greater of: (1) the monthly retirement benefit accrued as of the Participant's Normal Retirement Date, actuarially increased in accordance with the actuarial table contained in Section 12.05 of the Master Plan; or (2) the monthly retirement benefit accrued as of the Participant's Late Retirement Date, without further actuarial adjustment under Section 12.06 of the Master Plan.

**E. Monthly Disability Benefit Amount**

The amount of the monthly Disability Benefit shall be computed in the same manner as the Normal Retirement benefit, based upon the Participant's Accrued Benefit as of his Disability Retirement Date.

**Minimum Disability Benefit.** The Adopting Employer may set a minimum Disability Benefit. The Employer elects the following minimum Disability benefit (**check one**):

- Not applicable (the Adopting Employer does not offer disability retirement benefits under the Plan).
- No minimum is established.
- No less than (**check one**):  20%  10%  \_\_\_\_% (**if other than 20% or 10% insert percentage amount**) of the Participant's average monthly Earnings for the 12 calendar month period (excluding any period of unpaid leave of absence) immediately preceding his Termination of Employment as a result of a Disability. (Unless otherwise specified in an Addendum to the Adoption Agreement, no minimum will apply to elected or appointed members of the Governing Authority or Municipal Legal Officers.)
- No less than (**check one**):  66 2/3 %  \_\_\_\_\_% (**if other than 66 2/3%, insert percentage amount**) of the Participant's average monthly Earnings for the 12 calendar month period (excluding any period of unpaid leave of absence) immediately preceding his Termination of Employment as a result of a Disability, less any monthly benefits paid from federal Social Security benefits as a result of disability as reported by the Employer. (Unless otherwise specified in an Addendum to the Adoption Agreement, no minimum will apply to elected or appointed members of the Governing Authority or Municipal Legal Officers.)

**Note:** The Adopting Employer is responsible for reporting to GMEBS any amounts to be used in an offset.

**F. Minimum/Maximum Benefit For Elected Officials**

In addition to any other limitations imposed by federal or state law, the Employer may impose a cap on the monthly benefit amount that may be received by elected or appointed members of the Governing Authority. The Employer elects (**check one**):

- Not applicable (elected or appointed members of the Governing Authority do not participate in the Plan).
- No minimum or maximum applies.
- Monthly benefit for Service as an elected or appointed member of the Governing Authority may not exceed 100% of the Participant's final salary as an elected or appointed member of the Governing Authority.

- Other minimum or maximum (must specify in a manner that satisfies the definite written program requirement of Treasury Regulation 1.401-1(a)(2) and the definitely determinable requirement of Treasury Regulation 1.401-1(b)(1)(i)): \_\_\_\_\_.

**16. SUSPENSION OF BENEFITS FOLLOWING BONA FIDE SEPARATION OF SERVICE; COLA**

**A. Re-Employment as Eligible Employee After Normal, Alternative Normal, or Early Retirement and Following Bona Fide Separation of Service (see Master Plan Section 6.06(c) Regarding Re-Employment as an Ineligible Employee and Master Plan Section 6.06(e) and (f) Regarding Re-Employment After Disability Retirement)**

**(1) Reemployment After Normal or Alternative Normal Retirement.** In the event that a Retired Participant 1) is reemployed with the Employer as an Eligible Employee (as defined in the Plan) after his Normal or Alternative Normal Retirement Date and after a Bona Fide Separation from Service, or 2) is reemployed with the Employer in an Ineligible Employee class, and subsequently again becomes an Eligible Employee (as defined in the Plan) due to the addition of such class to the Plan after his Normal or Alternative Normal Retirement Date, the following rule shall apply (**check one**):

- (a) The Participant's benefit shall be suspended in accordance with Section 6.06(a)(1) of the Master Plan for as long as the Participant remains employed.
- (b) The Participant may continue to receive his retirement benefit in accordance with Section 6.06(b) of the Master Plan. This rule shall apply to (**check one**):  all Retired Participants  only the following classes of Retired Participants (**must specify (specific positions are permissible; specific individuals may not be named) - benefits of those Retired Participants not listed shall be suspended in accordance with Section 6.06(a) of the Master Plan if they return to work with the Employer**): \_\_\_\_\_.

**(2) Reemployment After Early Retirement.** In the event a Participant Retires with an Early Retirement benefit after a Bona Fide Separation from Service 1) is reemployed with the Employer as an Eligible Employee before his Normal Retirement Date; or 2) is reemployed with the Employer in an Ineligible Employee class, and subsequently again becomes an Eligible Employee (as defined in the Plan) before his Normal Retirement Date due to the addition of such class to the Plan, the following rule shall apply (**check one or more as applicable**):

- (a)  The Participant's Early Retirement benefit shall be suspended in accordance with Section 6.06(a)(1) of the Master Plan for as long as the Participant remains employed.

This rule shall apply to (**check one**):  all Retired Participants;  only the following classes of Retired Participants (**must specify - specific**



**positions are permissible; specific individuals may not be named):**  
\_\_\_\_\_.

- (b)  The Participant's Early Retirement benefit shall be suspended in accordance with Section 6.06(a)(1) of the Master Plan. However, the Participant may begin receiving benefits after he satisfies the qualifications for Normal Retirement or Alternative Normal Retirement, as applicable, and after satisfying the minimum age parameters of Section 6.06(a)(3) of the Master Plan, in accordance with Section 6.06(b)(2)(B)(i) of the Master Plan.

This rule shall apply to **(check one)**:  all Retired Participants;  only the following classes of Retired Participants **(must specify - specific positions are permissible; specific individuals may not be named):**  
\_\_\_\_\_.

- (c)  The Participant's Early Retirement benefit shall continue in accordance with Section 6.06(b)(2)(B)(ii) of the Master Plan.

This rule shall apply to **(check one)**:  all Retired Participants;  only the following classes of Retired Participants **(must specify - specific positions are permissible; specific individuals may not be named):**  
\_\_\_\_\_.

**B. Cost Of Living Adjustment**

The Employer may elect to provide for an annual cost-of-living adjustment (COLA) in the amount of benefits being received by Retired Participants and Beneficiaries, which shall be calculated and paid in accordance with the terms of the Master Plan. The Employer hereby elects the following **(check one)**:

- (1) No cost-of-living adjustment.
- (2) Variable Annual cost-of-living adjustment not to exceed \_\_\_\_\_% **(insert percentage)**.
- (3) Fixed annual cost-of-living adjustment equal to \_\_\_\_\_% **(insert percentage)**.

The above cost-of-living adjustment shall apply with respect to the following Participants (and their Beneficiaries) **(check one)**:

- All Participants (and their Beneficiaries).
- Participants (and their Beneficiaries) who terminate employment on or after \_\_\_\_\_ **(insert date)**.
- Other **(must specify in a manner that satisfies the definite written program requirement of Treasury Regulation 1.401-1(a)(2) and the definitely determinable requirement of**

**Treasury Regulation 1.401-1(b)(1)(i); specific positions are permissible; specific individuals may not be named): \_\_\_\_\_.**

The Adjustment Date for the above cost-of-living adjustment shall be (if not specified, the Adjustment Date shall be January 1): \_\_\_\_\_.

**17. TERMINATION OF EMPLOYMENT BEFORE RETIREMENT;  
VESTING**

**A. Eligible Regular Employees**

Subject to the terms and conditions of the Master Plan, a Participant who is an Eligible Regular Employee and whose employment is terminated for any reason other than death or retirement shall earn a vested right in his accrued retirement benefit in accordance with the following schedule (**check one**):

- No vesting schedule (immediate vesting).**
- Cliff Vesting Schedule.** Benefits shall be 100% vested after the Participant has a minimum of **10** years (**insert number not to exceed 10**) of Total Credited Service. Benefits remain 0% vested until the Participant satisfies this minimum. (See General Addendum subsection 16(e) regarding calculation of Total Credited Service for Vesting purposes for Participants who commenced Participation in the Plan prior to July 1, 2023.)
- Graduated Vesting Schedule.** Benefits shall become vested in accordance with the following schedule (**insert percentages**):

<u>COMPLETED YEARS OF TOTAL CREDITED SERVICE</u>	<u>VESTED PERCENTAGE</u>
1	%
2	%
3	%
4	%
5	%
6	%
7	%
8	%
9	%
10	%

**Exceptions:** If a vesting schedule other than that specified above applies to a special class(es) of Regular Employees, the Employer must specify the different vesting schedule below and the class(es) to whom the different vesting schedule applies.

Regular Employees to whom exception applies (**must specify - specific positions are permissible; specific individuals may not be named**): \_\_\_\_\_.

Vesting Schedule for excepted class (must specify in a manner that satisfies the definite written program requirement of Treasury Regulation 1.401-1(a)(2) and the definitely determinable requirement of Treasury Regulation 1.401-1(b)(1)(i)): \_\_\_\_\_.

**B. Elected or Appointed Members of the Governing Authority**

Subject to the terms and conditions of the Master Plan, a Participant who is an elected or appointed member of the Governing Authority or a Municipal Legal Officer shall earn a vested right in his accrued retirement benefit for Credited Service in such capacity in accordance with the following schedule (check one):

- Not applicable (elected or appointed members of the Governing Authority are not permitted to participate in the Plan).
- No vesting schedule (immediate vesting).
- Other vesting schedule (must specify in a manner that satisfies the definite written program requirement of Treasury Regulation 1.401-1(a)(2) and the definitely determinable requirement of Treasury Regulation 1.401-1(b)(1)(i): \_\_\_\_\_).

**18. PRE-RETIREMENT DEATH BENEFITS**

**A. In-Service Death Benefit**

Subject to the terms and conditions of the Master Plan, the Employer hereby elects the following in-service death benefit, to be payable in the event that an eligible Participant's employment with the Employer is terminated by reason of the Participant's death prior to Retirement (check and complete one):

(1)  **Auto A Death Benefit.** A monthly benefit payable to the Participant's Pre-Retirement Beneficiary, equal to the decreased monthly retirement benefit that would have otherwise been payable to the Participant, had he elected a 100% joint and survivor benefit under Section 7.03 of the Master Plan. In order to be eligible for this benefit, a Participant must meet the following requirements (check one):

- The Participant must be vested in a normal retirement benefit.
- The Participant must have \_\_\_\_\_ years (insert number) of Total Credited Service.
- The Participant must be eligible for Early or Normal Retirement.
- Other eligibility requirement (must specify in a manner that satisfies the definite written program requirement of Treasury Regulation 1.401-1(a)(2) and the definitely determinable requirement of Treasury Regulation 1.401-1(b)(1)(i): \_\_\_\_\_).

(2)  **Actuarial Reserve Death Benefit.** A monthly benefit payable to the Participant's Pre-Retirement Beneficiary, actuarially equivalent to the reserve required for the Participant's anticipated Normal Retirement benefit, provided the Participant meets the following eligibility conditions (**check one**):

- The Participant shall be eligible upon satisfying the eligibility requirements of Section 8.02(c) of the Master Plan.
- The Participant must have \_\_\_\_\_ years (**insert number**) of Total Credited Service.
- Other eligibility requirement (**must specify in a manner that satisfies the definite written program requirement of Treasury Regulation 1.401-1(a)(2) and the definitely determinable requirement of Treasury Regulation 1.401-1(b)(1)(i)**): \_\_\_\_\_.

**Imputed Service.** For purposes of computing the actuarial reserve death benefit, the Participant's Total Credited Service shall include (**check one**):

- Total Credited Service accrued prior to the date of the Participant's death.
- Total Credited Service accrued prior to the date of the Participant's death, plus (**check one**):  one-half (1/2)  \_\_\_\_\_ (**insert other fraction**) of the Service between such date of death and what would otherwise have been the Participant's Normal Retirement Date. (**See Master Plan Section 8.02(b) regarding 10-year cap on additional Credited Service.**)

Minimum In-Service Death Benefit for Vested Employees Equal to Terminated Vested Death Benefit. Unless otherwise specified under "Exceptions" below, if a Participant's employment is terminated by reason of the Participant's death prior to Retirement, and if as of the date of death the Participant is vested but he does not qualify for the in-service death benefit, then the Auto A Death Benefit will be payable, provided the Auto A Death Benefit is made available to terminated vested employees under the Adoption Agreement (see "Terminated Vested Death Benefit" below).

(3) **Exceptions:** If an in-service death benefit other than that specified above applies to one or more classes of Participants, the Employer must specify below the death benefit payable, the class(es) to whom the different death benefit applies, and the eligibility conditions for said death benefit.

Alternative Death Benefit (**must specify formula that satisfies the definite written program and definitely determinable requirements of Treasury Regulations Sections 1.401-1(a)(2) and 1.401-1(b)(1)(i) and does not violate limits applicable to governmental plans under Code Sections 401(a)(17) and 415**): \_\_\_\_\_.

Participants to whom alternative death benefit applies (**must specify - specific positions are permissible; specific individuals may not be named**): \_\_\_\_\_.

Eligibility conditions for alternative death benefit (**must specify in a manner that satisfies the definite written program requirement of Treasury Regulation 1.401-1(a)(2) and the definitely determinable requirement of Treasury Regulation 1.401-1(b)(1)(i)**): \_\_\_\_\_.

**B. Terminated Vested Death Benefit**

**(1) Complete this Section only if the Employer offers a terminated vested death benefit.** The Employer may elect to provide a terminated vested death benefit, to be payable in the event that a Participant who is vested dies after termination of employment but before Retirement benefits commence. Subject to the terms and conditions of the Master Plan, the Employer hereby elects the following terminated vested death benefit (**check one**):

- Auto A Death Benefit.** A monthly benefit payable to the Participant's Pre-Retirement Beneficiary, equal to the decreased monthly retirement benefit that would have otherwise been payable to the Participant had he elected a 100% joint and survivor benefit under Section 7.03 of the Master Plan.
- Accrued Retirement Benefit.** A monthly benefit payable to the Participant's Pre-Retirement Beneficiary which shall be actuarially equivalent to the Participant's Accrued Normal Retirement Benefit determined as of the date of death.

