

AGREEMENT

This Professional Services Agreement (“Agreement”) is made effective as of the ___ day of March, 2021, by and between the City of Cartersville (“Owner”) and McWhorter Goss General Contractors LLC (“Project Manager”).

RECITALS:

Whereas, the Owner desires to renovate the club house in the Atco Village (“Project”) located at 3 Goodyear Avenue, Cartersville; and

Whereas, Project Manager is a professional skilled in the services described hereunder, and is available and willing to perform the services, as more fully described in this Agreement.

NOW, THEREFORE, it is agreed between the parties as follows:

Section 1. *Description of Services.* Project Manager shall provide the professional services necessary to manage the renovation of the club house.

A) Coordinate the application for any building permit on said project(s) which shall include all planning, conversations and meetings with applicable parties which shall include all architects, engineers, building officials, fire marshals and others deemed necessary to enable a permit to be obtain for project(s).

B) Obtain fair and competitive pricing on all aspects of work required in the entire scope of work for the Project in accordance with the Georgia Annotated Code. All pricing shall be submitted to the owner for consideration and approval so that areas of work may be awarded on all task that shall be completed. Project Manager shall have the right to veto any subcontractor that might be deemed, within a reasonable manner, to be adverse to the successful completion of the Project.

C) Shall oversee all aspects of the Project with the authority to schedule, direct and instruct all subcontractors hired to complete the Project scope of work. Shall have the authority to have subcontractors correct any deficiencies with regards to work and shall have the authority to have any subcontractor that fails to do so removed from the Project.

D) Shall have the authority to request all inspections from building inspectors, fire marshals or reigning authorities, which shall include a final inspection upon the completion of the scope of works. The successful achieving of a final inspection for construction services shall constitute the completed Project.

E) Shall collect all draw request from subcontractors, inspect completed work to verify the draw request has been earned, submit a request to the owner for payment, submit a payment to date schedule at each draw period, collect processed checks from the owner and pay subcontractors at each draw period. Project Manager will not receive deposits from owner of public funds for redistribution as payment direct to contractors. Owner will make direct payment to their contractors for services rendered as approved by the Project Manager.

Section 2. *Performance of Service.* The manner in which the Services are to be performed and the specific hours to be worked by the Project Manager shall be determined by the Project Manager. The Owner will rely on the Project Manager to work as many hours as may be reasonably necessary to complete the Services in a timely and thorough manner.

Section 3. *Payment to Project Manager.* In exchange for the services performed hereunder, Owner shall pay Project Manager an amount equal to five percent (5%) of the total construction costs related to the club house, which includes all contracted amounts, fees, and/or change orders, with the total compensation to be paid on a project cost not to exceed 5%. In the event any such labor and/or material is donated, volunteered or performed by city staff during the term of this agreement, Project Manager will not receive any compensation but agrees to manage, direct and schedule such work as will perform those items that are paid goods and services.

Any direct or indirect expense related to the Project shall be reimbursable to the Project Manager. Draw amounts can be requested by the Project Manager at the payment intervals established between the Owner and the Project Manager. Ninety percent of the projected earnings by the Project Manager are available in even increments over the entire course of the full project period. The remaining ten percent of earning shall be payable only upon one hundred percent completion of the Project. Owner cannot establish or allow to be created any form of delay which creates a hindrance in the Project Manager's ability to complete such project and receive final payment. Such earned amounts and reimbursable funds due the Project Manager are payable at standard draw periods and shall not be withheld for any such reason short of an illegal or unlawful act.

Section 4. *Term/Termination.* The term of this agreement shall begin upon the execution of this agreement or by an earlier period in which any billable service was rendered. Completion of the Project shall be upon the successful completion of all requirements necessary for a certificate of occupancy to be obtained based on the scope of work. This agreement may be terminated by the Project Manager for the following reasons: a) Failure of Owner to pay Project Manager or any subcontractor total amounts earned by the party, b) Acts by the Owner which are deemed to be illegal, unlawful, immoral or unethical as defined and understood by the Project Manager, or c) an interruption by the Owner in the ability for the Project Manager to properly and adequately manage the Project for the purpose of completing the scope of work.

