

**THE CITY OF STONECREST, GEORGIA**  
**CONTRACT FOR SOUTHEAST ATHLETIC COMPLEX DOG PARK**

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

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**CONTRACT FOR SOUTHEAST ATHLETIC COMPLEX DOG PARK  
AND INCORPORATED GENERAL CONDITIONS**

This Agreement is made by and between the **CITY OF STONECREST, GEORGIA**, a municipal corporation of the State of Georgia (the "Owner"), and **F.H. PASCHE, S.N. NIELSEN & ASSOCIATES, LLC**, a corporation created and existing under the laws of the State of Georgia (the "Contractor"), under seal for design build services for the Southeast Athletic Complex Dog Park Project within the City of Stonecrest (the "Project"). For and in consideration of the mutual promises set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Owner and the Contractor hereby agree as follows:

**ARTICLE I**  
**THE CONTRACT AND THE CONTRACT DOCUMENTS**

**1.1 The Contract**

1.1.1 The Contract between the Owner and the Contractor, of which this Agreement is a part, consists of the Contract Documents. It shall be effective on the date this Agreement is executed by the last party to execute it.

**1.2 The Contract Documents**

1.2.1 The Contract Documents consist of this Agreement, any and all Exhibits attached hereto, the Specifications, the Drawings, all Change Orders and Task Orders issued hereafter, any other amendments hereto executed by the parties hereafter, together with the following (if any):

Advertisement for Competitive Sealed Bids/Proposals; Instructions to Offerors; Bid/Proposal Form; Bid Bond; Payment Bond; Performance Bond; Notice of Award; Change Order; Certificate of Substantial Completion; Notice to Proceed.

Documents not enumerated in this Paragraph 1.2 or not otherwise incorporated by reference hereunder are not Contract Documents and do not form part of this Contract.

**1.3 Entire Agreement**

1.3.1 This Contract, together with the Contractor's performance and payment bonds for the Project, Contract Documents, constitute the entire and exclusive agreement between the Owner and the Contractor with reference to the Project. Specifically, but without limitation, this Contract supersedes any bid documents and all prior written or oral communications, representations and negotiations, if any, between the Owner and Contractor.

## **1.4 No Privity with Others**

1.4.1 Nothing contained in this Contract shall create or be interpreted to create privity or any other contractual agreement between the Owner and any person or entity other than the Contractor.

## **1.5 Intent and Interpretation**

1.5.1 The intent of this Contract is to require complete, correct and timely execution of the Work. Any Work that may be required, implied or inferred by the Contract Documents, or any one or more of them, as necessary to produce the intended result shall be provided by the Contractor for the Contract Price.

1.5.2 This Contract is intended to be an integral whole and shall be interpreted as internally consistent. What is required by any one Contract Document shall be considered as required by the Contract.

1.5.3 When a word, term or phrase is used in this Contract, it shall be interpreted or construed, first, as defined herein; second, if not defined, according to its generally accepted meaning in the construction industry; and third, if there is no generally accepted meaning in the construction industry, according to its common and customary usage.

1.5.4 The words "include", "includes", or "including", as used in this Contract, shall be deemed to be followed by the phrase, "without limitation."

1.5.5 The specification herein of any act, failure, refusal, omission, event, occurrence or condition as constituting a material breach of this Contract shall not imply that any other non-specified act, failure, refusal, omission, event, occurrence or condition shall be deemed not to constitute a material breach of this Contract.

1.5.6 Words or terms used as nouns in this Contract shall be inclusive of their singular and plural forms unless the context of their usage clearly requires a contrary meaning.

1.5.7 The Contractor shall have a continuing duty to read, carefully study and compare each of the Contract Documents, the Shop Drawings and the Product Data and shall give written notice to the Owner of any inconsistency, ambiguity, error or omission which the Contractor may discover with respect to these documents before proceeding with the affected Work. The issuance, or the express or implied approval by the Owner or the Engineer of the Contract Documents, Shop Drawings or Product Data shall not relieve the Contractor of the continuing duties imposed hereby, nor shall any such approval be evidence of the Contractor's compliance with this Contract. The Owner has requested the Engineer to only prepare documents for the Project, including the Drawings and Specifications for the Project, which are accurate, adequate, consistent, coordinated and sufficient for construction. HOWEVER, THE OWNER MAKES NO REPRESENTATION OR WARRANTY OF ANY NATURE WHATSOEVER TO THE CONTRACTOR CONCERNING SUCH DOCUMENTS. By the execution hereof, the Contractor acknowledges

and represents that it has received, reviewed and carefully examined such documents, has found them to be complete, accurate, adequate, consistent, coordinated and sufficient for construction, and that the Contractor has not, does not, and will not rely upon any representation or warranties by the Owner concerning such documents as no such representation or warranties have been or are hereby made.

1.5.8 Neither the organization of any of the Contract Documents into divisions, sections, paragraphs, articles, (or other categories), nor the organization or arrangement of the Design, shall control the Contractor in dividing the Work or in establishing the extent or scope of the Work to be performed by Subcontractors.