**(2) Exceptions:** If a terminated vested death benefit other than that specified above applies to one or more classes of Participants, the Employer must specify below the death benefit payable, the class(es) to whom the different death benefit applies, and the eligibility conditions for said death benefit.

Alternative Death Benefit (**must specify formula that satisfies the definite written program and definitely determinable requirements of Treasury Regulations Sections 1.401-1(a)(2) and 1.401-1(b)(1)(i) and does not violate limits applicable to governmental plans under Code Sections 401(a)(17) and 415**): \_\_\_\_\_.

Participants to whom alternative death benefit applies (**must specify - specific positions are permissible; specific individuals may not be named**): \_\_\_\_\_.

Eligibility conditions for alternative death benefit (**must specify in a manner that satisfies the definite written program requirement of Treasury Regulation 1.401-1(a)(2) and the definitely determinable requirement of Treasury Regulation 1.401-1(b)(1)(i)**): \_\_\_\_\_.

### 19. EMPLOYEE CONTRIBUTIONS

**(1) Employee contributions (check one):**

- Are not required.
- Are required in the amount of \_\_\_\_% (insert percentage) of Earnings for all Participants.
- Are required in the amount of **3.1%** (insert percentage) of Earnings for Participants in the following classes (must specify - specific positions are permissible; specific individuals may not be named): **All Participants except police and fire personnel or former police and fire personnel, as defined in General Addendum subsection 16(d).**
- Are required in the amount of **4.1%** (insert percentage) of Earnings for Participants in the following classes (must specify - specific positions are permissible; specific individuals may not be named): **All Participants who are police and fire personnel or former police and fire personnel, as defined in General Addendum subsection 16(d).**

**[Repeat above subsection as necessary if more than one contribution rate applies.]**

**(2) Pre-Tax Treatment of Employee Contributions.** If Employee Contributions are required in Subsection (1) above, an Adopting Employer may elect to "pick up" Employee Contributions to the Plan in accordance with IRC Section 414(h). In such case, Employee Contributions shall be made on a pre-tax rather than a post-tax basis, provided the requirements of IRC Section 414(h) are met. If the Employer elects to pick up Employee Contributions, it is the Employer's responsibility to ensure that Employee Contributions are paid and reported in accordance with IRC Section 414(h). The Adopting Employer must not report picked up contributions as wages subject to federal income tax withholding.

The Employer hereby elects (check one):

- To pick up Employee Contributions. By electing to pick up Employee Contributions, the Adopting Employer specifies that the contributions, although designated as Employee Contributions, are being paid by the Employer in lieu of Employee Contributions. The Adopting Employer confirms that the executor of this Adoption Agreement is duly authorized to take this action as required to pick up contributions. This pick-up of contributions applies prospectively, and it is evidenced by this contemporaneous written document. On and after the date of the pick-up of contributions, a Participant does not have a cash or deferred election right (within the meaning of Treasury Regulation Section 1.401(k)-1(a)(3)) with respect to the designated Employee Contributions, which includes not having the option of receiving the amounts directly instead of having them paid to the Plan.
- Not to pick up Employee Contributions.

**(3) Interest on Employee Contributions.** The Adopting Employer may elect to pay interest on any refund of Employee Contributions.

- Interest shall not be paid. **But see General Addendum subsections 16(i) concerning rate of interest in the event of failure to exhaust.**
- Interest shall be paid on a refund of Employee Contributions at a rate established by GMEBS from time to time.
- Other rate of interest (**must specify rate in a manner that satisfies the definite written program requirement of Treasury Regulation 1.401-1(a)(2) and the definitely determinable requirement of Treasury Regulation 1.401-1(b)(1)(i):**  
\_\_\_\_\_.

## **20. MODIFICATION OF THE TERMS OF THE ADOPTION AGREEMENT**

If an Adopting Employer desires to amend any of its elections contained in this Adoption Agreement (or any Addendum), the Governing Authority by official action must adopt an amendment of the Adoption Agreement (or any Addendum) or a new Adoption Agreement (or Addendum) must be adopted and forwarded to the Board for approval. The amendment of the new Adoption Agreement (or Addendum) is not effective until approved by the Board and other procedures required by the Plan have been implemented.

The Administrator will timely inform the Adopting Employer of any amendments made by the Board to the Plan.

## **21. TERMINATION OF THE ADOPTION AGREEMENT**

This Adoption Agreement (and any Addendum) may be terminated only in accordance with the Plan. The Administrator will inform the Adopting Employer in the event the Board should decide to discontinue this volume submitter program.

## **22. EMPLOYER ADOPTION AND AUTHORIZATION FOR AMENDMENTS**

**Adoption.** The Adopting Employer hereby adopts the terms of the Adoption Agreement and any Addendum, which is attached hereto and made a part of this ordinance. The Adoption Agreement (and, if applicable, the Addendum) sets forth the Employees to be covered by the Plan, the benefits to be provided by the Adopting Employer under the Plan, and any conditions imposed by the Adopting Employer with respect to, but not inconsistent with, the Plan. The Adopting Employer reserves the right to amend its elections under the Adoption Agreement and any Addendum, so long as the amendment is not inconsistent with the Plan or the Internal Revenue Code or other applicable law and is approved by the Board of Trustees of GMEBS.

The Adopting Employer acknowledges that it may not be able to rely on the volume submitter advisory letter if it makes certain elections under the Adoption Agreement or the Addendum.

The Adopting Employer hereby agrees to abide by the Master Plan, Trust Agreement, and rules and regulations adopted by the Board of Trustees of GMEBS, as each may be amended from time to time, in all matters pertaining to the operation and administration of the Plan. It is intended that the Act creating the Board of Trustees of GMEBS, this Plan, and the rules and regulations of the Board are to be construed in harmony with each other. In the event of a conflict between the provisions of any of the foregoing, they shall govern in the following order:

- (1) The Act creating the Board of Trustees of The Georgia Municipal Employees' Benefit System, O.C.G.A. Section 47-5-1 *et seq.* (a copy of which is included in the Appendix to the Master Defined Benefit Plan Document) and any other applicable provisions of O.C.G.A. Title 47;
- (2) The Master Defined Benefit Plan Document and Trust Agreement;
- (3) This Ordinance and Adoption Agreement (and any Addendum); and
- (4) The rules and regulations of the Board.

In the event that any section, subsection, sentence, clause or phrase of this Plan shall be declared or adjudged invalid or unconstitutional, such adjudication shall in no manner affect the previously existing provisions or the other section or sections, subsections, sentences, clauses or phrases of this Plan, which shall remain in full force and effect, as if the section, subsection, sentence, clause or phrase so declared or adjudicated invalid or unconstitutional were not originally a part hereof. The Governing Authority hereby declares that it would have passed the remaining parts of this Plan or retained the previously existing provisions if it had known that such part or parts hereof would be declared or adjudicated invalid or unconstitutional.

This Adoption Agreement (and any Addendum) may only be used in conjunction with Georgia Municipal Employees Benefit System Master Defined Benefit Retirement Plan Document approved by the Internal Revenue Service under advisory letter J501718a dated March 30, 2018. The Adopting Employer understands that failure to properly complete this Adoption Agreement (or any Addendum), or to operate and maintain the Plan and Trust in accordance with the terms of the completed Adoption Agreement (and any Addendum), Master Plan Document and Trust, may result in disqualification of the Adopting Employer's Plan under the Internal Revenue Code. Inquiries regarding the adoption of the Plan, the meaning of Plan provisions, or the effect of the IRS advisory letter should be directed to the Administrator. The Administrator is Georgia Municipal Employees Benefit System, with its primary business offices located at: 201 Pryor Street, SW, Atlanta, Georgia, 30303. The business telephone number is: (404) 688-0472. The primary person to contact is: GMEBS Legal Counsel.

**Authorization for Amendments.** Effective on and after February 17, 2005, the Adopting Employer hereby authorizes the volume submitter practitioner who sponsors the Plan on behalf of GMEBS to prepare amendments to the Plan, for approval by the Board, on its behalf as provided under Revenue Procedure 2005-16, as superseded by Revenue Procedure 2015-36, Revenue Procedure 2011-49, and Announcement 2005-37. Effective January 1, 2013,



Georgia Municipal Association, Inc., serves as the volume submitter practitioner for the Plan. Employer notice and signature requirements were met for the Adopting Employer before the effective date of February 17, 2005. The Adopting Employer understands that the implementing amendment reads as follows:

On and after February 17, 2005, the Board delegates to the Practitioner the authority to advise and prepare amendments to the Plan, for approval by the Board, on behalf of all Adopting Employers, including those Adopting Employers who have adopted the Plan prior to the January 1, 2013, restatement of the Plan, for changes in the Code, the regulations thereunder, revenue rulings, other statements published by Internal Revenue Service, including model, sample, or other required good faith amendments (but only if their adoption will not cause such Plan to be individually designed), and for corrections of prior approved plans. These amendments shall be applied to all Adopting Employers. Employer notice and signature requirements have been met for all Adopting Employers before the effective date of February 17, 2005. In any event, any amendment prepared by the Practitioner and approved by the Board will be provided by the Administrator to Adopting Employers.

Notwithstanding the foregoing paragraph, no amendment to the Plan shall be prepared on behalf of any Adopting Employer as of either:

- the date the Internal Revenue Service requires the Adopting Employer to file Form 5300 as an individually designed plan as a result of an amendment by the Adopting Employer to incorporate a type of Plan not allowable in a volume submitter plan as described in Revenue Procedure 2015-36; or
- as of the date the Plan is otherwise considered an individually designed plan due to the nature and extent of the amendments.

If the Adopting Employer is required to obtain a determination letter for any reason in order to maintain reliance on the advisory letter, the Practitioner's authority to amend the Plan on behalf of the Adopting Employer is conditioned on the Plan receiving a favorable determination letter.

The Adopting Employer further understands that, if it does not give its authorization hereunder or, in the alternative, adopt another pre-approved plan, its Plan will become an individually designed plan and will not be able to rely on the volume submitter advisory letter.

**AN ORDINANCE (continued from page 1)**

**Section 2.** Except as otherwise specifically required by law or by the terms of the Master Plan or Adoption Agreement (or any Addendum), the rights and obligations under the Plan with respect to persons whose employment with the City was terminated or who vacated his office with the City for any reason whatsoever prior to the effective date of this Ordinance are fixed and shall be governed by such Plan, if any, as it existed and was in effect at the time of such termination.

**Section 3.** The effective date of this Ordinance shall be the date of its approval.

**Section 4.** All Ordinances and parts of ordinances in conflict herewith are expressly repealed.

Approved by the Mayor and Council of the City of \_\_\_\_\_, Georgia this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Attest:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor

(SEAL)

Approved:

\_\_\_\_\_  
City Attorney

The terms of the foregoing Adoption Agreement are approved by the Board of Trustees of Georgia Municipal Employees Benefit System.

IN WITNESS WHEREOF, the Board of Trustees of Georgia Municipal Employees Benefit System has caused its Seal and the signatures of its duly authorized officers to be affixed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Board of Trustees  
Georgia Municipal Employees  
Benefit System

(SEAL)

\_\_\_\_\_  
Secretary

**GENERAL ADDENDUM TO THE  
GEORGIA MUNICIPAL EMPLOYEES BENEFIT SYSTEM  
DEFINED BENEFIT RETIREMENT PLAN  
ADOPTION AGREEMENT**

**This is an Addendum to the Adoption Agreement completed by the City of Cartersville, Georgia, as follows (complete one or more sections, as applicable):**

**\*\*\*Items (1) through (5) of pre-approved Addendum - Not Applicable\*\*\***

**(6) Modified Definition of Earnings. For purposes of determining any Employee contributions and Final Average Earnings, Earnings as defined in Section 2.26 of the Master Plan shall be modified as follows (check all that apply):**

- (a) excluding overtime pay.
- (b) excluding bonuses.
- (c) excluding holiday pay (specify type of excluded earnings).
- (d) including perquisites or allowances for use of a car or house rent.
- (e) including severance payments; provided that the following limitations shall apply (must specify):  
\_\_\_\_\_.
- (f) including \_\_\_\_\_ (specify type of included earnings).

**This definition of Earnings applies to (check one):**

- All Participants.

- Only the following Participants (must specify): Overtime and bonus payments are excluded with respect to all Participants. Holiday pay is excluded with respect to police and fire personnel as defined in subsection 16(d) below.

**NOTE: The Employer is responsible for providing any and all documentation to the Administrator relating to payments that are included in the definition of Earnings pursuant to this Section, including but not limited to the amount(s) paid and the date of such payment(s).**

[Repeat above subsection as necessary for each applicable definition and Participant class covered under the Plan.]

- (7) **Modified Definition of Final Average Earnings.** Final Average Earnings is defined as the monthly average of Earnings paid to a Participant by the Adopting Employer for the 36 (insert number not to exceed 60) consecutive months of (check one):
  - Credited Service,  employment, during the last 120 (insert number not to exceed 120) consecutive month period preceding the Participant's most recent Termination in which the Participant's Earnings were the highest, multiplied by 12. Note: GMEBS has prescribed forms for calculation of Final Average Earnings that must be used for this purpose.

This definition of Final Average Earnings applies to (check one):

- All Participants.
- Only the following Participants (must specify): \_\_\_\_\_.

[Repeat above subsection as necessary.]

