



Work Session 5:00 PM

- 1. Call to Order**
- 2. Recognition of Visitors and Comments**
Sgt. Ashley Henson, PCSO - Paulding Community Health & Resource Center
- 3. Reports**
 - A. Finance Committee, Mayor Boyd Austin, Chair**
 - B. Public Safety Committee, Chris Carter, Chair**
 - C. Economic Development Committee, Nancy Arnold, Chair**
Schedule for Georgia Classic Rides Block Party
 - D. Transportation & Recreation Committee, Jim Henson, Chair**
 - E. Utilities & Franchises Committee, James Kelly, Chair**
Sanitation service review
 - F. Intergovernmental Relations Committee, Griffin White, Chair**
 - G. Community Development Committee, Mike Cason, Chair**
Board of Ethics appointment recommendation
 - H. Public Works Manager**
 - I. Parks & Rec Director, Donna Baxter**
 - J. Theater Manager, Emily Shipp**
 - K. Chief Marshal, Michael Hester**
 - L. Police Chief, Scott Halter**
 1. Police Chief's Report
 - M. City Manager, Kendall Smith**
 1. EPD Compliance Order & Settlement Agreement

2. Signal Point Systems Proposal -Tower Decommission
3. Stevenson & Palmer Proposal WPP Annual Services

4. Executive Session

1. Motion: **Open Executive Session**
2. Motion: **Close Executive Session**



Dallas City Council

129 East Memorial Drive, Dallas, GA 30132

REPORT

TO: City Council

From: Police Department, Scott Halter

Meeting: February 1, 2016 05:00 PM

Police Chief's Report

Summary:

Mayor and Council Report

February 01, 2016

Summary of offenses for January 2016:

Total call: Pending

Major offenses:

Aggravated assault-An argument over alleged stolen make up between family members led to a fifteen year old female being charged with aggravated assault, after she grabbed a knife and began stabbing the closet door where her mother's friend was taking refuge. The fifteen year old was arrested and taken to Rome's YDC.

Aggravated assault-A man was arrested after it was reported that he choked his girlfriend while they were moving out of the Dallas Garden Apartments. He had a warrant out of Paulding County as well.



Dallas City Council

129 East Memorial Drive, Dallas, GA 30132

REPORT

Criminal trespass-Two males were arrested after they were observed jumping over fences near a residence that had been previously burglarized at the Silver Ridge Subdivision. Upon checking a vacant residence nearby, Officers recovered stolen items from the burglary.

Drug arrest-A sixty year old male was arrested for possession of methamphetamine and marijuana during a traffic stop. This arrest shows how widespread this drug is being used.

Burglary-An officer on patrol checking businesses discovered a window broken out at a store in Paulding Plaza, \$800.00 was reported to be missing.

Traffic Fatality-The driver of a vehicle was killed while attempting to cross over SR6 near the courthouse, the driver's husband, was seriously injured and taken to Kennestone Hospital. The State Patrol investigated the accident.

Request to receive firearms donation-The commander of the Haralson- Paulding Drug Task Force has offered to donate five (5) Colt AR15 A2 patrol rifles to the police department. The Task Force has also made a donation to the Sheriff's Office.

The Task Force upgraded their patrol rifles and no longer had a need for the Colt rifles.

Evidence/property -All of the bicycles and skateboards have been removed from the old police department and work is being done to remove old files, etc.



Dallas City Council

129 East Memorial Drive, Dallas, GA 30132

DRAFT

TO: City Council

From: City Hall, Kendall Smith

Meeting: February 1, 2016 05:00 PM

EPD Compliance Order & Settlement Agreement

Summary:

West Plant - Griffin Creek: (1) unpermitted discharge \$6000

Recommendation:

Financial Impact:

Review:

Kendall Smith Pending

Dallas City Council Pending 02/01/2016 5:00 PM

Dallas City Council Pending 02/01/2016 7:00 PM

Mountain District Office, 16 Center Road, Cartersville, Georgia 30121

Environmental Protection Division

Judson H. Turner, Director

Phone: (770) 387-4900

Fax: (770) 387-4906

Remit Correspondence to:
Post Office Box 3250
Cartersville, Georgia 30120

CERTIFIED MAIL
7013 2250 0001 8375 0105

JAN 20 2016

Honorable Boyd Austin, Mayor
City of Dallas
129 East Memorial Drive
Dallas, Georgia 30132