## **1.6 Ownership of Contract Documents**

1.6.1 The Contract Documents, and each of them, shall remain the property of the Owner. The Contractor shall have the right to keep one record set of the Contract Documents upon completion of the Project; provided, however, that in no event shall Contractor use, or permit to be used, any or all of such Contract Documents on other projects without the Owner's prior written authorization.

## **1.7 Hierarchy of Contract Documents**

1.7.1 In the event of any conflict, discrepancy, or inconsistency among any of the Contract Documents, the following hierarchy shall control: (a) as between figures given on drawings and the scaled measurements, the figures shall govern; (b) as between large scale drawings and small scale drawings, the large scale shall govern; (c) as between drawings and specifications, the requirements of the specifications shall govern; (d) as between the Contract for Construction and the specifications, the requirements of the Contract for Construction shall govern. As set forth hereinabove, any and all conflicts, discrepancies, or inconsistencies shall be immediately reported to the Engineer in writing by the Contractor.

## **ARTICLE II** **THE WORK**

**2.1** The Contractor shall perform all of the Work required, implied or reasonably inferable from, this Contract.

**2.2** The term "Work" shall mean whatever is done by or required of the Contractor to perform and complete its duties under this Contract, including the following: construction of the whole or a designated part of the Project; furnishing of any required surety bonds and insurance; and the provision or furnishing of labor, supervision, services, materials, supplies, equipment, fixtures, appliances, facilities, tools, transportation, storage, power, permits and licenses required of the Contractor, fuel, heat, light, cooling and all other utilities as required by this Contract. The Work to be performed by the Contractor is generally described as follows: See **Exhibit A**, which is

attached hereto and is incorporated herein by reference.

### **ARTICLE III** **CONTRACT TIME**

#### **3.1 Contract Term**

3.1.1 This Agreement shall commence on the effective date of this Agreement and shall terminate absolutely and without further obligation on the part of the Owner at the close of the calendar year in which it was executed, unless renewed pursuant to Paragraph 12.3.

#### **3.2 Time and Liquidated Damages**

3.2.1 The Contractor shall commence the Work under this Agreement on the date established by a written Notice to Proceed given by the Owner to the Contractor fixing the date on which the Contract time will commence to run. The Contractor shall achieve Substantial Completion of the Work within One Hundred and Eighty (180) calendar days from receipt of the Notice to Proceed (NTP) and Purchase Order (PO), unless another date is provided within the written Notice to Proceed. The number of consecutive calendar days from the date on which the Work is permitted to proceed, through the date set forth for Substantial Completion, shall constitute the "Contract Time."

3.2.2 The Contractor shall pay the Owner the sum of two hundred and fifty (\$250.00) per day for each and every business day of unexcused delay in achieving Substantial Completion beyond the date set forth herein for Substantial Completion of the Work. Any sums due and payable hereunder by the Contractor shall be payable, not as a penalty, but as liquidated damages representing an estimate of delay damages likely to be sustained by the Owner, estimated at or before the time of executing this Contract. When the Owner reasonably believes that Substantial Completion will be inexcusably delayed, the Owner shall be entitled, but not required, to withhold from any amounts otherwise due the Contractor an amount then believed by the Owner to be adequate to recover liquidated damages applicable to such delays. If and when the Contractor overcomes the delay in achieving Substantial Completion, or any part thereof, for which the Owner has withheld payment, the Owner shall promptly release to the Contractor those funds withheld, but no longer applicable, as liquidated damages.

#### **3.3 Substantial Completion**

3.3.1 "Substantial Completion" shall mean that stage in the progression of the Work when the Work is sufficiently complete in accordance with this Contract that the Owner can enjoy beneficial use and occupancy of the Work and can utilize the Work for its intended purpose. Partial use or occupancy of the Project shall not result in the Project being deemed substantially complete, and such partial use or occupancy shall not be evidence of Substantial completion.

### **3.4 Time is of the Essence**

3.4.1 All limitations of time set forth in the Contract Documents are of the essence of this Contract.

## **ARTICLE IV** **CONTRACT PRICE**

### **4.1 The Contract Price**

4.1.1 The Owner shall pay, and the Contractor shall accept, as full and complete payment for the Contractor's timely and full performance of its obligations hereunder, the total lump sum amount set forth in Paragraph 4.1.2. The lump sum amount set forth in Paragraph 4.1.2 shall not be modified except by Change Order(s) as provided in this Agreement.

4.1.2 The total lump sum amount to be paid by the Owner to the Contractor for the Contractor's limitedly and full performance of its obligations under the Agreement shall not exceed THREE HUNDRED EIGHTY-TWO THOUSAND, SEVEN HUNDRED AND FIVE DOLLARS AND FIFTY CENTS 50/100(\$382,705.50). See **Exhibit B** (Cost Proposal) attached hereto and incorporated by reference herein.