The Owner shall have the right to terminate this agreement for the following reasons: a) failure of the Project Manager to properly conduct and complete the task set forth in section 1 of this agreement, b) Acts by the Project Manager which are deemed to be illegal, unlawful, immoral or unethical as defined and understood by the Owner, or c) failure by the Project Manager to complete the projects in a reasonable time frame with consideration and without penalty to the limitations in completing the task that may be created by the Owner, Owner's subcontracted labor and/or the funding source/partner for such project.

In the event that termination is made based on any of the three causes above mentioned, the Project Manager is due all monies earned to date and/or those funds that are reimbursable. Payment shall be made immediately by the Owner. This agreement may be terminated for any reason with a thirty-day written notice. If termination is without an above referenced cause, all outstanding funds shall be immediately paid plus a termination fee of 25% for all remaining compensation that would have been earned if the Project is under fifty percent complete and a termination fee of 50% if project is over fifty percent complete.

If the Project is cancelled during the design or preplanning stage, for any reason deemed necessary by the Owner, this shall result in a cancellation of the Professional Service Agreement. The compensation to the Project Manager shall be an amount equal to fifteen percent of the project expense accrued. If no expense was experienced by the Owner, an hourly rate of seventy-five dollars per hour shall be paid to the Project Manager upon verification of hours committed to the project.

Section 5. Insurance. The Project Manager agrees to secure and maintain in full force and affect a policy of professional liability insurance in a minimum amount of \$1,000,000 providing coverage for any negligent acts, errors or omissions by Project Manager made during the term of this Agreement. The Project Manager agrees to provide Owner with a copy of a certificate of professional liability insurance.

Section 6. Nondiscrimination. The Project Manager, in performing under this Agreement, shall not discriminate against any workers, employees, or applicants, or any member of the public, because of race, creed, color, religion, age, sex or national origin, nor otherwise commit an unfair employment practice. The Project Manager shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, creed, color, religion, age, sex or national origin. Action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Project Manager shall post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause. The Project Manager further agrees that this clause will be incorporated in all contracts entered into with suppliers of materials or services, contractors and subcontractors and all labor organizations, furnishing skilled, unskilled and craft union skilled labor, or who may perform any labor or services in connection with this Agreement.

Attention is called to Executive Order 11246 issued September 24, 1965, 30 Fed. Reg. 12319, as modified by Executive Order 11375 issued October 13, 1967, 32 Fed. Reg. 14303 and Executive Order 12086 issued October 5, 1978, 43 Fed. Reg. 46501 and as further amended by Federal Reorganization Plan No. 2 of 1978, Section 102, 43 Fed. Reg. 36037, 92 Stat. 3783; The Civil Rights Act of 1964, Pub. L. No. 88-352, July 2, 1964, 78 Stat. 241 et sub, as amended; an ordinance passed by the DDA Council of the DDA; and the provisions of 41 C.F.R. Chapter 60.

To demonstrate compliance the Project Manager and its Subcontractors shall furnish reports and information that may be reasonably requested by the Commission on Human Relations.

Section 7. Employment. The Project Manager shall comply with "An Act to give preference to veterans of the United States military and naval service in appointments and employment upon public

works by, or for the use of, the State or its political subdivisions," approved June 12, 1935, as amended.

Section 8. Wages. The Project Manager shall comply with "An Act regulating wages of laborers, mechanics and other workmen employed in any public works by the State, County or any political subdivision or by any one under contract for public works, approved June 26, 1941, as amended."

Section 9. Owner's Duties and Responsibilities. The Owner shall provide a designated staff person by which the Project Manager shall answer directly to. In communications relating to the Project, the Owner shall communicate with Contractors and Subcontractors only through the Project Manager. The Owner shall examine documents submitted by the Project Manager within the time and manner set forth in these General Conditions or the Competition Program for the review of documents, provided however that where time and manner is not set forth in these General Conditions or the Competition Program, the Owner shall examine documents within 25 days from the date of receipt.

The Owner's representative at the Project shall be the Project Manager, and all communications to the Owner shall be made through the Project Manager. Unless otherwise stated herein, no Modification to the Contract shall be made without the written approval of the Owner.