RE: Proposed Expedited Enforcement Compliance Order (EECO)
City of Dallas – West
Water Pollution Control Plant (WPCP)
NPDES Permit No. GA0026026
Paulding County

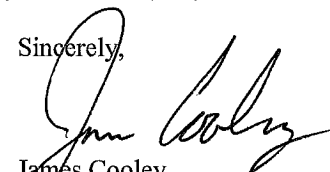
Dear Mayor Austin:

On January 12, 2016, the Environmental Protection Division (EPD), Mountain District Office, was notified by fax of an unpermitted discharge of sewage from the collection system for the City of Dallas West WPCP, which reached waters of the state. The notification indicated the spill was the result of equipment failure and blockage due to debris.

EPD is offering to resolve and settle this matter through the enclosed EECO. Please return the signed original EECO within fifteen (15) days of receipt. In accordance with Chapter 391-1-3 of the Public Participation in Enforcement of Environmental Statutes Rule, the EPD plans to issue public notice on this EECO once you have signed and returned it. After consideration of any comments received during the thirty (30) day comment period, EPD will present to you an executed EECO or an EECO with modifications based upon comments received pursuant to the public notice. In the event that no changes are made to the proposed EECO previously forwarded to you, you will be responsible for returning the settlement amount to the EPD in the form of a check made payable to the Georgia Department of Natural Resources within fifteen (15) days of the execution date of the EECO.

EPD considers this settlement to be a reasonable resolution to this issue. If there are any questions concerning the proposed EECO, please contact Mick Smith or Ebony Johnson at (770) 387-4900.

Sincerely,



James Cooley
District Manager
Mountain District Office

Enclosure:
EECO

Attachment: MX-3100N_20160128_153610 (1644 : EPD Compliance Order & Settlement Agreement)

GEORGIA ENVIRONMENTAL PROTECTION DIVISION
MOUNTAIN DISTRICT OFFICE
POST OFFICE BOX 3250
CARTERSVILLE, GEORGIA 30120

EXPEDITED ENFORCEMENT COMPLIANCE ORDER AND SETTLEMENT AGREEMENT

PART I: COMPLIANCE ORDER

Permit No.: GA0026026

(Name of Facility)

City of Dallas – West WPCP

(Facility Address)

527 West Memorial Drive
Dallas, Georgia 30132
Paulding County

(Responsible Official)

Honorable Boyd Austin, Mayor
City of Dallas

(Address)

129 East Memorial Drive
Dallas, Georgia 30132

The Environmental Protection Division (EPD) has documented the fact that the above noted facility experienced an unpermitted discharge on January 12, 2016 from its Sewer Collection System that entered waters of the State, which is a violation of Chapter 391-3-6 of the Georgia Rules and Regulations for Water Quality Control, and Title 12, Chapter 5 of the Official Code of Georgia Annotated (Code). The following violation noted, in accordance with sections 12-5-20 through 12-5-53 of the Code and its corresponding settlement amount, is listed below:

391-3-6-.03 [12-5-52(a)]: January 12, 2016 Settlement \$6,000.00

Nature of Violation: One (1) unpermitted discharge of 67,000 gallons into Griffin Creek.

TOTAL SETTLEMENT AMOUNT \$ 6,000.00

The City of Dallas (hereinafter "Respondent") is hereby ordered to correct the violations and pay the settlement amount. This Compliance Order is issued solely with reference to the Settlement Agreement in Part II of this form. If the Settlement Agreement in Part II is not returned in correct form by the Respondent within fifteen (15) days of receipt, this Compliance Order can be withdrawn without prejudice to the EPD's ability to file additional enforcement actions for the above violations or any other violations.

PART II: SETTLEMENT AGREEMENT

The Georgia Environmental Protection Division (EPD) offers this Settlement Agreement as an expedited enforcement procedure in order to settle the violation listed in the Compliance Order in Part I of this form subject to the following terms and conditions:

The Respondent, by signing below, certifies under penalty of law that: a) the information submitted in this and all attached documents have been personally examined and that the Respondent is familiar with the information; b) the CITED VIOLATIONS WILL BE CORRECTED immediately; and c) payment of the settlement amount in the form of a check made payable to the Department of Natural Resources for the total settlement amount within fifteen (15) days after the execution date of this Order.