## **ARTICLE V** **PAYMENT OF THE CONTRACT PRICE**

### **5.1 Schedule of Values**

5.1.1 For all portions of this Agreement not payable in unit values, within ten (10) calendar days of the effective date hereof, the Contractor shall submit to the Owner and to the Engineer a Schedule of Values allocating the Contract Price to the various portions of the Work. The Contractor's Schedule of Values shall be prepared in such form, with such detail, and supported by such data as the Engineer or the Owner may require to substantiate its accuracy. The Contractor shall not imbalance its Schedule of Values nor artificially inflate any element thereof. The violation of this provision by the Contractor shall constitute a material breach of this Contract. The Schedule of Values shall be used only as a basis for the Contractor's Applications for Payment and shall only constitute such basis after it has been acknowledged in writing by the Engineer and the Owner.

### **5.2 Payment Procedure**

5.2.1 The Owner shall pay the Contract Price to the Contractor as provided below.

5.2.2 *Progress Payments* -- Based upon the Contractor's Applications for Payment submitted to the Engineer and upon Certificates for Payment subsequently issued to the Owner by the Engineer, the Owner shall make progress payments to the Contractor on account of the Contract Price.

5.2.3 On or before the 1st day of each month after commencement of the Work, the Contractor shall submit an Application for Payment for the period ending the 30th day of the month to the Engineer in such form and manner, and with such supporting data and content, as the Owner or the Engineer may require. Therein, the Contractor may request payment for ninety percent (90%) of that portion of the Contract Price properly allocable to Contract requirements properly provided, labor, materials and equipment properly incorporated in the Work plus ninety percent (90%) of that portion of the Contract Price properly allocable to materials or equipment properly stored on-site (or elsewhere if approved in advance in writing by the Owner) for subsequent incorporation in the Work, less the total amount of previous payments received from the Owner. Payment for stored materials and equipment shall be conditioned upon the Contractor's proof satisfactory to the Owner, that the Owner has title to such materials and equipment and shall include proof of required insurance. Such Application for Payment shall be signed by the Contractor and shall constitute the Contractor's representation that the Work has progressed to the level for which payment is requested in accordance with Articles 4 and 5 of this Agreement, that the Work has been properly installed or performed in full accordance with this Contract, and that the Contractor knows of no reason why payment should not be made as requested. Thereafter, the Engineer will review the Application for Payment and may also review the Work at the Project site or elsewhere to determine whether the quantity and quality of the Work is as represented in the Application for Payment and is as required by this Contract. The Engineer shall determine and certify to the Owner the amount properly owing to the Contractor.

5.2.4 The Owner shall make partial payments on account of the Contract Price to the Contractor within thirty (30) days following the Engineer's receipt of each Application for Payment. The amount of each partial payment shall be the amount certified for payment by the Engineer less such amounts, if any, otherwise owing by the Contractor to the Owner or which the Owner shall have the right to withhold as authorized by this Contract. The Engineer's certification of the Contractor's Application for Payment shall not preclude the Owner from the exercise of any of its rights as set forth in Paragraph 5.3 hereinbelow. PROVIDED, HOWEVER, that when fifty (50) percent of the contract value, including change orders and other additions to the contract value, provided for by the Contract Documents is due, and the manner of completion of the contract Work and its progress are reasonably satisfactory to the Owner, the Owner shall withhold no more retainage. At the discretion of the Owner, and with the approval of the Contractor, the retainage of any subcontractor may be released separately as the subcontractor completes its work. If, however, after discontinuing the retention, the Owner determines that the Work is unsatisfactory or has fallen behind schedule, retention may be resumed at the previous level. If retention is resumed by the Owner, the Contractor and subcontractors shall be entitled to resume withholding retainage accordingly. The rights of the Owner set forth herein to retainage are in addition to all of the other rights and remedies of the Owner set forth in this Agreement.

5.2.5 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 payments have been received from

the Owner shall be free and clear of liens, claims, security interest or other encumbrances in favor of the Contractor or any other person or entity whatsoever.

5.2.6 The Contractor shall promptly pay each Subcontractor out of the amount paid to the Contractor on account of such Subcontractor's Work, the amount to which such Subcontractor is entitled. In the event the Owner becomes informed that the Contractor has not paid a Subcontractor as herein provided, the Owner shall have the right, but not the duty, to issue future checks in payment to the Contractor of amounts otherwise due hereunder naming the Contractor and such Subcontractor as joint payees. Such joint check procedure, if employed by the Owner, shall create no rights in favor of any person or entity beyond the right of the named payees to payment of the check and shall not be deemed commit the Owner to repeat the procedure in the future.

5.2.7 No progress payment, nor any use or occupancy of the Project by the Owner, shall be interpreted to constitute an acceptance of any Work not in strict accordance with this Contract.

### **5.3 Withheld Payment**

5.3.1 To the extent permitted by Georgia law, the Owner may decline to make payment, may withhold funds, and, if necessary, may demand the return of some or all of the amounts previously paid to the Contractor, to protect the Owner from loss because of:

- (a) defective Work not remedied by the Contractor nor, in the opinion of the Owner, likely to be remedied by the Contractor;
- (b) claims of third parties against the Owner or the Owner's property;
- (c) failure by the Contractor to pay Subcontractors or others in a prompt and proper fashion;
- (d) evidence that the balance of the Work cannot be completed in accordance with the Contract for the unpaid balance of the Contract Price;
- (e) evidence that the Work will not be completed in the time required for substantial or final completion;
- (f) persistent failure to carry out the Work in accordance with the Contract;
- (g) damage to the Owner or third party to whom the Owner is, or may be, liable.