In the event that any dispute between the Owner and the Project Manager concerning questions of fact arising under this Contract cannot be resolved, a request for resolution shall be submitted by the Project Manager to the City Manager for final determination. Requests for such determination shall be made in writing. The City Manager's decision may be reached in accordance with assistance as he or she may deem reasonably necessary or desirable. The City Manager's final decision shall be rendered in writing no more than 30 days after receipt of a fully documented (to the extent that such documents are within the control of the Project Manager) request for a determination. The decision shall be conclusive, final, and binding on all parties, unless the Project Manager shall seek a judicial determination in accordance with the provisions set forth below.

No later than 60 days after the Project Manager's receipt of the City Manager's determination, the Project Manager shall respond to the City Manager in writing, either accepting the determination or stating the Project Manager's factual or legal objections to the determination. If the Project Manager's response is an objection, the City Manager shall respond in writing to the objection within 30 days after receipt of it. No further response by either party shall be required. Thereafter, the Project Manager may seek a judicial determination of the dispute. In the event that the Project Manager intends to seek judicial determination of a matter decided by the City Manager, the Project Manager shall notify the Owner of its intent to do so within 60 days of the City Manager's final decision.

The Project Manager shall continue to perform the Work required under the Contract during this resolution period, including judicial. The City Manager's written determination shall be complied with pending final resolution, including judicial, of the dispute. If the Project Manager complies with the City Manager's written determination, the Owner shall continue to perform under the Contract and make all payments due (other than those or the portions of payments in dispute, if any) during the resolution period. This payment provision shall not apply in the event that the Project Manager fails to submit a dispute to the City Manager's as required by this Section. The continued performance of the Contract by either party shall not constitute an admission as to any factual or legal position in connection with the dispute, or a waiver of its rights under the Contract or at Law. If the Owner

becomes aware of any fault or defect in the Work or nonconformance with the Design Development or Project Documents, it shall give written notice to the Project Manager.

Section 10. Protection of Persons and Property. The Project Manager shall be responsible for initiating, maintaining and providing supervision of safety precautions and programs in connection with the Work, and shall also comply with any and all insurance carrier mandated safety requirements and programs.

The Project Manager shall see to it that subcontractors at their own expense as part of their Contract Sum shall take any and all precautions that may be necessary to render all portions of the Work, the Project Site and any adjacent areas affected by the Work secure in every respect, or to decrease the likelihood of accidents from any cause, or to avoid contingencies which are liable to delay the Work. The Project Manager shall arrange all necessary facilities to provide safe means of access to all points where Work is being performed. The Project Manager shall take all precautions and measures as may be necessary to secure the Project at all hours, including evening and non-work hours. Precautions may include but not be limited to provision of security guards.

The Project Manager shall take reasonable precautions for the safety of and shall provide reasonable protection to prevent damage, injury or loss to (a) employees on the Work Site and other persons who may be affected by it; (b) the Work and materials, furnishings and equipment to be incorporated in it; and (c) other property related to the Project, whether or not located at or adjacent to the Project Site. Although the Owner will observe the Project Work and give the Project Manager opinions and suggestions about safety defects and deficiencies, the Owner shall not be responsible for any unsafe conditions. The Owner suggestions on safety shall in no way relieve the Project Manager of its responsibility for safety on the Project. The Project Manager has sole responsibility for safety throughout the term of the Contract. In case of accident, the Project Manager shall immediately furnish the Owner with full data relative to the accident.

Only materials and equipment that are reasonably necessary or appropriate for the Work under the Contract, shall be placed, stored or allowed to occupy any such space at the site of the Work. If gasoline, flammable oils or other highly combustible materials are to be stored at the Project Site, they shall be stored in safety containers and placed in clearly marked safe areas. The Project Manager shall give notices and comply with all applicable laws, ordinances, rules, regulations and orders of the Federal, State and local public authorities bearing on the safety of persons and property and their protection from damage, injury or loss.

The Project Manager shall be liable for any and all damage or loss to property at the site caused in whole or in part by the Project Manager directly or anyone directly or indirectly employed by Project Manager. To the extent that damages are covered by insurance provided in accordance with this Contract, the Project Manager shall be reimbursed for payments made to the Owner from any monetary recovery under insurance coverage. The Project Manager shall include same such provision in each contract for services approved by the owner for work to be completed on the said project.

The Project Manager shall see that contractors avoid damage, as a result of the Project's operations, to existing sidewalks, curbs, streets, alleys, pavements, utilities, adjoining property, the Work of other contractors, and the property of the Owner and others and the responsible party if said damages were unapproved and not part of the project, will be deducted from the funds owed the responsible parties.