**\*\*\*Items (8) through (15) of pre-approved Addendum - Not Applicable\*\*\***

- (16) **Other** (May include, but shall not be limited to, provisions relating to Master Plan Sections 6.03, 6.06, 8.04, 8.06, 8.08, 8.09, 8.10, 8.12, 9.01, and 9.02) (must specify):
  - (a) **Plan Background.** This is a continuation of the “City of Cartersville 2017 Pension Plan” (“2017 Plan” or “Plan”), which

originally became effective January 1, 2017, for Eligible Regular Employees of the City initially employed or reemployed on or after January 1, 2017, and has been amended from time to time. Effective September 1, 2023, the City of Cartersville transferred administration of the 2017 Plan and all assets in the trust fund of the 2017 Plan to GMEBS. All rights and benefits of Participants who Terminated employment prior to September 1, 2023, shall be determined solely by the provisions in effect as of their respective Termination dates unless otherwise specifically provided herein.

- (i) Relationship with Original City of Cartersville Pension Plan. Employees who were initially employed prior to January 1, 2017, participated in the “City of Cartersville Pension Plan” (“Original Plan”). On January 1, 2017, the Original Plan was closed to new entrants; all future employees, including those who previously participated in the Original Plan but returned to employment on or after January 1, 2017, were ineligible to participate in that Plan and instead became participants in the 2017 Plan with respect to all service after their dates of employment or reemployment occurring on or after January 1, 2017. All Credited Service under the Original Plan Shall count for the purpose of satisfying the requirements for Vesting and benefit eligibility under the 2017 Plan; however, the Participant’s Service and Earnings under the Original Plan shall not count for the purpose of benefit computation under the 2017 Plan.
- (ii) Waiting Period prior to July 1, 2023. Prior to July 1, 2023, each Employee who satisfied the eligibility requirements for participation in the 2017 Plan (i.e., any person initially employed or reemployed by the City on a regular full-time basis on or after January 1, 2017), became a Participant in the Plan on the first day of the month coinciding with or next following the date on which he or she had completed six (6) consecutive months of employment with the City, provided that such Employee was at least 18 years of age. For purposes of this subparagraph, “employment” is deemed to have begun on the first day of the month if the Employee commenced working on or before the first non-

holiday weekday of the month as indicated by the City's employment policy. Notwithstanding the foregoing, an Employee described herein who was employed prior to July 1, 2023, but who had not satisfied the six-month waiting period (as applicable) prior to such date, commenced participation in the Plan effective July 1, 2023. Participants described herein shall have a one-time opportunity to purchase Credited Service with respect to their service as an Employee during the waiting period. Otherwise, Participants will not receive Credited Service under the Plan for their employment during the waiting period (e.g., service during the waiting period will not otherwise count for the purpose of benefit computation). However, see subsection 16(e) below concerning determination of Vesting and benefit eligibility for Participants who commenced participation in the Plan prior to July 1, 2023. See also Service Credit Purchase Addendum.

- (b) **Transfer of Assets and Administration.** Administration of this Plan was transferred to GMEBS effective September 1, 2023, with the express intent that a minimum of 85% of Plan assets be transferred to GMEBS no later than September 11, 2023, with the remainder of the Plan's assets, less the amount of any outstanding checks, to be transferred to GMEBS no later than October 10, 2023, to allow GMEBS to make Retirement benefit payments to Retired Participants (and their beneficiaries) on October 1, 2023, and each month thereafter. The trustee, custodian, fund administrator, third party administrator, and other employees or agents of the City of Cartersville who were responsible for the administration of the City's Plan immediately prior to September 1, 2023, are authorized and directed to take any and all reasonably necessary actions to effect the transfer of at least 85% of Retirement Plan assets to GMEBS by September 11, 2023, and the remainder (less the amount of any outstanding checks) by October 10, 2023.
- (i) **Required Data.** On or before September 1, 2023, the City of Cartersville will provide (or will ensure its employees or agents provide) GMEBS with records and information reasonably requested or necessary to facilitate the timely

transfer of plan administration (plan administration will include the payment of current retirees and beneficiaries in pay status as of October 1, 2023). Information and records to be provided include, but are not limited to the following concerning active Participants, Terminated Vested Participants, Retired Participants and beneficiaries: name, address, social security number, birth date, years and months of credited service for Vesting and benefit eligibility purposes, years and months of credited service for benefit computation purposes, 36-month Earnings history, Employee Contribution history and equity account balances, accrued monthly Normal Retirement benefits, beneficiary designation forms, Retirement applications, and direct deposit forms, tax withholding forms, and 1099 tax reporting information for current retirees and beneficiaries.

- (ii) **Treatment of Terminated Vested Participants and Retired Participants.** In particular with respect to Vested Participants who Terminated prior to September 1, 2023, but had not Retired as of such date, the City will ensure GMEBS is provided with a listing indicating the amount of each such Terminated Vested Participant's accrued Normal Retirement benefit and Normal Retirement eligibility date. Retirement benefits for said Terminated Vested Participants will be paid based upon said information in accordance with the Retirement benefit payment options (including factors used to determine benefit reductions associated with survivor beneficiaries and/or Early Retirement benefits, and factors used to determine Actuarial Equivalent amounts) available under the GMEBS Master Plan or the City's pre-GMEBS plan document, as applicable, in effect as of each said Participant's effective Retirement date. See also subsection 16(c) below regarding treatment of Terminated Vested Participants.
- (iii) **Continuation of Benefits for Retirees (and Their Beneficiaries) in Pay Status as of September 1, 2023.** Benefits will continue be paid to Retired Participants (and their beneficiaries, if applicable) in pay status prior to September 1, 2023, in accordance with the form of benefit

payment required or selected by the Retired Participant under the applicable terms of the retirement plan in effect prior to September 1, 2023, and based upon the benefit payment amounts determined prior to September 1, 2023, and furnished to GMEBS.

- (iv) **Effect of Failure to Timely Transfer Assets.** Notwithstanding any provision to the contrary, the terms of this paragraph shall apply in the event the City fails to liquidate (or have liquidated) all assets invested in the City of Cartersville 2017 Pension Plan trust fund immediately prior to September 1, 2023, and transfer (or have transferred) at least 85% of such liquidated assets to the GMEBS Retirement Trust by September 11, 2023. In such event, the City (or its third-party administrator, as applicable), and not GMEBS, will be responsible for processing and distributing all October 1, 2023, benefit payments under the Plan to Participants (and their beneficiaries) in pay status as of such date. Thereafter, the City (or its third-party administrator, as applicable) shall remain responsible for processing benefit payments under the Plan until the first day of the first month that begins at least 20 days after the date on which at least 85% of the liquidated assets describe in this paragraph 16(b)(iv) have been transferred to GMEBS. GMEBS shall otherwise be responsible for administering the Plan effective September 1, 2023, including but not limited to processing Retirement benefit applications and requests for death benefits and determining the amounts of any benefits newly payable under the Plan, and will notify the City of the amounts of any benefits which become newly payable after September 1, 2023, and until the date on which GMEBS assumes responsibility for processing benefit payments. The City (or its third-party administrator, as applicable) shall process payments of any benefits which become newly payable after September 1, 2023, until the date GMEBS assumes responsibility for processing benefit payments (i.e., the first day of the first month that begins at least 20 days after the date on which at least 85% of the liquidated assets



described in this paragraph 16(b)(iv) have been transferred to GMEBS) in accordance with the information provided by GMEBS.

- (v) Notwithstanding any provision to the contrary, the City, and not GMEBS, shall make Retirement benefit payments to Retired Participants (and their beneficiaries) on September 1, 2023, prior to the transfer of assets to the GMEBS Retirement Trust Fund. Further, the City, and not GMEBS shall issue any necessary tax forms (e.g., Form 1099-R) relating to benefits paid pursuant to the Plan from January 1, 2023 – September 1, 2023. GMEBS shall issue any necessary tax forms (e.g., Form 1099-R) relating to benefits paid pursuant to the Plan from October 1, 2023 – December 31, 2023.

(c) **Administration of Benefits to Terminated Vested Participants Who Terminated Prior to September 1, 2023; Insufficient Information Relating to Calculation of Benefits under Prior Plan.**

Recognizing that documentation by previous plan administrators of the accrued benefits of Participants who Terminated prior to September 1, 2023, may not provide adequate information relating to the computation of Retirement benefits under the Plan for GMEBS to accurately determine a Participant's Vested status, eligibility for benefits, or the amount of a Participant's monthly Retirement benefit, as applicable, the following provisions shall govern the administration of Retirement benefits with respect to a Participant who Terminated employment with the City prior to September 1, 2023 (i.e., the effective date of the City's first GMEBS Plan) and who applies for Retirement benefits on or after such date.

- (i) GMEBS shall accept the City's determination regarding whether a Participant who Terminated prior to September 1, 2023, was deemed Terminated Vested as of such date, provided, however, that in the event the City deemed such a Participant not Vested and information is subsequently presented suggesting that such Participant was Vested, GMEBS shall, in its sole discretion determine whether said

**Participant was Vested upon his or her Termination prior to September 1, 2023.**

- (ii) Where sufficient information necessary for GMEBS to compute such a Participant's benefit is available, including applicable prior plan documents, GMEBS will compute the Participant's Retirement benefits in accordance with such plan documents and supporting information.**
  
- (iii) Where sufficient information necessary to compute such a Participant's benefit is not available, if the accrued benefits of such a Participant were calculated by the plan administrator in place at the time of the Participant's termination, and GMEBS has written documentation of such calculation, GMEBS will administer Retirement benefits, as applicable, to the Participant in accordance with the greater of:
  - (A) The prior administrator's calculation of the Participant's Retirement benefits, applying the GMEBS Retirement factors and the Plan's Early Retirement factors (if applicable) in effect at the time of the Participant's Retirement to determine the monthly Retirement benefit amount payable to the Participant; or**
  - (B) GMEBS's calculation of the Participant's Retirement benefits, using the terms of the GMEBS Plan in effect at the time of the Participant's Retirement, including the benefit formula, the definition of Final Average Earnings and any applicable factors.****
  
- (iv) Where sufficient information necessary to compute such a Participant's benefits is not available and GMEBS does not have documentation of a prior administrator's calculation of the accrued benefits of such a Participant, GMEBS will apply the terms of the GMEBS Plan in effect at the time of the Participant's application for Retirement benefits, including the benefit formula, the definition of Final Average Earnings and any applicable factors, to calculate the Participant's Retirement benefits.**

- (v) In the event information relating to such a Participant's Earnings necessary to compute Retirement benefits is insufficient or unavailable, salary information obtained from the Social Security Administration, or other information provided by the City as Earnings, will be used as a proxy to determine the Participant's Final Average Earnings. The City and/or the Participant will be responsible for obtaining Earnings information necessary to compute Retirement benefits under the Plan and providing such information to GMEBS.
- (vi) In the event such a Participant dies before Retirement benefits commence, the Participant's designated beneficiary shall receive a lump sum payment equal to the Participant's Employee Contributions, plus interest accrued until the date of the Participant's death at the rate of 4% per annum. For purposes of this paragraph, the term "designated beneficiary shall mean the Participant's surviving Spouse, if any, and the term "surviving" shall mean surviving the Participant by at least 32 days. In the event there is no designated beneficiary, the aforementioned lump sum payment shall be made to the Participant's estate.
- (d) Early Retirement for Vested Police and Fire Personnel. A Participant with at least five (5) years of Credited Service as a Participant in this Plan while employed as police and fire personnel or as a former police and fire personnel, who is Vested under the Plan, and is at least 50 years of age but has not attained 20 years of Total Credited Service may apply for Early Retirement based on the "50 & 20" Alternative Normal Retirement qualification in Section 14(C)(6) of the Adoption Agreement. Such a Participant's monthly Retirement benefit will be computed in the same manner as the monthly Normal Retirement benefit, but the benefit shall be reduced by seven (7) percent a year for each year in which the Participant's Termination date precedes the date on which the Participant would have attained 20 years of Total Credited Service. For purposes of this subsection 16(d), as well as Sections 14(A), 14(C)(6) and 19(1) of the Adoption Agreement, "police and fire personnel" shall mean a Participant who is employed in the City's

police and/or fire department and “former police and fire personnel” shall mean a Participant who was previously employed in the City’s police and/or fire department. For the avoidance of doubt, such terms shall include, but shall not be limited to, employees who provide (or who provided) administrative services within the police and/or fire department.

- (e) **Determination of Credited Service for Purposes of Vesting and Benefit Eligibility for Participants Who Commenced Participation in the Plan prior to July 1, 2023.** Notwithstanding any provision to the contrary, with respect to Participants who commenced participation in the Plan prior to July 1, 2023, Service with the City prior to July 1, 2023, shall count as Credited Service for the purposes of satisfying the requirements of Vesting and benefit eligibility in accordance with the applicable terms of the City’s Plan in effect prior to such date. The City shall determine whether such a Participant has satisfied the requirements for Vesting and benefit eligibility under the Plan and GMEBS is entitled to rely on such determination.
- (f) **Effect of Leave of Absence on Final Average Earnings.** The period during which a Participant is on a leave of absence (except for qualified military service), is not included in determining the Participant’s Final Average Earnings.
- (g) **Final Average Earnings for Calculating Late Retirement Benefit.** In the event of Late Retirement, the Final Average Earnings used to calculate a Participant’s Late Retirement benefit will be the greater of the Participant’s Final Average Earnings as of his or her Normal Retirement Date or the Participant’s Final Average Earnings as of the date of his or her Termination of employment.
- (h) **Repayment of Employee Contributions.**
- (i) **Participants Reemployed on or after September 1, 2023.** A Participant in this Plan who Terminates (or Terminated) employment, withdraws (or withdrew) Employee Contributions made under this Plan, and becomes reemployed on or after September 1, 2023, shall be subject to the applicable provisions of Section 13.03(d) and (e) of

the Master Plan concerning repayment of Employee Contributions for the purpose of restoring any Credited Service under this Plan that was previously forfeited by virtue of the Participant's withdrawal of Employee Contributions (e.g., such Participants have six-months from the date of reemployment to repay all amounts previously withdrawn plus interest at the assumed actuarial rate of return for the GMEBS Retirement Fund established by the Board as of the date of repayment), provided that the period of time between the Participant's Termination of employment and the Participant's date of reemployment is less than or equal to five (5) years. If a Participant returns to employment more than five (5) years after his or her most recent Termination of employment, the Participant will not be eligible to repay withdrawn Employee Contributions or restore previously forfeited Credited Service under the Plan.