Upon EPD final approval of this Settlement Agreement, EPD will take no further action against the Respondent for the specific violation(s) described in this Compliance Order. EPD does not waive any enforcement action by EPD, the State, or any local agencies for any past, present or future violations of the Water Quality Control Rules. This Order does not relieve the Respondent of any obligations or requirements of the Permit.

This Settlement Agreement is binding on EPD and the Respondent once it is signed below. This Settlement Agreement is not negotiable and is effective upon EPD's final approval below. Upon final approval, EPD shall mail a copy of the approved Settlement Agreement to the Respondent signing below.

Final approval of the Settlement Agreement is in the sole discretion of the Director of EPD, or authorized delegate.

BY (print name): _____

TITLE: _____

SIGNATURE: _____

DATE: _____

FINAL ORDER BY EPD this ____ day of ____, 2016.

Judson H. Turner,
Director

COMPLIANCE ORDER NO:

Attachment: MX-3100N_20160128_153610 (1644 : EPD Compliance Order & Settlement Agreement)



Dallas City Council

129 East Memorial Drive, Dallas, GA 30132

DRAFT

TO: City Council

From: City Hall, Kendall Smith

Meeting: February 1, 2016 05:00 PM

Signal Point Systems Proposal -Tower Decommission

Summary:

Refer to attached proposal.

Recommendation:

Financial Impact:

Review:

Kendall Smith Completed 01/29/2016 3:50 PM

Dallas City Council Pending 02/01/2016 5:00 PM

Dallas City Council Pending 02/01/2016 7:00 PM



January 13, 2016

City of Dallas, GA
 Kendall Smith
 129 East Memorial Drive
 Dallas, GA 30132

RE: 170' Self Support Decommission

Signal Point Systems (SPS) is pleased to present this proposal to the City of Dallas for the above referenced project for the below scope of work below.

Scope of Work:

- Mobilize tower crew to the above location.
- Remove of all side arm mounts and antennas;
- Removal of all coax to existing antennas;
- Supply 110T crane to disassemble 170' self-support tower in sections;
- Supply cribbing to set tower on City supplied truck and trailer or directly in designated area in parking lot.

Total Cost: \$10,993.00

Note:

Price does not include any disposal of antennas mounts or tower sections.

SPS appreciates the opportunity to provide the City of Dallas with this proposal and looks forward to working with you on this project. Should you have any questions in regard to this proposal, please call me at (901) 481-0403. We look forward to hearing from you.

Sincerely,

Jesse Chavez
 SR Project Manager



Dallas City Council

129 East Memorial Drive, Dallas, GA 30132

DRAFT

TO: City Council

From: City Hall, Kendall Smith

Meeting: February 1, 2016 05:00 PM

Stevenson & Palmer Proposal WPP Annual Services

Summary:

Refer to attachment.

Recommendation:

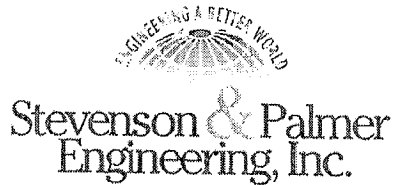
Financial Impact:

Review:

Kendall Smith Completed 01/29/2016 3:53 PM

Dallas City Council Pending 02/01/2016 5:00 PM

Dallas City Council Pending 02/01/2016 7:00 PM



Albany
Atlanta
Augusta
Savannah

January 13, 2016

Mr. Brian Bourque
WPCP Manager
City of Dallas Public Works Department
320 East Foster Avenue
Dallas, Georgia 30132

RE: Letter Proposal
2016 WPP Annual Reporting and Subsequent Plan Revisions
City of Dallas Watershed Protection Plan

Dear Mr. Bourque:

Stevenson & Palmer Engineering, Inc. (SPE) is pleased to present this proposal to provide recurrent engineering services related to the annual reporting requirements outlined in the City of Dallas' Watershed Protection Plan (WPP). Based on last year's efforts, we understand the City currently performs their own water quality sampling and contracts their biological sampling to Kennesaw State University staff. SPE proposes to assist the City with their 2016 Annual Report due in June.