In the event that the Owner makes written demand upon the Contractor for amounts previously paid by the Owner as contemplated in this Subparagraph 5.3.1, the Contractor shall promptly comply with such demand.

### **5.4 Unexcused Failure to Pay**

5.4.1 If within forty-five (45) days after the date established herein for payment to the contractor by the Owner, the Owner, without cause or basis hereunder, fails to pay the Contractor any amount then due and payable to the Contractor, then the Contractor may, after seven (7) additional days' written notice to the Owner and Engineer, and without prejudice to any other available rights or remedies it may have, stop the Work until payment of those amounts due from the Owner has been received. Any payment not made within forty-five (45) days after the date due shall bear interest at the rate of three percent (3%) per annum.

## **5.5 Substantial Completion**

5.5.1 When the Contractor believes that the Work is substantially complete, the Contractor shall submit to the Engineer and Owner notice that it believes the project has been completed. The Engineer shall then cause the project to be inspected and provide the Contractor with either (1) a list of items to be completed or corrected by the Contractor, or (2) a Certificate of Substantial Completion. When the Engineer on the basis of an inspection determines that the Work is in fact substantially complete, it will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, shall state the responsibilities of the Owner and the Contractor for Project security, maintenance, heat, utilities, damage to the Work, and insurance, and shall fix the time within which the Contractor shall complete the items listed therein. The Certificate of Substantial Completion shall be submitted to the Contractor for its written acceptance of the responsibilities assigned to it in such certificate. Upon Substantial Completion of the Work, and execution by both the Owner and Contractor of the Certificate of Substantial Completion, the Owner shall pay the Contractor an amount sufficient to increase total payment to the Contractor to one hundred percent (100%) of the Contract Price less two hundred percent (200%) of the reasonable cost as determined by the Owner for completing all incomplete Work, correcting and bringing into conformance all defective and nonconforming Work, and handling all unsettled claims.

## **5.6 Completion and Final Payment**

5.6.1 When all of the Work is finally complete, and the Contractor is ready for a final inspection, it shall notify the Owner and the Engineer thereof in writing. Thereupon, the Engineer will make final inspection of the Work and, if the Work is complete in full accordance with this Contract and all Contract Documents, and this Contract has been fully performed, the Engineer will promptly issue a final Certificate for Payment certifying to the Owner that the Project is complete and the Contractor is entitled to the remainder of the unpaid Contract Price, less any amount withheld pursuant to this Contract. Guarantees required by the Contract shall commence on the date of Final Completion of the Work. If the Engineer is unable to issue its final Certificate for Payment and is required to repeat its final inspection of the Work, the Contractor shall bear the cost of such repeat final inspection(s) which cost may be deducted by the Owner from the Contractor's final payment.

5.6.1.1 If the Contractor fails to achieve final completion within the time fixed therefore by the Engineer in its Certificate of Substantial Completion, the Contractor shall pay the Owner the sum of Two Hundred and Fifty Dollars (\$250.00) per day for each and every calendar day of unexcused delay in achieving final completion beyond the date set forth herein for final completion of the Work. Any sums due and payable hereunder by the Contractor shall be payable, not as penalty, but as liquidated damages representing an estimate of delay damages likely to be sustained by the Owner, estimated at or before the time of executing this Contract. When the Owner reasonably believes that final completion will be inexcusably delayed, the Owner shall be entitled, but not required, to withhold from any amounts otherwise due the Contractor an amount then believed by the Owner to be adequate to recover liquidated damages applicable to such delays. If and when the Contractor overcomes the delay in achieving final completion, or any part thereof, for which the Owner has withheld payment, the Owner shall promptly release to the Contractor those funds withheld, but no longer applicable, as liquidated damages.

5.6.2 The Contractor shall not be entitled to final payment unless and until it submits to the Engineer and Owner all documents required by the Contract, including, but not limited to, its affidavit that all payrolls, invoices for materials and equipment, and other liabilities connected with the Work for which the Owner, or the Owner's property might be responsible, have been fully paid or otherwise satisfied; releases and waivers of lien from all Subcontractors of the Contractor and of any and all other parties required by the Engineer or the Owner; consent of Surety, if any, to final payment. If any third party fails or refuses to provide a release of claim or waiver of lien as required by the Owner, the Contractor shall furnish a bond satisfactory to the Owner to discharge any such lien or indemnify the Owner from liability.

5.6.3 The Owner shall make final payment of all sums due the Contractor within thirty (30) days of the Engineer's execution of a final Certificate for Payment.

5.6.4 Acceptance of final payment shall constitute a waiver of all claims against the Owner by the Contractor except for those claims previously made in writing against the Owner by the Contractor, pending at the time of final payment, and identified in writing by the Contractor as unsettled at the time of its request for final payment.

5.6.5 The Owner and Contractor expressly agree that the terms of payment, payment periods, and rates of interest herein shall control to the exclusion of any provisions set forth in the Georgia Prompt Pay Act, O.C.G.A. Section 13-11-1 *et al.*, and the provisions of said Act are herein waived.