- (ii) **Participants Reemployed prior to September 1, 2023.** The following provisions shall apply with respect to Participants who previously Terminated employment and withdrew Employee Contributions but subsequently became reemployed in an Eligible Employee class prior to September 1, 2023. Upon such reemployment, such a Participant was permitted to reinstate any service credit under this Plan he or she forfeited by virtue of his or her withdrawal of Employee Contributions provided that: 1) the period of time between the Participant's Termination of employment and the Participant's date of reemployment was less than or equal to five (5) years; 2) the Participant repaid (or repays) in a lump sum all amounts previously withdrawn plus 5% interest compounded annually from the date of the return of Contributions through the date of repayment; and 3) the amount due was (or is) is paid in full within 12 months of his or her resumption of employment.
- (i) **Interest in Event of Failure to Exhaust.** The provisions of Section 13.06 of the Master Plan shall apply in the event of failure to exhaust. For purposes of a refund of Employee Contributions in the event of Failure to Exhaust only, interest on a Participant's

Employee Contributions shall be deemed to have accrued at the rate of 4% per annum.

- (j) **Reservation of Rights.** The City of Cartersville, Georgia, expects and intends to maintain the Plan in force indefinitely, but necessarily reserves the right to modify, discontinue or terminate the Plan at any time in any manner it deems appropriate. Further, at any time and from time to time, the Plan may be changed in whole or in part, or the contributions of the Employer may be suspended.
- (k) **Effect of Termination on Participants in the Plan as of August 31, 2023.** With respect to Participants in the Plan as of August 31, 2023, in the event of a termination or partial termination of the Plan, the accrued benefit of each such Participant shall become 100% Vested and non-forfeitable”. The applicable terms of the GMEBS Master Plan shall control in the event of a full or partial termination of the plan with respect to Participants initially employed or reemployed by the City on or after September 1, 2023.
- (l) **Reliance by GMEBS on Information Provided by City; Litigation over Transfer of Assets and Administration.** GMEBS is not responsible for errors in and is entitled to rely on all documents and information provided to GMEBS by the City, including but not limited to information required pursuant to subsection 16(b) of this Addendum. The City certifies that the information provided is true and correct to the best of its knowledge. Notwithstanding any provision to the contrary, the City of Cartersville, and not GMEBS, shall bear the cost of any litigation or other claims relating to the transfer of assets and administration to GMEBS.
- (m) **Portability Service with GMEBS Employers Not Applicable to Participants Who Terminated Prior to September 1, 2023 –** Notwithstanding Section 9.05 of the Master Plan or any other provision to the contrary, Service with other GMEBS Employers shall not count as portability service under this Plan for Employees who Terminated employment with the City of

**Cartersville prior to September 1, 2023, unless such Employees participate in this Plan on or after September 1, 2023.**

- (n) IRS Filings. The City will complete at its expense any IRS filings (including payment of associated IRS filing fees and tax attorney fees) that GMEBS reasonably requests in order to protect the 401(a)-qualified status of the GMEBS volume submitter plan and/or to confirm the 401(a)-qualified status of the City's Adoption Agreement and Addendum.**

The terms of the foregoing Addendum to the Adoption Agreement are approved by the Mayor and Council of the City of Cartersville, Georgia this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Attest: CITY OF CARTERSVILLE, GEORGIA

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor

(SEAL)

Approved:

\_\_\_\_\_  
City Attorney

The terms of the foregoing Addendum are approved by the Board of Trustees of the Georgia Municipal Employees Benefit System.

IN WITNESS WHEREOF, the Board of Trustees of the Georgia Municipal Employees Benefit System has caused its Seal and the signatures of its duly authorized officers to be affixed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**Board of Trustees  
Georgia Municipal Employees  
Benefit System**

(SEAL)

\_\_\_\_\_  
Secretary



**SERVICE CREDIT PURCHASE  
ADDENDUM TO THE  
GEORGIA MUNICIPAL EMPLOYEES BENEFIT SYSTEM  
DEFINED BENEFIT RETIREMENT PLAN  
ADOPTION AGREEMENT**

This is an Addendum to the Adoption Agreement completed by the City of Cartersville, Georgia. It modifies the Adoption Agreement to provide for service credit purchases for eligible Participants in the Retirement Plan for the Employees of the City of Cartersville, in accordance with and subject to the following requirements:

- (1) **Service Credit Purchase; Eligibility Requirements.** Subject to any conditions specified in Section 13.B. or 13.C. of the Adoption Agreement and in this Service Credit Purchase Addendum, Participants in this Plan who are actively employed on or after September 1, 2023, and who were initially employed prior to July 1, 2023, may purchase credit under this Plan for the Participant’s full-time Service with the City during the participant’s “waiting period” (i.e., from the Participant’s date of hire as an Eligible Employee until the date on which the Participant commenced participation in the Plan). The purchase of prior service credit is permitted but not required under this Plan. Such purchases will be allowed to the extent permitted by law, subject to any conditions, proofs, or acceptance that the Pension Committee Secretary or GMEBS deem appropriate.
- (2) **Use of Purchased Service Credit.** Subject to any conditions or limitations provided in this Addendum, service credit purchased hereunder will be counted as Credited Service for purposes of (check all that apply):
- computing the amount of benefits payable under the Plan;
  - meeting the minimum service requirements for vesting under the Plan;
  - meeting the minimum service requirements for benefit eligibility under the Plan.
- (3) **Application to Purchase Service Credit.** A Participant who meets the eligibility requirements specified in paragraph (1) above and who

- wishes to purchase eligible service credit as described in paragraph (1) above may apply for such purchase by completing and submitting to the Pension Committee Secretary an application form provided for that purpose. Participants will be responsible for providing the Pension Committee Secretary with any information or documentation that the Pension Committee Secretary deems necessary to establish that the Participant's service is eligible for purchase under paragraph (1) above.
- (4) **Window Period for Application.** In order to purchase service credit, eligible Participants may submit the service credit purchase application during the period of October 1, 2023 – November 30, 2023, and October 1, 2024 – November 30, 2024. If a Participant does not submit a completed application to purchase service credit within the designated window period, the Participant will not be permitted to purchase service credit. As a precondition for approval of his or her application, the Participant will be responsible for providing the Pension Committee Secretary with any additional information or documentation that the Pension Committee Secretary deems necessary to establish that the Participant's service is eligible for purchase under paragraph (1) above. Notwithstanding any provision herein to the contrary, no Participant may apply for or purchase prior service credit after his or her termination of employment.
- (5) **Review by Pension Committee Secretary.** Within 30 days after the end of the application period, the Pension Committee Secretary will review the Participant's application to purchase service credit and will determine whether the application should be accepted. Upon approval of an application by the Pension Committee Secretary, the Pension Committee Secretary will certify on the application the number of years and months of prior service that are eligible for purchase under paragraph (1) above.
- (6) **Fee for Cost Study.** As a precondition for approval of the application to purchase service credit, and prior to the commencement of any cost study, Participants may be required by the Employer to pay all or a portion of the GMEBS actuarial cost study fee(s) associated with determining the cost to purchase the Participant's eligible service credit. Any portion of the fee that the Participant is not required to pay will be paid by the Employer.

- (7) **Actuarial Study to Determine Cost of Purchase.** In the event that a cost study has not been undertaken prior to the Participant's submission of a completed application to purchase service credit, if the Participant's application to purchase is approved by the Pension Committee Secretary, a cost study will be undertaken as soon as reasonably practicable after the application has been approved, in order to determine the actuarial cost relating to the Participant's prior service that is eligible for purchase.
- (8) **Lump Sum Payment Required Within 120 Days.** Upon completion of the cost study, the Pension Committee Secretary will notify the Participant of the lump sum amount required to purchase prior service credit, as reflected in the cost study. Within 120 days of receiving this notice or of receiving notice of the Pension Committee's approval of the Participant's application to purchase service credit, whichever is later, the Participant shall remit said lump sum amount in the form and manner required by paragraphs (9)-(11) below, the Pension Committee Secretary, and GMEBS. The Participant may remit less than the full lump amount necessary to purchase all of the prior service credit which is eligible for purchase, in which case the percentage of service credit awarded will be equal to the percentage of the full amount remitted. The Pension Committee Secretary shall have the authority to extend the 120-day time period for payment of lump sum amounts required to purchase service credit if, for reasons outside the control of the Participant, payment cannot be made within the 120-day period. However, the time limit for payment will not be extended any later than an additional 120 days and in no event may a Participant make such payment after his or her termination of employment.
- (9) **Method of Payment.** To the extent permitted by the Internal Revenue Code and regulations issued thereunder, the lump sum amount referred to in paragraph (8) above may be paid via one or more of the following sources: (1) a direct trustee-to-trustee transfer from a 401(a) qualified retirement plan, a governmental 457(b) deferred compensation plan or a 403(b) tax sheltered annuity; (2) a qualified rollover from a governmental 457(b) plan, 403(b) tax-sheltered annuity plan, 401(a) qualified plan, 403(a) annuity plan, or a 408(a) or 408(b) individual retirement account or annuity (traditional IRA); or (3) a lump sum contribution of after-tax funds. Participants shall be solely responsible

for effecting the payment referred to herein. Participants will not be permitted to purchase credit via payroll deduction.

- (10) **Limitation on Amount of Lump Sum Payment.** If the lump sum amount referred to in paragraph (8) is paid via any method other than as described under paragraph (9)(1) or (9)(2) above, then the Participant shall not be permitted to contribute to the Plan in any calendar year an amount which exceeds any applicable limit specified in Internal Revenue Code Section 415.
- (11) **IRC 415, Other Limitations.** Notwithstanding any other provision of the Adoption Agreement or this Addendum to the contrary, the Plan will not accept and shall return without interest any contribution or portion of a contribution made to purchase service credit if such contribution would result in a violation of the applicable limitations established under Internal Revenue Code Section 415(b), (c), or (n) or any other provision of law or the Plan, or if it is later determined that the Participant's prior service is not eligible for purchase, and any prior service credit attributable to said contribution or portion of a contribution will be forfeited.
- (12) **Return of Contributions.** Contributions made to purchase prior service credit shall be used to fund retirement and death benefits payable under the Plan relating to such credit. Contributions shall not otherwise be refundable to the Participant or any other person, except as otherwise provided in this paragraph (12) or in Section 13.06 or 18.04 of the Master Plan Document (concerning failure to exhaust or termination of the Plan, respectively). Participants (check one):
- will not be permitted to withdraw contributions made to purchase prior service credit upon termination of employment (Participants must be vested to purchase prior service credit).
  - will not be permitted to withdraw contributions made to purchase prior service credit upon termination of employment, unless they are not vested upon termination (Participants are not required to be vested to purchase prior service credit).
  - will be permitted to withdraw contributions made to purchase service credit upon termination of employment, subject to the provisions of Section 13.03(c) of the Master Plan Document

concerning the effect of withdrawal. For purposes of determining the amount of any refund of contributions made to purchase service credit, said contributions shall be credited with interest at 0% (but see General Addendum subsection 16(i) concerning the rate of interest in the event of failure to exhaust), subject to any limitations on the crediting of interest in Section 13.03(c) of the Master Plan Document.

- will be permitted to withdraw contributions made to purchase service credit upon termination of employment, subject to the following conditions for repayment (must describe):

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**Note:** Partial withdrawal of employee contributions is not permitted. If the Participant withdraws contributions made to purchase service credit, the Participant will forfeit any and all service credit and/or benefits attributable to such purchase for all purposes.

**(13) Repayment Upon Reemployment.** If the Participant returns to employment with the Employer after having withdrawn his contributions made to purchase prior service credit, the Participant (check one):

- not applicable (withdrawal not permitted).
- will not be permitted to re-purchase said service credit upon reemployment.
- will be permitted to re-purchase said service credit upon reemployment, based on the actuarial cost of such service credit, taking into account the additional actuarial cost of any benefit enhancements adopted prior to reemployment pursuant to paragraph (14) below, provided that the Participant makes application for such re-purchase within [insert time limit] after reemployment and provided the Participant effects payment for such re-purchase in accordance with and subject to the provisions of this Addendum within [insert time limit] after the application is approved.
- will be permitted to re-purchase said service credit upon reemployment, subject to the following conditions for

**repayment (must describe other repayment method): A Participant who returns to employment with the City after having withdrawn Contributions made to purchase prior service credit shall be subject to the applicable provisions of Section 13.03(d) and (e) of the Master Plan concerning repayment of Employee Contributions for the purpose of restoring Credited Service under this Plan that was previously forfeited by virtue of the Participant's withdrawal of Employee Contributions, provided, that the period of time between the Participant's Termination of employment and the Participant's date of reemployment is less than or equal to five (5) years. If a Participant returns to employment more than five (5) years after his or her most recent Termination of employment, the Participant will not be eligible to repay withdrawn Employee Contributions or restore previously forfeited Credited Service under the Plan.**

**(14) Definition of Actuarial Cost. The cost to purchase qualifying prior service credit shall be determined based upon the actuarial cost of said prior service credit. In applying the provisions of the Adoption Agreement and this Service Credit Purchase Addendum, the term "actuarial cost of prior service credit" means:**

- the actuarial accrued liability relating to such prior service as determined by the GMEBS actuary and calculated using the actuarial assumptions and methods established for this purpose in the funding policy adopted by the GMEBS Board of Trustees.**
- Other (must specify other method of determining actuarial cost for this purpose): \_\_\_\_\_.**

The terms of the foregoing Service Credit Purchase Addendum to the Adoption Agreement are approved by the Mayor and Council of the City of Cartersville, Georgia this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Attest: CITY OF CARTERSVILLE, GEORGIA

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor

(SEAL)

Approved:

\_\_\_\_\_  
City Attorney

The terms of the foregoing Service Credit Purchase Addendum are approved by the Board of Trustees of the Georgia Municipal Employees Benefit System.