Specifically, the scope of work proposed for 2016 WPP monitoring and reporting is as follows:

1. The Engineer will coordinate with the City staff for receipt of the available 2015 calendar year annual water quality monitoring and bacteriological data, and copies of any additional KSU biological data. SPE will perform data reduction and ensure the water quality data is entered into the Agency-required templates for submittal.
2. The Engineer will prepare the Annual Progress Report, Electronic Monitoring Data Submittal, and Certification due to GA EPD on June 30, 2016 in accordance with Agency requirements. The Annual Report will include discussion of available monitoring results, observed trends, and any BMPs, Ordinances, or water quality improvements resulting from the WPP. Attachments will include the 2015 Water Quality Sampling and, if available, 2015 Biologic Assessment deliverables.
3. The Engineer will coordinate with EPD and the City to ensure that all elements of the Watershed Protection Plan are in compliance.
4. After the submittal of the Annual Report, the Engineer will coordinate review of the previous WA and WPP with the City representatives, discuss potential revisions with the City and assigned Agency reviewer, and, if deemed necessary, prepare a draft Addendum for City approval and submittal to EPD. The potential WPP addendum will address the health of streams and waters within the City's service delivery area and should continue to be based on the findings of the previously approved WA. During the revision process, the long term monitoring plan can be adjusted to address recent Watershed practices and policies accepted by the Agency as well as any changes in the City's systems. However, the sampling locations must still reflect the most likely monitoring approach for identifying potential water quality standard parameter concentrations resulting primarily from storm water runoff.

723 Industrial Park Drive, Suite 2 / Evans, Georgia 30809 / 706-261-4040 / Fax 706-261-4042

Attachment: MX-3100N_20160128_173753 (1646 : Stevenson & Palmer Proposal WPP Annual Services)

- 5. If revisions are required, the Engineer will coordinate with the EPD reviewer to attempt to finalize the modified Long Term Monitoring Plan (LMTP) for Agency approval prior to the 2017 monitoring year.

It should be noted, the EPD has recently revised some of the requirements for Long Term Monitoring Plans. Biological assessment frequency has been reduced from biennial to twice every five years, although some additional sampling parameters are required. As a result, the City should not need to initiate their next assessment until next year. A separate guidance document has also been published for revised Annual Reporting requirements (excerpt attached) and City input will be needed to address some of the new BMP information. SPE will contact City representatives with specific needs as the reporting date approaches.

SPE will commence the engineering services upon the City's authorization under the terms and conditions of Attachment B; Standard Contract Conditions. SPE's engineering fees for the recently revised 2016 Annual Reporting services will be on a Cost Plus basis, Not-to-Exceed \$10,000 to be delivered prior to the June 30th reporting deadline.

If required, our fees for preparing a revised LMTP WPP addendum for final approval, including Agency coordination, will be on a Cost Plus basis, Not-to-Exceed \$7,500 to be delivered by year's end for a cumulative Not-to-Exceed fee of \$17,500 to be invoiced monthly. Based on last year's Annual Report and the current status of the Long Term Monitoring Program, SPE believes the need for this addendum will be unlikely.

This project will be managed by Mr. Richard L. Clegg, P.E. of our Augusta office. Mr. Clegg has over 20 years of environmental engineering experience and prepared the City's initial Annual Report in 2015. He has developed numerous recent WA/WPP's in the State of Georgia and is very familiar with the EPD staff. He currently provides similar recurrent annual reporting services to several other municipal clients.

If this Letter Agreement adequately defines the scope of work and is acceptable, please execute one (1) copy in the space provided below and return it to SPE as our Agreement and Authorization to Proceed.

Sincerely,

STEVENSON & PALMER ENGINEERING, INC.

Richard L. Clegg, P.E.
Environmental Engineer

ACCEPTED

By: _____

Name: _____

Title: _____

Date: _____

Attachment: MX-3100N_20160128_173753 (1646 : Stevenson & Palmer Proposal WPP Annual Services)

1. Summary of Best Management Practices (BMPs)

Permittees must review BMPs implemented and evaluate their effectiveness based on long-term monitoring results from the previous calendar year. Provide a brief summary of BMPs that were implemented the previous calendar year. Include the following:

- a. Newly implemented BMPs that may be a one-time action, or may become an ongoing activity.
- b. BMPs that are a continuous or periodic activity from year-to-year.
- c. BMPs that were implemented, or are ongoing, as a result of programs other than what is covered under the WPP (e.g. National Pollutant Discharge Elimination System (NDPES) MS4 program; 319 Grant funded project, sanitary and storm sewer inspection and maintenance, etc.)
- d. Based on water quality and biological monitoring results, summarize the effectiveness of the BMPs currently in place. Where the need for corrective measures is indicated, propose BMPs that will improve conditions.