**ARTICLE VI**  
**THE OWNER**

**6.1 Information, Services and Things Required from Owner**

6.1.1 If the Contractor requests in writing, the Owner shall furnish to the Contractor, prior to the execution of this Contract, any and all written and tangible material in its possession concerning conditions below ground at the site of the Project. Such written and tangible material is furnished to the Contractor only in order to make complete disclosure of such material and for no other purpose. By furnishing such material, the Owner does not represent, warrant, or guarantee its accuracy either in whole, in part, implicitly or explicitly, or at all, and shall have no liability, therefore. The Owner shall also furnish surveys, legal limitations and utility locations (if known), and a legal description of the Project site.

6.1.2 Excluding permits and fees normally the responsibility of the Contractor, the Owner shall obtain all approvals, easements, and the like required for construction and shall pay for necessary assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

6.1.3 The Owner shall furnish the Contractor, free of charge, three (3) copies of the Contract Documents for execution of the Work (if applicable). The Contractor will be charged, and shall pay the Owner, Fifty Dollars (\$50.00) per additional set of Contract Documents which it may require.

## **6.2 Right to Stop Work**

6.2.1 If the Contractor persistently fails or refuses to perform the Work in accordance with this Contract, the Owner may order the Contractor to stop the Work, or any described portion thereof, until the cause for stoppage has been corrected, no longer exists, or the Owner orders that Work be resumed. In such event, the Contractor shall immediately obey such order.

## **6.3 Owner's Right to Perform Work**

6.3.1 If the Contractor's Work is stopped by the Owner under Paragraph 6.2, and the Contractor fails within seven (7) days of such stoppage to provide adequate assurance to the Owner that the cause of such stoppage will be eliminated or corrected, then the Owner may, without prejudice to any other rights or remedies the Owner may have against the Contractor, proceed to carry out the subject Work. In such a situation, an appropriate Change Order shall be issued deducting from the Contract Price the cost of correcting of the subject deficiencies, plus compensation for the Engineer's additional services and expenses necessitated thereby, if any. If the unpaid portion of the Contract Price is insufficient to cover the amount due to the Owner, the Contractor shall pay the difference to the Owner.

## **ARTICLE VII** **THE CONTRACTOR**

### **7.1 The Contractor**

7.1.1 The Contractor is again reminded of its continuing duty set forth in Subparagraph 1.5.7. The Contractor shall perform no part of the Work at any time without adequate Contract Documents or, as appropriate, approved shop Drawings, Product Data or Samples for such portion of the Work. If the Contractor performs any of the Work knowing it involves a recognized error, inconsistency, or omission in the Contract Documents without such notice to the Engineer, the Contractor shall bear responsibility for such performance and shall bear the cost of correction.

## **7.2 Compliance with Contract**

7.2.1 The Contractor shall perform the work strictly in accordance with this Contract.

## **7.3 Reasonable Care and Skill**

7.3.1 The Contractor shall supervise and direct the Work and warrants that it will perform all services or Work using reasonable care and skill and in workmanlike manner consistent with industry standards. The Contractor shall be responsible to the Owner for any and all acts or omissions of the Contractor, its employees and others engaged in the Work on behalf of the Contractor.

## **7.4 Warranty**

7.4.1 The Contractor warrants to the Owner that all labor furnished to progress the Work under this Contract will be competent to perform the tasks undertaken, that the product of such labor will yield only first-class results, that materials and equipment furnished will be of good quality and new unless otherwise permitted by this Contract, and that the Work will be of good quality free from faults and defects and in strict conformance with this Contract. All Work not conforming to these requirements may be considered defective.

7.4.2 The standard of care applicable to the Contractor's services shall be the standard of skill and diligence normally employed by businesses performing the same or similar services at the time the Contractor's services are performed. For a twelve (12) month period commencing with the completion of the Work, the Contractor shall re-perform, solely at its own cost and without additional compensation due from the Owner, any services not meeting this standard. The Contractor further warrants that any service it undertakes in the performance of the Work will be adequate and sufficient to accomplish the purposes for which they are performed, and no review or approval thereof by the City shall be deemed to diminish this warranty in any way.

## **7.5 Permits**

7.5.1 The Contractor shall obtain and pay for all permits, inspections, fees and licenses necessary and ordinary for the Work. The Contractor shall comply with all lawful

requirements applicable to the Work and shall give and maintain any and all notices required by applicable law, ordinance, or regulation pertaining to the Work.

**7.6 Supervision**

7.6.1 The Contractor shall employ and maintain at the Project site only competent supervisory personnel. Absent written instruction from the Contractor to the contrary, the superintendent shall be deemed the Contractor’s authorized representative at the site and shall be authorized to receive and accept any and all communications from the Owner or the Engineer.

7.6.2 Key supervisory personnel assigned by the Contractor to this Project are as follows:

<u>Name</u>	<u>Function</u>
_____	_____
_____	_____
_____	_____
_____	_____

So long as the individuals named above remain actively employed or retained by the Contractor, they shall perform the functions indicated next to their names unless the Owner agrees to the contrary in writing. In the event one or more individuals not listed above subsequently assumes one or more of those functions listed above, the Contractor shall be bound by the provisions of this Subparagraph 7.6.2 as though such individuals had been listed above.