IN WITNESS WHEREOF, the Board of Trustees of the Georgia Municipal Employees Benefit System has caused its Seal and the signatures of its duly authorized officers to be affixed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Board of Trustees  
Georgia Municipal Employees  
Benefit System

(SEAL)

\_\_\_\_\_  
Secretary



## CITY COUNCIL ITEM SUMMARY

<b>MEETING DATE:</b>	August 3, 2023
<b>SUBCATEGORY:</b>	First Reading of Ordinances
<b>DEPARTMENT NAME:</b>	Administration
<b>AGENDA ITEM TITLE:</b>	Amendment to Retirement Plan Ordinances
<b>DEPARTMENT SUMMARY RECOMMENDATION:</b>	Moving to GMEBS creates a need to amend several of our existing retirement plan ordinances. Upon second reading, I recommend approval of these amendments.
<b>LEGAL:</b>	Reviewed by Archer & Lovell



**Ordinance no. \_\_\_\_\_**

Now be it and it is hereby ordained by the Mayor and City Council of the City of Cartersville, that the CITY OF CARTERSVILLE CODE OF ORDINANCES. CHAPTER 16 – PERSONNEL. ARTICLE II. - EMPLOYEE BENEFITS. DIVISION 2. RETIREMENT PLAN. SEC. 16-51. ADOPTED; SHORT TITLE; DEFINITION is hereby amended by deleting in its entirety and replacing it as follows:

1.

**Sec. 16-51. Adopted; short title; definition.**

- (a) The Cartersville Retirement Plan was created on April 15, 1967 with Lincoln National Life Insurance Company, Fort Wayne, Indiana, and in 2011 the plan's assets were transferred over to Benefit Trust Company, a Kansas company, a copy of which is on file in the office of the city manager. In 2021, the plan's assets were transferred to the Salem Trust Company, a copy of the agreement is on file at the city clerk's office. In September 2023, the plan assets were transferred to the Georgia Municipal Employees Benefit System (GMEBS). The retirement plan and all of its business shall be transacted and all of its funds shall be invested by GMEBS; and, all of its cash, securities and other property, shall be held in trust by GMEBS, for the purposes set forth in this plan.
- (b) As used in this division, "retirement plan" or "plan" means the Cartersville Retirement Plan as incorporated in subsection (a).
- (c) That the 1967 pension plan document as amended and restated as of July 1, 2023 was adopted by the city council on August 3, 2023. A copy of the 1967 pension plan is kept by and maintained at the city clerk's office. This plan covers employees hired before January 1, 2017.
- (d) That the 2017 pension plan document as amended and restated as of July 1, 2023 was adopted by the city council on August 3, 2023. A copy of the 2017 pension plan is kept by and maintained at the city clerk's office. This plan covers employees hired on or after January 1, 2017.
- (e) Upon adoption of an amendment to the pension plan, the proper officers of the employer and the pension board are hereby authorized and directed to take each other and further action on the advice of counsel, including the making of additional amendments not inconsistent with the general tenor of the foregoing, so that the plan, as amended, continues to meet the qualification requirements of Section 401(a) of the Internal Revenue Code of 1986, as amended (the "code"), and the implementing trust thereunder continues to be tax-exempt under said code, and the 2017 plan , as amended, satisfies the qualification requirements of Section 401(a) of the code, and the implementing trust thereunder is tax-exempt under said code.

2.

It is the intention of the city council and it is hereby ordained that the provisions of this ordinance shall become and be made a part of the Code of Ordinances, City of Cartersville, Georgia, and the sections of this Ordinance may be renumbered and/or alphabetized accordingly to accomplish such intention.

BE IT AND IT IS HEREBY ORDAINED

FIRST READING: \_\_\_\_\_

SECOND READING: \_\_\_\_\_

\_\_\_\_\_  
MATTHEW J. SANTINI, MAYOR

ATTEST: \_\_\_\_\_  
JULIA DRAKE, CITY CLERK

Ordinance no. \_\_\_\_\_

Now be it and it is hereby ordained by the Mayor and City Council of the City of Cartersville, that the CITY OF CARTERSVILLE CODE OF ORDINANCES. CHAPTER 16 – PERSONNEL. ARTICLE II. - EMPLOYEE BENEFITS. DIVISION 2. RETIREMENT PLAN. SEC. 16-58. EARLY RETIREMENT FOR POLICE AND FIRE PERSONNEL is hereby amended by deleting section (c) only and replacing it as follows:

1.

**Sec. 16-58. Early retirement for police and fire personnel.**

(c) Employee's hired on or before July 20, 2000 within the police and fire department who elect to retire early under this retirement option, are eligible to continue insurance coverage under the city's medical, dental and life insurance plan, but must pay the entire insurance premium between the age of fifty (50) and fifty-five (55). A retiree under this early retirement option who elects not to continue participation with the city's insurance provider would relinquish their right to all future insurance coverage through the city.

2.

All other existing provisions of Sec. 16-58 not changed herein, shall remain as is.

3.

It is the intention of the city council and it is hereby ordained that the provisions of this ordinance shall become and be made a part of the Code of Ordinances, City of Cartersville, Georgia, and the sections of this Ordinance may be renumbered and/or alphabetized accordingly to accomplish such intention.

BE IT AND IT IS HEREBY ORDAINED

FIRST READING: \_\_\_\_\_

SECOND READING: \_\_\_\_\_

\_\_\_\_\_  
MATTHEW J. SANTINI, MAYOR

ATTEST: \_\_\_\_\_

JULIA DRAKE, CITY CLERK

**Ordinance no. \_\_\_\_\_**

Now be it and it is hereby ordained by the Mayor and City Council of the City of Cartersville, that the CITY OF CARTERSVILLE CODE OF ORDINANCES. CHAPTER 16 – PERSONNEL. ARTICLE II. - EMPLOYEE BENEFITS. DIVISION 2. RETIREMENT PLAN. SEC. 16-59. DISABILITY is hereby amended by deleting it in its entirety and replacing it as follows:

1.

**Sec. 16-59. Reserved.**

2.

It is the intention of the city council and it is hereby ordained that the provisions of this ordinance shall become and be made a part of the Code of Ordinances, City of Cartersville, Georgia, and the sections of this Ordinance may be renumbered and/or alphabetized accordingly to accomplish such intention.

BE IT AND IT IS HEREBY ORDAINED

FIRST READING: \_\_\_\_\_

SECOND READING: \_\_\_\_\_

\_\_\_\_\_  
MATTHEW J. SANTINI, MAYOR

ATTEST: \_\_\_\_\_

JULIA DRAKE, CITY CLERK

**Ordinance no. \_\_\_\_\_**

Now be it and it is hereby ordained by the Mayor and City Council of the City of Cartersville, that the CITY OF CARTERSVILLE CODE OF ORDINANCES. CHAPTER 16 – PERSONNEL. ARTICLE II. - EMPLOYEE BENEFITS. DIVISION 2. RETIREMENT PLAN. SEC. 16-60. DISABILITY RETIREMENT is hereby amended by deleting it in its entirety and replacing it as follows:

1.

**Sec. 16-60. Reserved.**

2.

It is the intention of the city council and it is hereby ordained that the provisions of this ordinance shall become and be made a part of the Code of Ordinances, City of Cartersville, Georgia, and the sections of this Ordinance may be renumbered and/or alphabetized accordingly to accomplish such intention.

BE IT AND IT IS HEREBY ORDAINED

FIRST READING: \_\_\_\_\_

SECOND READING: \_\_\_\_\_

\_\_\_\_\_  
MATTHEW J. SANTINI, MAYOR

ATTEST: \_\_\_\_\_  
JULIA DRAKE, CITY CLERK

**Ordinance no. \_\_\_\_\_**

Now be it and it is hereby ordained by the Mayor and City Council of the City of Cartersville, that the CITY OF CARTERSVILLE CODE OF ORDINANCES. CHAPTER 16 – PERSONNEL. ARTICLE II. - EMPLOYEE BENEFITS. DIVISION 2. RETIREMENT PLAN. SEC. 16-61. DISABILITY RETIREMENT BENEFITS is hereby amended by deleting it in its entirety and replacing it as follows:

1.

**Sec. 16-61. Reserved.**

2.

It is the intention of the city council and it is hereby ordained that the provisions of this ordinance shall become and be made a part of the Code of Ordinances, City of Cartersville, Georgia, and the sections of this Ordinance may be renumbered and/or alphabetized accordingly to accomplish such intention.

BE IT AND IT IS HEREBY ORDAINED

FIRST READING: \_\_\_\_\_

SECOND READING: \_\_\_\_\_

\_\_\_\_\_  
MATTHEW J. SANTINI, MAYOR

ATTEST: \_\_\_\_\_

JULIA DRAKE, CITY CLERK

**Ordinance no. \_\_\_\_\_**

Now be it and it is hereby ordained by the Mayor and City Council of the City of Cartersville, that the CITY OF CARTERSVILLE CODE OF ORDINANCES. CHAPTER 16 – PERSONNEL. ARTICLE II. - EMPLOYEE BENEFITS. DIVISION 2. RETIREMENT PLAN. SEC. 16-62. COURT ORDER RETIREMENT BENEFITS is hereby amended by deleting it in its entirety and replacing it as follows:

1.

**Sec. 16-62. Reserved.**

2.

It is the intention of the city council and it is hereby ordained that the provisions of this ordinance shall become and be made a part of the Code of Ordinances, City of Cartersville, Georgia, and the sections of this Ordinance may be renumbered and/or alphabetized accordingly to accomplish such intention.

BE IT AND IT IS HEREBY ORDAINED

FIRST READING: \_\_\_\_\_

SECOND READING: \_\_\_\_\_

\_\_\_\_\_  
MATTHEW J. SANTINI, MAYOR

ATTEST: \_\_\_\_\_  
JULIA DRAKE, CITY CLERK



## CITY COUNCIL ITEM SUMMARY

<b>MEETING DATE:</b>	August 3, 2023
<b>SUBCATEGORY:</b>	Bid Award/Purchases
<b>DEPARTMENT NAME:</b>	Parks and Recreation
<b>AGENDA ITEM TITLE:</b>	Loftness Mulcher Head for Skid Steer
<b>DEPARTMENT SUMMARY RECOMMENDATION:</b>	Parks and Recreation requests to purchase a 61” loftness mulcher head for the skid steer to improve the efficiency of clearing and maintaining properties. This item will be shared among departments. Sunbelt Rentals had the lowest quote of \$33,000. The request is not budgeted, but funds are available in the general fund.
<b>LEGAL:</b>	N/A





PC#: 1503  
 13 CENTER RD SE  
 CARTERSVILLE, GA 30121 2942  
 770-382-7368

SUNBELT RENTALS, INC.

Job Site:  
 PARKS AND REC  
 100 PINE GROVE RD.  
 CARTERSVILLE, GA 30120  
  
 C#: 770-387-5642 J#: 770-607-6298

**EQUIPMENT SALE QUOTE**



Customer: 6211664  
 CITY OF CARTERSVILLE  
 PO BOX 1390  
 CARTERSVILLE, GA 30120

Invoice #... 141642594  
 Invoice date 7/06/23  
  
 Quote date.. 9/04/23  
 Job Loc..... 100 PINE GROVE RD., CARTERSVILLE  
 Job No..... 1 - PARKS AND REC  
 P.O. #..... MULCHER  
 Ordered By.. BRYANT, SHANNON  
 NET 30

Qty	Equipment #	Price	Wght (lbs)	Amount
1.00	10909024 CC: 049-0051 MULCHER HEAD FOR SKIDSTEER Make: LOFTNESS Model: MULCHI HEAD 61" Serial #: 84-1527	33000.00		33000.00
Sub-total:				33000.00
Total:				33000.00

All amounts are in USD

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IF THE EQUIPMENT DOES NOT WORK PROPERLY, NOTIFY THE OFFICE AT ONCE	MULTIPLE SHIFTS OR OVERTIME RATES MAY APPLY	CUSTOMER IS RESPONSIBLE FOR REFUELING, DAMAGES AND REPAIRS
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1. The total charges are an estimate based on the estimated rental period and other information provided by Customer.
2. Customer assumes all risks associated with the Equipment during the Rental Period, including injury and damage to persons, property and the Equipment.
3. Customer is responsible for and shall only permit properly trained, Authorized Individuals to use the Equipment.
4. If the Equipment does not operate properly, is not suitable for Customer's intended use, does not have operating and safety instructions or Customer has any questions regarding use of the Equipment, Customer shall not use the Equipment and shall contact Sunbelt immediately.
5. Equipment misuse or using damaged or malfunctioning Equipment may result in serious bodily injury or death and Customer agrees that Customer (i) assumes all risk associated thereunder, and (ii) indemnifies Sunbelt Eastlco for all claims or damages as a result of misuse or use of damaged or malfunctioning Equipment.
6. Customer has received, read, understands and agrees to the estimated charges and all the terms on this page, plus all sections on the reverse side of this Contract ("Sections"), including Release and Indemnification in Section B and Environmental Fee in Section 10, which can also be found at [www.sunbeltrentals.com/rentalscontract](http://www.sunbeltrentals.com/rentalscontract). \*Delivery/Pickup Surcharge fee explanation is available at [www.sunbeltrentals.com/surcharge](http://www.sunbeltrentals.com/surcharge).
7. Customer must contact Sunbelt to request pickup of Equipment, retain the Pick-Up Number given by Sunbelt and will be responsible for Equipment until actually retrieved by Sunbelt.
8. Customer waives its right to a jury trial in any dispute as set forth in Section 18.
9. At the election of Sunbelt or Customer, Customer agrees to submit every dispute to arbitration and waives any right to bring a class action as set forth in Section 28.