2. Water Quality and Biological Monitoring

a. Monitoring site information

- 1) Provided in a tabular format a summary of the monitoring sites sampled. Information should include the site ID, site name, GPS coordinates, Ecoregion level IV, and whether the site is a water quality monitoring site, a bioassessment site, or both.
- 2) Map showing the locations of the monitoring sites, stream hydrology within the watershed assessment area, the permittee's service area, permittee's jurisdictional limits, map scale, and a north arrow indicating map orientation. Clearly indicate these items using legible labels and a legend.
- 3) Record and report when a sample site is dry or no flow exists. Under these conditions, water quality samples should not be collected. GAEPD should be consulted if this situation occurs to schedule alternative sampling.

b. Summary of Water Quality Monitoring

- 1) Provide a brief discussion summarizing the water quality of the waterbodies sampled based on results of the *in situ* measurements and chemical parameters sampled. Compare these results to instream water quality standards. Where standards do not exist, evaluate the sample results based on EPA guidance criteria, if

ATTACHMENT A

STEVENSON & PALMER ENGINEERING, INC.
AUGUSTA REGIONAL SCHEDULE OF RATES
MARCH 2013

Stevenson & Palmer Engineering, Inc. provides services on a time and expense basis as follow:

- 1. This basis includes allowance for direct salary expenses and direct non-salary expenses. It also provides for services that may be subcontracted.
- 2. Direct salary expenses are generally based upon our payroll costs. The hourly charge rates include the cost of salaries and wages for time directly chargeable to the project; plus overhead for indirect labor (sick, vacation, holiday, and non-billable); plus labor cost related overhead (payroll taxes, social security, retirement, and employee insurance benefits); plus general overhead for various business expenses.

<u>POSITION</u>	<u>HOURLY CHARGE RATE</u>
Principal Engineer	\$160.00
Engineering Manager	\$150.00
Project Manager	\$135.00
Survey Manager	\$125.00
Design Engineer	\$100.00
Contract Administrator	\$90.00
Engr/CADD Technician	\$80.00
Survey Technician	\$75.00
Construction Inspector	\$65.00
Administrative Assistant	\$55.00

Mileage \$0.55/mi
 Per Diem \$30.00/night plus lodging

- 3. Miscellaneous phone calls, copies and offices supplies are included in the above rates. Extra outside costs for direct project expenses, including printing and reproduction, are billed at 1.1 times actual cost. Services of outside consultants are billed at 1.1 times actual cost. The 10% mark-up is for coordination and accounts handling to reduce the cost of overhead.
- 4. Projects will be billed monthly, or at the completion of work, with payment due upon receipt. Payment will be considered past due 30 days from date of invoice. Special billing and payment arrangements may be made as mutually agreed.
- 5. Should the project extend past the current year, the above rates are subject to change.

Revised 3-19-13

Attachment: MX-3100N_20160128_173753 (1646 : Stevenson & Palmer Proposal WPP Annual Services)

ATTACHMENT B

STEVENSON & PALMER ENGINEERING, INC.

STANDARD CONTRACT PROVISIONS

ASSIGNMENT

Neither party to this Agreement shall assign, or transfer any rights under or interest in this Agreement without the prior written consent of the other party except that ENGINEER may retain sub-consultants as ENGINEER deems appropriate and ENGINEER may make a collateral assignment of this Agreement to its lenders.

DISPUTE RESOLUTION

OWNER and ENGINEER agree that they shall first submit any and all unsettled claims, counterclaims, disputes and other matters in question between them arising out of or relating to this Agreement or breach thereof to mediation unless the parties mutually agree otherwise. Within fifteen (15) days of receipt by one party of notice of a dispute and demand for mediation from the other party, the parties shall jointly select a mediator and shall conduct mediation within (30) days of receipt by one party of notice of a dispute and demand for mediation from the other party. The cost of mediation shall be paid equally by both parties. In the event a mediator is not selected within the fifteen (15) day period or if mediation has not occurred within said thirty (30) day period (or at such other time as agreed to in writing by the parties), then the parties shall mediate such dispute in accordance with the Commercial Arbitration Rules and Mediation of the American Arbitration Association. The OWNER and the ENGINEER further agree to require a similar mediation provision in all agreements with independent contractors and consultants, thereby providing for mediation as the primary method for dispute resolution between the parties to those agreements.