**7.7 Schedules**

7.7.1 The Contractor, within fifteen (15) days of commencing the Work, shall submit to the Owner for their information the Contractor’s schedule for completing the Work. Additionally, within fifteen (15) days of commencing the Work, the Contractor shall submit to the Owner and the Engineer a separate shop drawing and submittal schedule detailing the schedule for the submission to the Engineer of all shop drawings (if applicable) submittals, product data and other similar documents. Each of the schedules required herein shall be revised no less frequently than monthly (unless the parties otherwise agree in writing) and shall be revised to reflect conditions encountered from time-to time and shall be related to the entire Project. Each such revision shall be furnished to the Owner and the Engineer. The schedules, and all revisions, shall be in such form, and shall contain such detail, as the Owner or the Engineer may require. THE PARTIES SPECIFICALLY AGREE THAT ANY FLOAT CONTAINED IN THE SCHEDULES SHALL BELONG TO THE PROJECT AND IN NO EVENT SHALL THE CONTRACTOR MAKE CLAIM FOR ANY ALLEGED DELAY, ACCELERATION,

OR EARLY COMPLETION SO LONG AS THE PROJECT IS COMPLETED WITHIN THE CONTRACT TIME. Strict compliance with the requirements of this Paragraph is condition precedent for payment to the Contractor, and failure by the Contractor to strictly comply with said requirements shall constitute a material breach of this Contract.

## **7.8 Required Documents at the Site**

7.8.1 The Contractor shall continuously maintain at the site, for the benefit of the Owner and the Engineer, one record copy of this Contract marked to record on a current basis changes, selections and modifications made during construction. Additionally, the Contractor shall maintain at the site for the Owner and the Engineer the approved Shop Drawings (if applicable), Product Data, Samples, and other similar required submittals. Upon final completion of the Work, all of these record documents shall be delivered to the Owner.

## **7.9 Shop Drawings, Product Data and Samples**

7.9.1 Shop Drawings (if applicable), Product Data, Samples and other submittals from the Contractor do not constitute Contract Documents. Their purpose is merely to demonstrate the manner in which the Contractor intends to implement the Work in conformance with information received from the Contract Documents.

7.9.2 The Contractor shall not perform any portion of the Work requiring submittal and review of Shop Drawings (if applicable), Product Data or Samples unless and until such submittal shall have been approved by the Engineer. Approval by the Engineer, however, shall not be evidence that Work installed pursuant thereto conforms with the requirements of this Contract.

## **7.10 Cleaning the Site and the Project**

7.10.1 The Contractor shall keep the site reasonably clean during performance of the Work. Upon final completion of the Work, the Contractor shall clean the site and the Project and remove all waste, together with all of the Contractor's property therefrom.

## **7.11 Access to Work**

7.11.1 The Owner and the Engineer shall have access to the Work at all times from commencement of the Work through final completion. The Contractor shall take whatever steps necessary to provide access when requested.

## **7.12 Indemnity**

7.12.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, its officials, officers, employees, agents and representatives from and against liability, claims, damages, losses and expenses, including attorneys' fees, arising out of or resulting from performance of the Work, provided that such liability, claims, damage,

loss or expense is attributable to injury, bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including loss of use resulting therefrom, but only to the extent caused in whole or in part by negligent or willful 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 liability, claim, damage, loss or expense is caused in part by a party indemnified hereunder.

7.12.2 For any claim against any person or entity indemnified under this Paragraph 7.12 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 this Paragraph 7.12 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 benefits acts or other employee benefits acts.

### **7.13 Means, Methods, Techniques, Sequences, Procedures and Safety**

7.13.1 The Contractor is fully responsible for, and shall have control over, all construction means, methods, techniques, sequences, procedures and safety, and shall coordinate all portions of the work required by the Contract Documents. Nothing contained herein, however, shall in any manner whatsoever relieve, release or discharge the Engineer from any of its duties, responsibilities, obligations, or liabilities as set forth in its contract with the Owner, or as provided by law.

### **7.14 Separate Contracts**

7.14.1 The Owner reserves the right to perform work on the premises with its own forces or by the use of other Contractors. In such event, the Contractor shall fully cooperate with the Owner and such other Contractors and shall coordinate, schedule and manage its work so as not to hinder, delay or otherwise interfere with the separate work of the Owner or other Contractors.

## **ARTICLE VIII**

### **CONTRACT ADMINISTRATION**

#### **8.1 Engineer's Administration**

8.2.1 The Engineer, unless otherwise directed by the Owner in writing, will perform those duties and discharge those responsibilities allocated to the Engineer as set forth in this Contract. The Engineer shall be the Owner's representative from the effective date of this Contract until final payment has been made. The Engineer shall be authorized to act on behalf of the Owner only to the extent provided in this Contract.

8.2.2 The Owner and the Contractor shall communicate with each other in the first instance

through the Engineer.