Customer is declining Rental Protection Plan (see reverse side for details) \_\_\_\_\_ (Customer Initials)

Customer Signature	Date	Name Printed	Delivered By	Date
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\*\* www.sunbeltrentals.com \*\*

EQPSALE (Rev 01/31/2)

# Franklin Tractor Co

## Quote for City of Cartersville Parks and Rec.

1. LOFTNESS 61" MULCHING HEAD ( 61BSH44B1)
  - VARIABLE DISPLACEMENT PISTON MOTOR
  - QUADCO REVERSIBLE KNIVES

\$37, 800.00 ( 3-4 WEEK LEAD TIME )

Prepared by:  
Daniel Teal  
Franklin Tractor



## CITY COUNCIL ITEM SUMMARY

<b>MEETING DATE:</b>	August 3, 2023
<b>SUBCATEGORY:</b>	Bid Award/Purchases
<b>DEPARTMENT NAME:</b>	Police Department
<b>AGENDA ITEM TITLE:</b>	Fingerprint Machine Replacement
<b>DEPARTMENT SUMMARY RECOMMENDATION:</b>	<p>The Police Department is requesting approval to purchase a replacement fingerprint machine. Our current fingerprint machine is constantly malfunctioning and is over ten years old. Fibercom personnel recommended purchasing an IDEMIA fingerprint machine after researching different companies. The cost is \$27,634.00 and is a budgeted request.</p> <p>The E-Verify and E-Save documents have been submitted to the police department and are on file. I am requesting your support and recommendation for this purchase.</p>
<b>LEGAL:</b>	N/A



# City of Cartersville

P O L I C E      D E P A R T M E N T

## Memorandum

**To** : Dan Porta, City Manager  
**From** : Chief Frank L. McCann  
**Date** : July 27, 2023  
**Ref** : Replacement fingerprint machine for the PD.

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I am requesting approval to purchase a replacement fingerprint machine for the PD. Our current fingerprint machine is constantly malfunctioning and is over ten years old. Fibercom personnel requested that we purchase IDEMIA fingerprint machine after doing a lot of research on the different companies. The cost for a fingerprint machine is \$27,634.00.

This is a budgeted item and the E-Verify and E-Save documents have been submitted to the police department and are on file. I am requesting your support and recommendation for this purchase.



11951 Freedom Drive, Suite 1800  
Reston, Virginia 20190

July 20, 2023

Cherie Hames  
Systems Administrator  
City of Cartersville  
Police Department  
Cartersville, GA  
Tel: (770) 607-1158 | Cell: (404) 925-0087  
Email: [chames@cartersvillega.gov](mailto:chames@cartersvillega.gov)

cc: Jeremy Maxwell | Email: [jmaxwell@cartersvillega.gov](mailto:jmaxwell@cartersvillega.gov)

**Reference No. IDGA-L071223-01A**

IDEMIA is pleased to provide City of Cartersville with the following price quote for the IDEMIA LiveScan System equipped with the accepted standard State of Georgia software and workflows.

**IDEMIA's fully integrated LiveScan solution provides City of Cartersville the following features and benefits:**

- ◆ Single-source vendor for all components of the LiveScan solution, including the AFIS interface for records submission to the State.
- Certification to the FBI's Electronic Fingerprint Transmission Specifications
- ◆ "Hit/No Hit" Response from the State AFIS Search
- ◆ Automatic fingerprint sequencing and duplicate print checking before scanning is completed, ensuring data integrity
- ◆ Quick check, review, and edit can be performed on each print
- ◆ All LiveScan Systems include on-site installation, training, and 1 year on-site warranty

**Solution Description and Pricing**

IDEMIA offers the equipment and services described in Table 1 - Tenprint (Fingerprint)/Palm Capture.

**Tenprint/Palm Capture – Cabinet Adjustable Height (AH)** Table 1. Pricing Price source: SL-LAWENF

	Description	Unit Price
TPE-5600-ED TPE-CSTX-GA TPE-CSTX-GAPALM TPE-COMX-NECFTP TPE-COMX-RMPOP3 TPE-SWOX-DIXML TP-IAT-CUSTOM 47FRT	<b>IDEMIA LiveScan System Cabinet AH Tenprint/Palm Capture, including:</b> <ul style="list-style-type: none"> <li>◆ IDEMIA LiveScan System Software</li> <li>◆ FBI Appendix F Certified Tenprint/Palm 500PPI Scanner with Moisture Discriminating Optics Scanner™ (MDO) Block Technology</li> <li>◆ Computer, Monitor, keyboard</li> <li>◆ Ruggedized Cabinet – Adjustable Height</li> <li>◆ Standard Georgia defined Workflows and profiles</li> <li>◆ Demographics Interface XML</li> <li>◆ Installation / On-site Training</li> <li>◆ <b>Warranty:</b> 1 Year <b>On-site Advantage</b> Solution warranty, 9X5, Next day on-site response and parts replacement</li> <li>◆ Freight</li> </ul>	<b>\$22,386</b>
	<b>Optional Annual Maintenance:</b> 1 Year On-site <b>Advantage</b> Solution, 9X5, Next day on-site response and parts replacement	<b>\$3,627</b>

Current shipping is 60+ days after receipt by IDEMIA receipt of City of Cartersville completed pre-install documentation, or as otherwise scheduled.

Optional Annual Maintenance Support will start immediately following the 1st Year Warranty. Annual Maintenance prices shown above are for Year 2 only. Annual maintenance pricing is subject to increase beginning in Year 3. Please contact the IDEMIA Maintenance Agreement team for pricing details: sec.alx.servicecontracts@idemia.com.

**Options and Pricing**

IDEMIA equipment options and pricing described in Table 2. **Options Pricing**

	Description	Unit Price	Annual Maintenance
TPE-PRT-DUP	Printer Black & White Tenprint Card, Duplexer	<b>\$1,409</b>	<b>\$212</b>

**IDEMIA LiveScan System – Details** Table 3. Details

Item	Description
Georgia Enterprise Customization	<ul style="list-style-type: none"> <li>◆ 500 DPI finger Capture</li> <li>◆ CAR CNA, JUV, APP, and SOT transactions</li> <li>◆ Prints: FD249, FD884, FD258 and FD258 w/o Demographics DBI 'Flat' (UI) and FCS (JSU) importer options available</li> <li>◆ Transmit: to GBI NATMS, AFIX Tracker® (Type 1,2,4,10)</li> <li>◆ Transmit: to local SMTP Server (Type 1,2,4,10,15)</li> <li>◆ Standard NATMS response; Standard NATMS Table downloads</li> <li>◆ TouchPrint Enterprise customization <a href="#">for Palm capture Systems</a></li> </ul>
TPE-COMX-NECFTP	◆ NATMS AFIS Protocol Support w/ FTP: Compression Support Package with FTP - support for NEC NATMS Protocol Communications over TCP/IP/FTP Wide Area Network Connections w/ WSQ compression.
TPE-COMX-RMPOP3	◆ TouchPrint™ POP3 Client Messaging: provides automated POP3 Client interface to City of Cartersville-supplied POP3 Mail Server address for back-channel text messages or NIST Records to Message Log or Record List.
TPE-SWOX-DIXML	◆ Demographic Interface (DI) - allows XML files to be imported into LiveScan--specific to IDEMIA. Files can be pushed to or pulled down by LiveScan via FTP, SMTP, or Windows File Share.

**Customer Responsibilities**

City of Cartersville is responsible for the following:

- ◆ Providing necessary facility resources required for equipment installation and operation including access, space, environmental control, electrical power and networking.

- ◆ Provide a technical point of contact for IDEMIA who will be the primary person responsible for providing and/or coordinating obtainment of site installation pre-requisite information such as network information, IP addresses, power information, etc.
- ◆ Obtain and maintain the required transmission lines and hardware for remote communications to and from the necessary agencies.
- ◆ Compliance with any requirements using receiving agency approved method for electronic transfer
- ◆ Installation, testing and troubleshooting any network communication connections, lines and/ or City of Cartersville network devices.
- ◆ Obtain all required authorizations for connectivity.
- ◆ Completion and return of IDEMIA pre-install documentation to IDEMIA Program Team.
- ◆ Printer supplies such as ink and toner cartridges (consumables) are City of Cartersville responsibility. IDEMIA does not offer or resell these items.

### Assumptions

In developing this price quote, IDEMIA has made the following assumptions:

- ◆ The proposed IDEMIA LiveScan System shall conform to the existing IDEMIA LiveScan configuration. Any additional functional requirements may be treated as change orders.
- ◆ An inter-agency agreement between City of Cartersville and applicable receiving agencies will be in place.
- ◆ City of Cartersville will provide all necessary communication for connectivity. This includes, but is not limited to hubs, routers, modems, etc.
- ◆ LiveScan System shipment and on-site Installation Services will be scheduled after network connectivity has been established and verified and IDEMIA's Program team has received the completed pre-install documentation from City of Cartersville.

The following items are not included in the scope of IDEMIA's pricing and will be quoted based on current service rates in effect at the time of request: (a) requests for IDEMIA assistance / completion of any agency or governing body required security documentation, surveys or questionnaires; (b) requests for IDEMIA support and potential resolution of issues resulting from agency vulnerability assessments, penetration testing and/or security audits.

Additional engineering efforts by IDEMIA beyond the scope of the standard product will be quoted based on current service rates in effect at the time of the change, plus any related travel or administrative expenses. Assistance with training and questions for the City of Cartersville's database or any programming, scripting, or review of programs beyond work quoted above are excluded from this offer.

Prices exclude any and all state, or local taxes, or other fees or levies. Customer payments are due to IDEMIA within 20 days of the date of the invoice.

Product purchase will be governed by the IDEMIA Agreement, a copy of which is attached. No subsequent purchase order can override such terms. Nothing additional shall be binding upon IDEMIA unless a subsequent agreement is signed by both parties.

Firm delivery schedules will be provided upon receipt of a purchase order and IDEMIA receipt of completed pre-install documentation.

IDEMIA reserves the right to substitute hardware of equal value with equal or better capability, based upon market availability. If, however, such equipment is unavailable, IDEMIA will make its best effort to provide a suitable replacement.

### Pricing valid through: September 30, 2023

Purchase orders should be sent to IDEMIA by electronic mail or U.S. postal mail to:

**IDEMIA**  
14 Crosby Dr., 2<sup>nd</sup> Floor  
Bedford, MA 01730  
Email: [jayne.goodall@us.idemia.com](mailto:jayne.goodall@us.idemia.com) | [anamtkorders@us.idemia.com](mailto:anamtkorders@us.idemia.com)

Please direct all questions and order correspondence to:

**Jayne Goodall**  
**IDEMIA Inside Sales**  
Email: [jayne.goodall@us.idemia.com](mailto:jayne.goodall@us.idemia.com) | Tel: (951) 833-2311

We look forward to working with you.

Sincerely,



Casey Mayfield  
Vice President Justice and Public Safety - IDEMIA Identity & Security USA LLC



### Advantage Solution Support

The following table provides a summary of the maintenance services and support available during warranty and following warranty expiration. Initial warranty period is 1 year from the date of installation.

Support Features	Warranty	Post Warranty
<b>Software Support 9X5*</b>	<b>Included in Warranty</b>	<b>Available for purchase</b>
Unlimited Telephone Technical Support	√	√
2 Hour Telephone Response Time	√	√
Remote Dial-in Analysis	√	√
Software Standard Releases	√	√
Software Supplemental Releases	√	√
Automatic Call Escalation	√	√
Software Customer Alert Bulletins	√	√
<b>Hardware Support – On-site 9X5*</b>	<b>Included in Warranty</b>	<b>Available for purchase</b>
On-Site Response	24-hours	√
On-Site Corrective Maintenance	√	√
On-Site Parts Replacement	√	√
Preventive Maintenance	√	√
Escalation Support	√	√
Hardware Service Reporting	√	√
Hardware Customer Alert Bulletins	√	√
<b>Parts Support</b>	<b>Included in Warranty</b>	<b>Available for purchase</b>
Advanced Exchange Parts Replacement	√	√
Telephone Technical Support for Parts Replacement	√	√
Parts Customer Alert Bulletins	√	√
<b>Software Uplifts</b>		
Hours of Coverage Available up to 24 Hours Per Day, 7 Days/Week	Optional	Optional
<b>Hardware Uplifts</b>		
Hours of Coverage Available up to 24 Hours Per Day, 7 Days/Week	Optional	Optional

\*Customer local time

By signing this signature block below, City of Cartersville agrees to the terms and pricing stated in this price quote for the products and services as referenced above. My signature below constitutes the acceptance of this offer and authorizes IDEMIA to ship and provide these products and services.

Signature Authorization for Order:

Signature \_\_\_\_\_  
Name \_\_\_\_\_  
Date \_\_\_\_\_

Total Purchase Price (including any Options): \$ \_\_\_\_\_

**PLEASE ENTER TOTAL ORDER AMOUNT ON ABOVE LINE**

**PLEASE PROVIDE A COPY OF CURRENT TAX EXEMPTION CERTIFICATE (if applicable).**

Please provide Billing Address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Billing Contact name \_\_\_\_\_

Telephone number (      ) \_\_\_\_\_

Email \_\_\_\_\_

Check if Billing Address is same as Shipping Address:

Please provide Shipping Address (if different from Billing Address):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Technical Contact name \_\_\_\_\_

Telephone number (      ) \_\_\_\_\_

Email \_\_\_\_\_

**Idemia Identity & Security USA LLC Short Form Sales Agreement**

1. Scope. Idemia Identity & Security USA LLC, ("IDEMIA" or "Seller") having a place of business at 11951 Freedom Drive, Suite 1800, Reston, Virginia 20190 and \_\_\_\_\_, ("Customer"), having a place of business at \_\_\_\_\_,

enter into this Sales Agreement ("Agreement"), pursuant to which IDEMIA will sell to Customer and Customer will purchase from Seller the equipment, parts, software, or services related to the equipment (e.g., installation) described in Seller's Proposal or Letter Quote dated \_\_\_\_\_. These terms and conditions, together with the Proposal or Quote, comprise the "Agreement." Customer may indicate its acceptance of this Agreement by signing below or by issuing a purchase order that refers to either the Proposal/Quote or to a Customer solicitation to which the Proposal/Quote responds. Only these terms and conditions apply to the transaction, notwithstanding any inconsistent or additional terms and conditions contained in the purchase order or Customer solicitation.