ALLOCATION OF RISKS - INDEMNIFICATION

To the fullest extent permitted by law, ENGINEER shall indemnify and hold harmless OWNER, OWNER's officers, directors, partners, employees and agents from and against any and all claims, costs, losses and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) caused solely by the negligent acts or omissions of ENGINEER or ENGINEER's officers, directors, partners, employees, agents and ENGINEER's services under this Agreement. The indemnification provision of the preceding sentence is subject to and limited by the provisions agreed to by OWNER and ENGINEER in "Allocation of Risks", if any.

To the fullest extent permitted by law, OWNER shall indemnify and hold harmless ENGINEER, ENGINEER's officers, directors, partners, employees, agents and ENGINEER's Consultants from any and all claims, costs, losses and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) caused solely by OWNER, OWNER's officers, directors, partners, employees, agents and OWNER's consultants with respect to this Agreement or the Project.

In recognition of the relative risks and benefits of the project both to OWNER and to ENGINEER, the risks have been allocated such that OWNER agrees, to the fullest extent permitted by law, to limit the liability of ENGINEER and its sub-consultants to OWNER and to all construction contractors and subcontractors on the project or any third party for any and all claims, losses, costs, damages of any nature whatsoever, or claims and/or expenses from any cause or causes, including attorneys' fees and costs, so that the total aggregate liability of ENGINEER and its sub-consultants to OWNER and all construction contractors and all third parties shall not exceed ENGINEER's total fee for services rendered on this project. It is intended that this limitation apply to any and all liability or cause of action however alleged or arising, unless otherwise prohibited by law. At additional cost, OWNER may obtain a higher limit prior to commencement of services. Additionally, OWNER and ENGINEER each waive any claim for consequential damages arising out of or in connection with the performance of this agreement.

If the OWNER requests drawings furnished by electronic media, the OWNER shall sign an agreement specifically excluding ENGINEER's liability from any use of such electronic media.

STANDARD OF CARE

The standard of care for all professional engineering and related services performed or furnished by ENGINEER under this Agreement will be the care and skill ordinarily used by members of ENGINEER's profession practicing under similar conditions at the same time and in the same locality. ENGINEER makes no warranties, express or implied, under this Agreement or otherwise, in connection with ENGINEER's service.

This Agreement is based on applicable laws, regulations, standards, and requirements as of its Effective Date. Changes to these laws, regulations, standards, or requirements after the Effective Date of this Agreement may be the basis for modifications to OWNER's responsibilities or to ENGINEER's scope of services, times of performance, and compensation.

FAILURE TO PAY

If OWNER fails to make any payment due ENGINEER for services and expenses within 30 days after receipt of ENGINEER's invoice, then amounts due ENGINEER will be increased at the rate of 1.5% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day; and ENGINEER may, after giving seven days written notice to OWNER, suspend services under this Agreement until OWNER has paid in full all amounts due for services, expenses, and other related charges. OWNER waives any and all claims against ENGINEER for any such suspension.

TERMINATION

The obligation to provide further services under this Agreement may be terminated by either party upon thirty days' written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party. Notwithstanding the foregoing, this Agreement will not terminate as a result of such substantial failure if the party receiving such notice begins, within seven days of receipt of such notice, to correct its failure to perform and proceeds diligently to cure such failure within no more than thirty days of receipt thereof, provided however, that if the failure is of such a nature that it cannot be cured within said thirty (30) day period, no right to terminate shall exist so long as the correcting party is diligently and in good faith pursuing the correction of the failure. The OWNER shall within thirty (30) calendar days of termination pay the ENGINEER for all services rendered and all costs incurred up to the date of termination, in accordance with the compensation provisions of this Agreement.

OPINIONS OF PROBABLE CONSTRUCTION COST

ENGINEER's opinions of probable construction cost are to be made on the basis of ENGINEER'S experience and qualifications and represent ENGINEER's best judgment as an experienced and qualified professional generally familiar with the construction industry. However, since ENGINEER has no control over the cost of labor, materials, equipment or services furnished by others, or over the Contractor's methods of determining prices, or over competitive bidding or market conditions, ENGINEER cannot and does not guarantee that proposals, bids or actual construction cost will not vary from opinions of probable construction cost prepared by ENGINEER. If OWNER wishes greater assurance as to probable construction cost, OWNER shall employ an independent cost estimator.