8.2.3 The Engineer shall be the initial interpreter of the requirements of the drawings and specifications and the judge of the performance thereunder by the Contractor. The Engineer shall render written or graphic interpretations necessary for the proper execution or progress of the Work with reasonable promptness on request of the Contractor.

8.2.4 The Engineer will review the Contractor's Applications for Payment and will certify to the Owner for payment to the Contractor, those amounts then due the Contractor as provided in this Contract.

8.2.5 The Engineer shall have authority to reject Work which is defective or does not conform to the requirements of this Contract. If the Engineer deems it necessary or advisable, the Engineer shall have authority to require additional inspection or testing of the Work for compliance with Contract requirements.

8.2.6 The Engineer will review and approve, or take other appropriate action as necessary, concerning the Contractor's submittals including Shop Drawings, Product Data and Samples. Such review, approval or other action shall be for the sole purpose of determining conformance with the design concept and information given through the Contract Documents.

8.2.7 The Engineer will prepare Change Orders and may authorize minor changes in the Work by Field Order as provided elsewhere herein.

8.2.8 The Engineer shall, upon written request from the Contractor, conduct inspections to determine the date of Substantial Completion and the date of Final Completion, will receive and forward to the Owner for the Owner's review and records, written warranties and related documents required by this Contract and will issue a final Certificate for Payment upon compliance with the requirements of this Contract.

8.2.9 The Engineer's decisions in matters relating to aesthetic effect shall be final if consistent with the intent of this Contract.

8.2.10 THE DUTIES, OBLIGATIONS AND RESPONSIBILITIES OF THE CONTRACTOR UNDER THIS AGREEMENT SHALL IN NO MANNER WHATSOEVER BE CHANGED, ALTERED, DISCHARGED, RELEASED, OR SATISFIED BY ANY DUTY, OBLIGATION OR RESPONSIBILITY OF THE ENGINEER. THE CONTRACTOR IS NOT A THIRD-PARTY BENEFICIARY OF ANY AGREEMENT BY AND BETWEEN THE OWNER AND THE ENGINEER. IT IS EXPRESSLY ACKNOWLEDGED AND AGREED THAT THE DUTIES OF THE CONTRACTOR TO THE OWNER ARE INDEPENDENT OF, AND ARE NOT DIMINISHED BY, ANY DUTIES OF THE ENGINEER TO THE OWNER.

### **8.3 Claims by the Contractor**

8.3.1 All Contractor claims shall be initiated by written notice and claim to the Owner and Engineer. Such written notice and claim must be furnished within seven (7) days after occurrence of the event, or the first appearance of the condition, giving rise to the claim.

8.3.2 Pending final resolution of any claim of the Contractor, the Contractor shall diligently proceed with performance of this Contract and the Owner shall continue to make payments to the Contractor in accordance with this Contract. The resolution of any claim under this Paragraph 8.3 shall be reflected by a Change Order executed by the Owner, the Engineer, and the Contractor.

8.3.3 *Claims for Concealed and Unknown Conditions* -- Should concealed and unknown conditions encountered in the performance of the Work (a) below the surface of the ground or (b) in an existing structure be at variance with the conditions indicated by this Contract, or should unknown conditions of an unusual nature differing materially from those ordinarily encountered in the area and generally recognized as inherent in Work of the character provided for in this Contract, be encountered, the Contract Price shall be equitably adjusted by Change Order upon the written notice and claim by either party made within seven (7) days after the first observance of the condition. As a condition precedent to the Owner having any liability to the Contractor for concealed or unknown conditions, the Contractor must give the Owner and the Engineer written notice of, and an opportunity to observe, the condition prior to disturbing it. The failure by the Contractor to make the written notice and claim as provided in this Subparagraph shall constitute a waiver by the Contractor of any claim arising out of or relating to such concealed or unknown condition.

8.3.4 *Claims for Additional Costs* -- If the Contractor wishes to make a claim for an increase in the Contract Price, as a condition precedent to any liability of the Owner therefore, the Contractor shall give the Engineer written notice of such claim within seven (7) days after the occurrence of the event, or the first appearance of the condition, giving rise to such claim. Such notice shall be given by the Contractor before proceeding to execute any additional or changed Work. The failure by the Contractor to give such notice and to give such notice prior to executing the Work shall constitute a waiver of any claim for additional compensation.

8.3.4.1 In connection with any claim by the Contractor against the Owner for completion in excess of the Contract Price, any liability of the Owner shall be strictly limited to direct costs incurred by the Contractor and shall in no event include indirect costs or consequential damages of the Contractor. The Owner shall not be liable to the Contractor for claims of third parties, including Subcontractors, unless and until liability of the Contractor has been established therefore in a court of competent jurisdiction.