2. Price, Payment and Sales Terms. The Contract Price is U.S. \$\_\_\_\_\_, excluding applicable sales, use, or similar taxes. Seller will submit invoices to Customer for products when they are shipped and, if applicable, for services when they are performed. Customer will make payments to Seller within twenty (20) days after the invoice date. Unless otherwise stipulated with the Seller when an Order is accepted, the Equipment will be delivered by Seller "FCA" (Free Carrier), with named place being the Seller's premises where the Goods are being dispatched, (Incoterms 2010). Title to the Equipment will pass to Customer upon payment in full of the Contract Price as outlined above, except that title to Software will not pass to Customer at any time. Risk of loss will pass to Customer upon delivery of the Equipment to the Customer at the agreed named place of delivery in accordance with the Incoterm in the contract. Seller will pack and ship all Equipment in accordance with good commercial practices.

3. Software. If this transaction involves software, any software owned by Seller ("IDEMIA Software") is licensed to Customer solely in accordance with Seller's Software License Agreement ("SLA"), which is attached as Exhibit A and incorporated herein by this reference. Any software owned by a third party ("Non-IDEMIA Software") is licensed to Customer in accordance with the standard license, terms, and restrictions of the copyright owner unless the owner has granted to Seller the right to sublicense its software pursuant to the SLA, in which case the SLA applies and the owner will have all rights and protections under the SLA as the Licensor. Seller makes no representations or warranties of any kind regarding Non-IDEMIA Software.

4. Express Limited Warranty and Warranty Disclaimer. IDEMIA Software is warranted in accordance with the SLA.

5. Delays and Disputes. Neither party will be liable for its non-performance or delayed performance if caused by an event, circumstance, or act of a third party that is beyond a party's reasonable control (a "Force Majeure"). Each party will notify the other if it becomes aware of a Force Majeure that will significantly delay performance. The parties will try to settle any dispute arising from this Agreement (except for a claim relating to intellectual property or breach of confidentiality) through good faith negotiations. If necessary, the parties will escalate the dispute to their appropriate higher-level managers. If negotiations fail, the parties will jointly select a mediator to mediate the dispute and will share equally the mediation costs. Neither party will assert a breach of this Agreement without first giving the other party written notice and a thirty (30) day period to cure the alleged breach.

6. LIMITATION OF LIABILITY. Except for personal injury or death, Seller's total liability, whether for breach of contract, warranty, negligence, strict liability in tort, or otherwise, will be limited to the direct damages recoverable under law, but not to exceed the purchase price of the products or services for which losses or damages are claimed. SELLER WILL NOT BE LIABLE FOR ANY COMMERCIAL LOSS; INCONVENIENCE; LOSS OF USE, TIME, DATA, GOOD WILL, REVENUES, PROFITS OR SAVINGS; OR OTHER SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES IN ANY WAY RELATED TO OR ARISING FROM THIS AGREEMENT, THE SALE OR USE OF THE PRODUCTS, OR THE PERFORMANCE OF SERVICES BY SELLER PURSUANT TO THIS AGREEMENT. No action for contract breach or otherwise relating to the transactions contemplated by this Agreement may be brought more than one year after the accrual

of the cause of action. This limitation of liability survives the expiration or termination of this Agreement.

7. Confidential Information and Preservation of Proprietary Rights. The SLA governs software confidentiality. As to any other information marked "Confidential" and provided by one party to the other, the receiving party will maintain the confidentiality of the information and not disclose it to any third party; take necessary and appropriate precautions to protect the information; and use the information only to further the performance of this Agreement. Confidential information is and will remain the property of the disclosing party, and no grant of proprietary rights in the confidential information is given or intended. Seller, any copyright owner of Non-IDEMIA Software, and any third party manufacturer own and retain all of their proprietary rights in the equipment, parts and software, and nothing herein is intended to restrict their proprietary rights. Except as explicitly provided in the SLA, this Agreement does not grant any right, title or interest in Seller's proprietary rights, or a license under any Seller patent or patent application.

8. Miscellaneous: Each party will comply with all applicable laws, regulations and rules concerning the performance of this Agreement or use of the products to the extent they do not conflict with the laws of the United States. This Agreement and the rights and duties of the parties will be governed by and interpreted in accordance with the laws of the State in which the products are installed to the extent they do not conflict with the laws of the United States. This Agreement constitutes the entire agreement of the parties regarding this transaction, supersedes all previous agreements and proposals relating to this subject matter, and may be amended only by a written instrument executed by both parties. Seller is not making, and Customer is not relying upon, any representation or warranty except those expressed herein. There are no certifications or commitments binding Seller applicable to this transaction unless they are in writing and signed by an authorized signatory of Seller.

**Idemia Identity & Security USA LLC ("SELLER"):**

Signed \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_  
Date \_\_\_\_\_

**NAME ("CUSTOMER")**

Signed \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_  
Date \_\_\_\_\_

**EXHIBIT A – SOFTWARE LICENSE AGREEMENT**

In this Exhibit A, the term "Licensor" means Idemia Identity & Security USA LLC, ("IDEMIA"); "Licensee," means the Customer; "Primary Agreement" means the agreement to which this exhibit is attached (IDEMIA Short Form Sales Agreement); and "Agreement" means this Exhibit and the applicable terms and conditions contained in the Primary Agreement. The parties agree as follows:

For good and valuable consideration, the parties agree as follows:

**SECTION 1. DEFINITIONS**

1.1 "Designated Products" means products provided by IDEMIA to Licensee with which or for which the Software and Documentation is licensed for use.

1.2 "Documentation" means product and software documentation that specifies technical and performance features and capabilities, and the user, operation and training manuals for the Software (including all physical or electronic media upon which such information is provided).

1.3 "Open Source Software" means software with either freely obtainable source code, license for modification, or permission for free distribution.

1.4 "Open Source Software License" means the terms or conditions under which the Open Source Software is licensed.

1.5 "Primary Agreement" means the agreement to which this exhibit is attached (IDEMIA Short Form Sales Agreement).

1.6 "Security Vulnerability" means a flaw or weakness in system security procedures, design, implementation, or internal controls that could be exercised (accidentally triggered or intentionally exploited) and result in a security breach such that data is compromised, manipulated or stolen or the system damaged.

1.7 "Software" (i) means proprietary software in object code format, and adaptations, translations, de-compilations, disassemblies, emulations, or derivative works of such software; (ii) means any modifications, enhancements, new versions and new releases of the software provided by IDEMIA; and (iii) may contain one or more items of software owned by a third party supplier. The term "Software" does not include any third party software provided under separate license or third party software not licensable under the terms of this Agreement.

**SECTION 2. SCOPE**

IDEMIA and Licensee enter into this Agreement in connection with IDEMIA's delivery of certain proprietary Software or products containing embedded or pre-loaded proprietary Software, or both. This Agreement contains the terms and conditions of the license IDEMIA is providing to Licensee, and Licensee's use of the Software and Documentation.

**SECTION 3. GRANT OF LICENSE**

3.1. Subject to the provisions of this Agreement and the payment of applicable license fees, IDEMIA grants to Licensee a personal, limited, non-transferable (except as permitted in Section 7) and non-exclusive license under IDEMIA's copyrights and Confidential Information (as defined in the Primary Agreement) embodied in the Software to use the Software, in object code form, and the Documentation solely in connection with Licensee's use of the Designated Products. This Agreement does not grant any rights to source code.

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**SECTION 4. LIMITATIONS ON USE**

4.1. Licensee may use the Software only for Licensee's internal business purposes and only in accordance with the Documentation. Any other use of the Software is strictly prohibited. Without limiting the general nature of these restrictions, Licensee will not make the Software available for use by third parties on a "time sharing," "application service provider," or "service bureau" basis or for any other similar commercial rental or sharing arrangement.

4.2. Licensee will not, and will not allow or enable any third party to: (i) reverse engineer, disassemble, peel components, decompile, reprogram or otherwise reduce the Software or any portion to a human perceptible form or otherwise attempt to recreate the source code; (ii) modify, adapt, create derivative works of, or merge the Software; (iii) copy, reproduce, distribute, lend, or lease the Software or Documentation to any third party, grant any sublicense or other rights in the Software or Documentation to any third party, or take any action that would cause the Software or Documentation to be placed in the public domain; (iv) remove, or in any way alter or obscure, any copyright notice or other notice of IDEMIA's proprietary rights; (v) provide, copy, transmit, disclose, divulge or make the Software or Documentation available to, or permit the use of the Software by any third party or on any machine except as expressly authorized by this Agreement; or (vi) use, or permit the use of, the Software in a manner that would result in the production of a copy of the Software solely by activating a machine containing the Software. Licensee may make one copy of Software to be used solely for archival, back-up, or disaster recovery purposes; *provided* that Licensee may not operate that copy of the Software at the same time as the original Software is being operated. Licensee may make as many copies of the Documentation as it may reasonably require for the internal use of the Software.

4.3. Unless otherwise authorized by IDEMIA in writing, Licensee will not, and will not enable or allow any third party to: (i) install a licensed copy of the Software on more than one unit of a Designated Product; or (ii) copy onto or transfer Software installed in one unit of a Designated Product onto another device. Licensee may temporarily transfer Software installed on a Designated Product to another device if the Designated Product is inoperable or malfunctioning, if Licensee provides written notice to IDEMIA of the temporary transfer and identifies the device on which the Software is transferred. Temporary transfer of the Software to another device must be discontinued when the original Designated Product is returned to operation and the Software must be removed from the other device. Licensee must provide prompt written notice to IDEMIA at the time temporary transfer is discontinued.

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**SECTION 6. LIMITED WARRANTY; DISCLAIMER OF WARRANTY**

6.1. If Licensee is not in breach of any of its obligations under this Agreement, IDEMIA warrants that the unmodified Software, when used properly and in accordance with the Documentation and this Agreement, will be free from a reproducible defect that eliminates the functionality or successful operation of a feature critical to the primary functionality or successful operation of the Software. Whether a defect occurs will be determined by IDEMIA solely with reference to the Documentation. IDEMIA does not warrant that Licensee's use of the Software or the Designated Products will be uninterrupted, error-free, completely free of Security Vulnerabilities, or that the Software or the Designated Products will meet Licensee's particular requirements. IDEMIA makes no representations or warranties with respect to any third party software included in the Software.

6.2. IDEMIA's sole obligation to Licensee and Licensee's exclusive remedy under this warranty is to use reasonable efforts to

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6.3. Warranty claims are described in the Primary Agreement.

6.4. **The express warranties set forth in this Section 6 are in lieu of, and IDEMIA disclaims, any and all other warranties (express or implied, oral or written) with respect to the Software or Documentation, including, without limitation, any and all implied warranties of condition, title, non-infringement, merchantability, or fitness for a particular purpose or use by Licensee (whether or not IDEMIA knows, has reason to know, has been advised, or is otherwise aware of any such purpose or use), whether arising by law, by reason of custom or usage of trade, or by course of dealing. In addition, IDEMIA disclaims any warranty to any person other than Licensee with respect to the Software or Documentation.**

**SECTION 7. TRANSFERS**

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**SECTION 8. TERM AND TERMINATION**

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8.2 Within thirty (30) days after termination of this Agreement, Licensee must certify in writing to IDEMIA that all copies of the Software have been removed or deleted from the Designated Products and that all copies of the Software and Documentation have been returned to IDEMIA or destroyed by Licensee and are no longer in use by Licensee.

8.3 Licensee acknowledges that IDEMIA made a considerable investment of resources in the development, marketing, and distribution of the Software and Documentation and that Licensee's breach of this Agreement will result in irreparable harm to IDEMIA for which monetary damages would be inadequate. If Licensee breaches this Agreement, IDEMIA may terminate this Agreement and be entitled to all available remedies at law or in equity (including immediate injunctive relief and repossession of all non-embedded Software and associated Documentation unless Licensee is a Federal agency of the United States Government).

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**SECTION 10. CONFIDENTIALITY**

Licensee acknowledges that the Software and Documentation contain IDEMIA's valuable proprietary and Confidential Information and are

IDEMIA's trade secrets, and that the provisions in the Primary Agreement concerning Confidential Information apply.

**SECTION 11. GENERAL**

11.1. **COPYRIGHT NOTICES.** The existence of a copyright notice on the Software will not be construed as an admission or presumption of publication of the Software or public disclosure of any trade secrets associated with the Software.

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11.3. **GOVERNING LAW.** This Agreement is governed by the laws of the United States to the extent that they apply and otherwise by the internal substantive laws of the State to which the Software is shipped if Licensee is a sovereign government entity, to the extent they do not conflict with the laws of the United States, or the internal substantive laws of the State of Delaware if Licensee is not a sovereign government entity. The terms of the U.N. Convention on Contracts for the International Sale of Goods do not apply. In the event that the Uniform Computer Information Transaction Act, any version of this Act, or a substantially similar law (collectively "UCITA") becomes applicable to a party's performance under this Agreement, UCITA does not govern any aspect of this Agreement or any license granted under this Agreement, or any of the parties' rights or obligations under this Agreement. The governing law will be that in effect prior to the applicability of UCITA.

11.4. **THIRD PARTY BENEFICIARIES.** This Agreement is entered into solely for the benefit of IDEMIA and Licensee. No third party has the right to make any claim or assert any right under this Agreement, and no third party is deemed a beneficiary of this Agreement. Notwithstanding the foregoing, any licensor or supplier of third party software included in the Software will be a direct and intended third party beneficiary of this Agreement.