CONSTRUCTION PHASE SERVICES

Neither the professional activities of the ENGINEER, nor the presence of the ENGINEER or its employees, agents or sub-consultants at a construction site, shall relieve any contractor and any other entity of their obligations, duties and responsibilities including, but not limited to, construction means, methods, sequence, techniques or procedures necessary for performing, superintending or coordinating all portions of the Work of construction in accordance with the contract documents or for the failure of any person or entity to carry out the work in accordance with any contract documents. Notwithstanding any inspections by ENGINEER or its employees, agents or sub-consultants, ENGINEER shall have no liability for the failure of any person or entity to carry out any work in accordance with any contract documents.

JOBSITE SAFETY

ENGINEER shall not at any time supervise, direct, or have control over Contractor's work, nor shall ENGINEER have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by Contractor, for security or safety at the Site, for safety precautions and programs incident to the Contractor's work in progress, nor for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's furnishing and performing the Work.

The OWNER agrees that the Contractor is solely responsible for jobsite safety, and warrants that this intent shall be made evident in the OWNER's agreement with the Contractor. The OWNER also agrees that the OWNER, the ENGINEER and the ENGINEER's consultants shall be indemnified and shall be made additional insureds under the Contractor's general liability insurance policy. The ENGINEER and his personnel have no authority to exercise any control over any construction contractor or other entity or their employees in connection with their work or any health or safety precautions.

UNUSUAL OR CONCEALED PHYSICAL CONDITIONS

In the event ENGINEER encounters concealed or unknown conditions of an unusual nature, differing materially from those ordinarily encountered in similar work, the OWNER agrees the ENGINEER's scope of services, times of performance, and compensation shall be equitably adjusted.

MISCELLANEOUS PROVISIONS:

- a. **Notice:** All notices, requests, demands, tenders and other communications required or permitted hereunder shall be made in writing and shall be deemed to be duly given if delivered in person or mailed certified mail, return receipt requested, to the addresses set forth. Either party hereto may change the address to which notices, requests, demands, tenders and other communications to such party shall be delivered or mailed by giving notice to the other party hereto in the manner herein provided.
- b. **Waiver:** Any term or condition of this Agreement may be waived at any time by the party which is entitled to the benefit thereof, but such waiver shall only be effective if evidenced by a writing signed by such party. A waiver on one occasion shall not be deemed to be a waiver of the same or any other breach on another occasion.
- c. **Amendments:** This Agreement may be amended or modified only by a writing signed by both of the parties hereto.
- d. **Successors and Assigns:** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.
- e. **Governing Law:** The validity and effect of this Agreement shall be governed, construed and enforced under the laws of the State of Georgia.
- f. **Entire Agreement:** This Agreement contains all of the terms agreed upon by the parties with respect to the subject matter hereof and there are no representations or understandings between the parties except as provided herein.
- g. **Section Headings:** Section headings contained in this Agreement are solely for convenience of reference and shall not affect the meaning or interpretation of this Agreement or of any term or provision hereof.
- h. **Time:** Time shall be of the essence in this Agreement.
- i. **Counterparts:** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall be considered one and the same agreement.
- j. **Costs of Enforcement:** In the event that any party hereto defaults in the performance of its obligations hereunder, the non-defaulting party shall be entitled to recover from the defaulting party all fees, costs and expenses (including attorneys' fees and expenses) incurred in enforcing the provisions of this Agreement.
- k. **Construction of Agreement:** No provision of this Agreement shall be construed against or interpreted to the disadvantage of any party hereto or thereto by any court or other governmental or judicial authority by reason of such party having or being deemed to have structured or dictated such provision.
- l. **No Third-Party Beneficiary:** This Agreement shall be binding upon, inure solely to the benefit of, and be enforceable by only the parties hereto, their respective successors and permitted assigns, and nothing in the Agreement, express or implied, is intended to or shall confer upon any person, other than the parties hereto, their respective successors and permitted assigns, any rights, remedies, obligations or liabilities of any nature whatsoever.