Section 11. *Rights to Entry.* The Project Manager shall use a reasonable degree of care when entering upon any property owned by the Owner in connection with the Project. In the case of property not owned by the Owner, the Project Manager shall comply with any and all instructions and requirements for the use of such property. In the case of property owned by any other entity, the Project Manager shall separately negotiate and obtain any license or permission to enter upon the property. The Owner agrees to cooperate with the Project Manager in the Project Manager's negotiation with other public entities in order to secure licenses or permission.

Section 12. *Assignment.* This Agreement shall not be assigned by Project Manager without the written consent of the Owner.

Section 13. *Notices.* Any notice required or permitted by this Agreement shall be in writing and shall be deemed to have been sufficiently given for all purposes if sent by certified mail or registered mail, postage and fees prepaid, addressed to the party to whom such notice is to be given at the address set forth on the first page of this Agreement, or at such other address as has been previously furnished in writing to the other party or parties. Such notice shall be deemed given when deposited in the United States mail.

Section 14. *Delays.* Any delays in or failure of performance by any party of his or its obligations under this Agreement shall be excused if such delays or failure are a result of acts of God, fires, floods, strikes, labor disputes, accidents, regulations or orders of civil or military authorities, shortages of labor or materials, or other causes, similar or dissimilar, which are beyond the control of such party.

Section 15. *Additional Documents.* The parties agree to execute any additional documents or take any additional action that is necessary to carry out this Agreement.

Section 16. *Entire Agreement.* This Agreement represents the entire agreement between the parties and there are no oral or collateral agreements or understandings. This Agreement may be amended only by an instrument in writing signed by the parties. If any other provision of this Agreement is held invalid or unenforceable, no other provision shall be affected by such holding, and all of the remaining provisions of this Agreement shall continue in full force and effect.

Section 17. *Time of the Essence.* If any payment or any other condition, obligation, or duty is not timely made, tendered or performed by either party, then this Agreement, at the option of the party who is not in default, may be terminated by the non-defaulting party, in which case, the non-defaulting party may recover such damages as may be proper. If the non-defaulting party elects to treat this Agreement as being in full force and effect, the non-defaulting party shall have the right to an action for specific performance or damage or both.

Section 18. *Waiver.* A waiver by any party to this Agreement of the breach of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by either party.

Section 19. *Governing Law.* This Agreement shall be governed by the laws of the State of Georgia.

Section 20. *Binding Effect.* This Agreement shall inure to the benefit of, and be binding upon, the parties, their respective legal representatives, successors, heirs, and assigns; provided, however, that

nothing in this paragraph shall be construed to permit the assignment of this Agreement except as otherwise expressly authorized herein.

Section 21. Indemnification. Project Manager expressly agrees to indemnify and hold harmless Owner or any of its officers or employees from any and all claims, damages, liability, or court awards including attorney's fees that are or may be awarded as a result of any loss, injury or damage sustained or claimed to have been sustained by anyone, including, but not limited to, any person, firm, partnership, or corporation, in connection with or arising out of any omission or act of commission by Project Manager or any of their employees or agents in performing work pursuant to this Agreement. In the event that any such suit or action is brought against Owner. The Owner will give notice thereof to Project Manager. Project Manager shall insert same such provision in each contract approved by the Owner for work to be completed in association with said project.

Section 22. Worker's Compensation. Project Manager shall at its own expense keep in full force and effect during the term of this Agreement Statutory Worker's Compensation Insurance.

Section 23. Subcontractors. Project Manager shall not subcontract any task it is to perform under the terms of this Agreement without prior written consent of Owner.

Section 24. Compliance. Project Manager shall comply with Federal and State requirements regarding verification of employment for contractors and subcontractors attached hereto as Exhibit "A".

Section 25. No Third-Party Beneficiaries. It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to Owner and Project Manager, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other third party on such Agreement. It is the express intention of the parties that any person other than Owner or Project Manager receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

CITY OF CARTERSVILLE

McWHORTER GOSS GENERAL CONTRACTORS LLC

Matt Santini, Mayor

Ron Goss, Jr., Project Manager

Attest: Julia Drake, City Clerk

NOTARY PUBLIC
My Commission Expires: _____

Signed, sealed and delivered on the
_____ day of _____, 202__.