11.5. **PREVAILING PARTY.** In the event of any dispute arising out of the subject matter of this Agreement, the prevailing party shall recover, in addition to any other damages assessed, its reasonable attorneys' fees and court costs incurred in arbitrating, litigating, or otherwise settling or resolving such dispute.

11.6. **SURVIVAL.** Sections 4, 5, 6.3, 7, 8, 9, 10, and 11 survive the termination of this Agreement.



## CITY COUNCIL ITEM SUMMARY

<b>MEETING DATE:</b>	August 3, 2023
<b>SUBCATEGORY:</b>	Bid Award/Purchases
<b>DEPARTMENT NAME:</b>	Administration
<b>AGENDA ITEM TITLE:</b>	Matthews Garage Invoice
<b>DEPARTMENT SUMMARY RECOMMENDATION:</b>	In December 2022, one of our patrol vehicles responded to a call and during the call the vehicle was damaged. The cost to repair the vehicle from Matthews Garage is \$8,222.24, and I recommend approval of this invoice.
<b>LEGAL:</b>	N/A

**Matthews Garage Inc.**

18 Pinson Drive  
 Cartersville, GA. 30120  
 Phone: 770-382-0900 Fax: 770-382-0842

Meeting: August 3, 2023 Item. 13.

Org. Est. # 079375

**INVOICE**

Printed Date: 07/31/2023

Tax Resale # : 00000000  
**Work Completed: 07/31/2023**

**CITY OF CARTERSVILLE - CARTERSVILLE CITY OF**

P.O. BOX 1390  
 CARTERSVILLE, GA 30120  
 Home 770-387-5640 -- Fax 770-387-7409

2016 Dodge - Charger Pursuit - 5.7L, V8 (345CI) VIN(T)

Lic # : GV9969E Odometer In : 15  
 Unit # : 4255  
 VIN # : 2C3CDXAT8 GH123025

Part Description	Number	Qty	Sale	Ext	Labor Description	Hours	Ext
ENGINE SPT TRANS MOUNT BRKT 4578062-AC		1.00	84.20	84.20	R&R TRANSMISSION	4.70	446.50
ENGINE SPT TRANS MOUNT ENSTM		1.00	55.45	55.45	SWAP NEC COMPONENTS	1.00	95.00
TRANSMISSION TRANS		1.00	4,160.00	4,160.00	R&R ENG SPT TRANS CROSSMEMBER	1.00	95.00
ENGINE SPT TRANS CROSSMEMBER 4578055-AE		1.00	449.00	449.00	R&R FRT ENGINE UNDER COVER	0.50	24.00
TRANS FLUID TF		1.00	132.67	132.67	R&I ENGINE UNDER COVER	0.40	19.20
CROSSMEMBER BOLTS CBMB		2.00	7.21	14.42	PRE REPAIR & POST REPAIR SCAN	2.00	190.00
R ROCKER MOULDING 1LP86TZZAG		1.00	432.00	432.00	REPAIR R & L FLOOR RAIL REINFO.	4.00	300.00
CORROSION PROT. COR		1.00	10.00	10.00	REFINISH R&L FLOOR RAIL REINF	1.00	48.00
BUFFING & POLISHING SUPPLIES BFP		1.00	18.00	18.00	R&R R ROCKER MOULDING	0.40	19.20
MASK MSK		1.00	5.00	5.00	REFINISH R ROCKER MOULDING	1.00	48.00
PAINT & MATERIALS PM		1.00	273.60	273.60	REPAIR R F DOOR REPAIR PANEL	2.00	96.00
SHOP MATERIALS SS		1.00	52.00	52.00	REINFIHS RF DOOR OUTSIDE	2.30	110.40
					R&R RF DOOR APPLIQUE	1.30	62.40
					R&R RF OTR DOOR HANDLE	0.30	14.40
					REPAIR R REAR DOOR REPAIR PANEL	7.00	336.00
					REFNISH R REAR DOOR OUTSIDE	1.80	86.40
					DECAL AND ADHESIVE REMOVAL	2.00	96.00
					R&I R REAR DOOR APPLIQUE	0.40	19.20
					R&I R REAR DOOR TRIM PANEL	0.40	19.20
					R&I R REAR OTR DOOR HANDLE	0.30	14.40
					ADD FOR CLEARCOAT	1.50	72.00
					RESTORE CORROSION PROT.	0.50	24.00
					FINISH SAND & BUFF	1.40	67.20
					MASK FOR OVERSPRAY	0.30	14.40
					DYNAMIC VERIFICATIONS ROAD TEST	0.50	24.00
					PROGRAM COMP MODULES	2.00	190.00
					ENVIRONMENTAL FEE		5.00

**Matthews Garage Inc.**  
 18 Pinson Drive  
 Cartersville, GA. 30120  
 Phone: 770-382-0900 Fax: 770-382-0842

Meeting: August 3, 2023 Item. 13.

Org. Est. # 079375

**INVOICE**

Printed Date: 07/31/2023

Tax Resale # : 00000000  
**Work Completed: 07/31/2023**

**CITY OF CARTERSVILLE - CARTERSVILLE CITY OF**  
 P.O. BOX 1390  
 CARTERSVILLE, GA 30120  
 Home 770-387-5640 -- Fax 770-387-7409

2016 Dodge - Charger Pursuit - 5.7L, V8 (345CI) VIN(T)  
 Lic # : GV9969E Odometer In : 15  
 Unit # : 4255  
 VIN # : 2C3CDXAT8 **GH123025**

Part Description	Number	Qty	Sale	Ext	Labor Description	Hours	Ext
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Org. Estimate 8,222.24 Revisions 0.00 Current Estimate 8,222.24

<b>Labor:</b>	<b>2,530.90</b>
<b>Parts:</b>	<b>5,686.34</b>
<b>Sublet:</b>	<b>5.00</b>
<b>SubTotal:</b>	<b>8,222.24</b>
<b>Tax:</b>	<b>0.00</b>
<b>Total:</b>	<b>8,222.24</b>
<b>Bal Due:</b>	<b>\$8,222.24</b>

[ Payments - ]

Vehicle Received: 7/31/2023

Customer Number : 198

Warranty on parts and labor is one years or 12,000 miles whichever comes first. Warranty work has to be performed in our shop & cannot exceed the original cost of repair. Our Terms are NET 15 DAYS. I/We understand that any past due charges are subject to a 1 and 1/2 PERCENT monthly service charge added to any unpaid balances until such balances are satisfied. Collection agency fees (15%) plus all court cost, expenses & interest in the event that the account is turned over and collected by a collection agency or attorney.

Signature \_\_\_\_\_ Date \_\_\_\_\_

Visit us on the web: [www.matthewsgarage.com](http://www.matthewsgarage.com)

Email Address: [tara@matthewsgarage.com](mailto:tara@matthewsgarage.com)

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## CITY COUNCIL ITEM SUMMARY

<b>MEETING DATE:</b>	August 3, 2023
<b>SUBCATEGORY:</b>	Bid Award/Purchases
<b>DEPARTMENT NAME:</b>	Electric
<b>AGENDA ITEM TITLE:</b>	167kVA Transformer Purchase
<b>DEPARTMENT SUMMARY RECOMMENDATION:</b>	The Electric Department recommends your approval of purchasing (2)-167kVA single-phase pad-mount transformers from Gresco for the best bid of \$17,902.00.
<b>LEGAL:</b>	N/A



Quote



<b>Entered Date</b> 7/31/23	<b>Taken By</b> cgre	<b>Customer #</b> 1458	<b>Order #</b> 10217696-00
		<b>PO #</b> 7.31.23	<b>Page #</b> 1

**Bill To**  
CITY OF CARTERSVILLE  
PO BOX 1390  
CARTERSVILLE, GA 30120-1390

**Ship To**  
CITY OF CARTERSVILLE  
320 S ERWIN ST  
CARTERSVILLE, GA 30120-3914

**Remit To**  
GRESKO  
PO BOX 932918  
ATLANTA, GA 31193-2918

**Instructions**

<b>Ship Point</b> Gresco-Forsyth, GA	<b>Via</b> Gresco Truck	<b>Shipped</b>	<b>Terms</b> Net 30 Days	<b>SlsRepln/Out</b> cgre / anar
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**Notes**

Material Handling Capabilities: LIFT ONLY

Line	Product and Description	Order Quantity	Qty UOM	Unit Price	Price UOM	Amount(Net)
1	PD4N167KVA-E TX PM DV 240/120167KVA 167KVA STOCK	2.00	EA	8,951.00	EA	17,902.00
1	Lines Total	Total Order Quantity	2.00		Subtotal	17,902.00
					Taxes	0.00
					Total	17,902.00





Jeff Nalli  
Cartersville Electric System  
jnalli@cityofcartersville.org

Daresa Denis  
Inside Sales  
daresa.denis@sunbeltsolomon.com | +1 4234530420

PRODUCT	QTY	EACH
<b>Single Phase Pad Mount 167 KVA, Shipment: 42 Weeks ARO, "Estimated" Losses NOT Guaranteed: NL - 408, FL - 2280</b>  KVA: 167 @ 65°C   60Hz   Impedance: Standard HV: 12470GrdY x 24940GrdY (125 KV BIL)   Loop Feed   LV: 240/120 (30 KV BIL) Primary Taps: No Taps  Dual Voltage Switch Wells & 25 KV Inserts 4-Hole Spade LV Bushing Non-PCB Mineral Oil Bayonet Fusing w/Drip Shield	2	\$23,197

Units are Completely Rewound to Quoted Specifications

**Destination:** GA | **FOB:** Destination | **Shipping & Handling:** Prepaid & Allowed  
**Shipment:** 42 Weeks ARO | **Warranty:** 3 Years | **Terms:** Net 30 with approved credit.

Offer to sell valid for 30 days. Price is subject to re-evaluation after 15 days. Units subject to availability.

Please note any changes to the specifications on this quotation form and reference the quotation number on your Purchase Order. Sunbelt Solomon ("Supplier") will use your Purchase Order to proceed with manufacturing when terms and conditions are finalized. Please note that changes made after the manufacturing process begins may result in additional charges and potential delays in production. Production of units that are contingent on the approval/receipt of drawings will begin the manufacturing process after the final sign off on the specified drawings by the customer. Please contact your sales representative for the estimated drawing lead time associated with this quote.

All sales, rental and services are subject to Supplier's Terms and Conditions for Sales and Rentals of Equipment and/or Services ("Terms and Conditions") unless otherwise mutually agreed in writing by officer of Supplier as evidenced by such officer's signature. Acceptance of a Buyer purchase order by Supplier does not constitute acceptance of Buyer terms and conditions. As orders are time sensitive and it is cost prohibitive to review and negotiate terms and conditions between parties, Supplier Terms and Conditions apply to quotes/orders: 1) with a value before tax of \$25,000 or less, 2) emergency services or services completed before issuance of a purchase order, and 3) rush orders for sales and rental that are to ship within three (3) days regardless of submission of terms and conditions by Buyer. If the Quotation is for Company to perform evaluation services on Customer-owned equipment (e.g. for Company to determine how/if the piece of equipment failed and/or whether it can be repaired), then the provisions of terms and conditions will apply which include (among other provisions) risk of loss remaining with Customer and Company only being liable for damage to this equipment to the extent of its gross negligence or willful misconduct. In no event does Supplier accept consequential damages or agree to Prime/Owner contract terms and conditions.

Price does not include tax. If applicable, tax will be added to the invoice. If order is tax exempt, please provide a copy of your exemption certificate. Unit(s) quoted are for normal service conditions as defined by ANSI/IEEE Standards. Notify Supplier at time of quotation should the unit(s) be subject to harmonics, motor starting, shovel duty, or other special service conventions.

**Schedules**

1922 S. MLK Jr. Drive  
Temple, TX 76504

+01 800.433.3128

info@sunbeltsolomon.com  
sunbeltsolomon.com



# TRANSFORMERNET QUOTE

Meeting: August 3, 2023 Item. 14.

Jeff Nalli

**From:** Dave Mossman <dave.mossman@transformernet.com>  
**Sent:** Tuesday, July 25, 2023 9:39 AM  
**To:** Jeff Nalli  
**Subject:** [EXTERNAL] RE: Cartersville, GA RFQ

28-30 recon (1000kVA 277/480, 500kVA 277/480) 56-60 reman. (500kVA 120/208, 167kVA 120/240)

**\*\*\*CAUTION\*\*\*** : This email originated from outside the City of Cartersville network. Do not click links or open attachments unless you recognize the sender and know the content is safe.

**Sender: dave.mossman@transformernet.com**

Jeff

We are pleased to submit our pricing as follows:

- Manufacturer name – Reconditioned will be nameplated Transformer Network
- Lead times – Reconditioned 28-30 weeks, remanufactured 56-60 weeks
- Tank and compartment dimensions – can supply once order is received
- No Load/Load Loss data (if new unit) – after testing complete
- Price per Unit. – See below

Quote 1:

- (1) Dual Voltage 1000kVA 277/480 3phase pad-mount transformer – Reconditioned \$27,421.00 each

Quote 2:

- (1) Dual Voltage 500kVA 277/480 3-phase pad-mount transformer – Reconditioned \$18,912.00 each

Quote 3:

- (1) Dual Voltage 500kVA 120/208 3-phase pad-mount transformer – Remanufactured \$31,316.00 each

Quote 4:

- (2) Dual Voltage 167kVA 120/240 1-phase pad-mount transformer – Remanufactured \$19,652.00 each

Freight is included if on our milk run, otherwise cost plus 10%.

David Mossman

Transformer Network Inc.  
301 S. Florence  
P.O. Box 187, Colman, SD  
57017

1-800-724-2211 – Office

[www.transformernet.com](http://www.transformernet.com)