8.3.5 *Claims for Additional Time* -- If the Contractor is delayed in progressing any task which at the time of the delay is then critical or which during the delay becomes critical, as the sole result of any act or neglect to act by the Owner or someone acting in the Owner's behalf, or by Changes Ordered in the Work, unusual delay in transportation, unusually adverse weather conditions not reasonably anticipatable, fire or any causes beyond the Contractor's

control, then the date for achieving Substantial completion of the Work shall be extended upon the written notice and claim of the Contractor to the Owner and the Engineer, for such reasonable time as the Engineer may determine. Any notice and claim for an extension of time by the Contractor shall be made not more than seven (7) days after the occurrence of the event or the first appearance of the condition giving rise to the claim and shall set forth in detail the Contractor's basis for requiring additional time in which to complete the Project. In the event the delay to the Contractor is continuing, only one notice and claim for additional time shall be necessary. If the Contractor fails to make such claim as required in this Subparagraph, any claim for an extension of time shall be waived.

#### **8.4 Extension of Contract Time for Unusually Adverse Weather Conditions not Reasonably Anticipated**

8.4.1 Pursuant to the provisions of subparagraph 8.3.5 of this Contract, the contract time may be extended upon written notice and claim of the Contractor to the Owner and the Engineer as set forth in such subparagraph and as further set forth herein. It is, however, expressly agreed that the time for completion as stated in the Contract Documents includes due allowance for calendar days on which work cannot be performed out-of-doors.

8.4.2 In addition to the notice requirements set forth in the aforesaid subparagraph 8.3.5, the Contractor agrees that it shall provide written notice to the Owner and the Engineer on the day of any adverse weather not anticipated and for which a request for a time extension has been, or will be, made. Said notice shall state with particularity a description of the adverse weather as well as a description of the nature and extent of any delay caused by such weather. Receipt of this notice by the Owner and the Engineer is a condition precedent to the submission of any claim for an extension of time as provided by subparagraph 8.3.5. Furthermore, as required by subparagraph 8.3.5, the Contractor shall submit a written claim for extension of time within seven (7) days after the occurrence of the adverse weather and such claim shall be supported by such documentation including, but not limited to, official weather reports, as the Owner or the Engineer may be required. To the extent that any of the terms and conditions set forth in this paragraph are in conflict with any of the terms and conditions of subparagraph 8.3.5 as identified herein, the terms and conditions of this paragraph shall govern and control.

### **ARTICLE IX** **SUBCONTRACTORS**

#### **9.1 Definition**

9.1.1 A Subcontractor is an entity, which has a direct contract with the Contractor to perform a portion of the Work.

#### **9.2 Award of Subcontracts**

9.2.1 Upon execution of the Contract, the Contractor shall furnish the Owner, in writing, the names of persons or entities proposed by the Contractor to act as a Subcontractor on the Project. The Owner shall promptly reply to the Contractor, in writing, stating any objections the Owner may have to such proposed Subcontractor. The Contractor shall not enter into a Subcontract with a proposed Subcontractor with reference to whom the Owner has made timely objection. The Contractor shall not be required to Subcontract with any party to whom the Contractor has objection.

9.2.2 All Subcontracts shall afford the Contractor rights against the Subcontractor which correspond to those rights afforded to the Owner against the Contractor herein, including those rights afforded to the Owner by Subparagraph 12.2.1 below.

## **ARTICLE X** **CHANGES IN THE WORK**

### **10.1 Changes Permitted**

10.1.1 Changes in the Work within the general scope of this Contract, consisting of additions, deletions, revisions, or any combination thereof, may be ordered without invalidating this Contract, by Change Order or by Task/Field Order.

10.1.2 Changes in the Work shall be performed under applicable provisions of this Contract and the Contractor shall proceed promptly with such changes.

### **10.2 Change Order Defined**

10.2.1 Change Order shall mean a written order to the Contractor executed by the Owner and Engineer, issued after execution of this Contract, authorizing, and directing a change in the Work or an adjustment in the Contract Price or the Contract Time, or any combination thereof. The Contract Price and the Contract Time may be changed only by Change Order.

### **10.3 Changes in the Contract Price**

10.3.1 Any change in the Contract Price resulting from a Change Order shall be determined as follows: (a) by mutual agreement between the Owner and the Contractor as evidenced by (1) the change in the Contract Price being set forth in the Change Order, (2) such change in the Contract Price, together with any conditions or requirements related thereto, being initialed by both parties and (3) the Contractor's execution of the Change Order, or (b) if no mutual agreement occurs between the Owner and the Contractor, then, as provided in Subparagraph 10.3.2 below.

10.3.2 If no mutual agreement occurs between the Owner and the Contractor as contemplated in the Subparagraph 10.3.1 above, the change in the Contract Price, if any, shall then be

determined by the Engineer on the basis of the reasonable expenditures or savings of those performing, deleting or revising the Work attributable to the change, including, in the case of an increase or decrease in the Contract Price, a reasonable allowance for direct job site overhead and profit. In such case, the Contractor shall present, in such form and with such content as the Owner or Engineer requires, an itemized accounting of such expenditures or savings, plus appropriate supporting data for inclusion in a Change Order. Reasonable expenditures or savings shall be limited to the following: reasonable costs of materials, supplies, or equipment including delivery costs, reasonable costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance, reasonable rental costs of machinery and equipment exclusive of hand tools whether rented from the contractor or others, reasonable costs of premiums for all bonds and insurance, permit fees, and sales, use or other taxes related to the Work, and reasonable cost of direct supervision and jobsite field office overhead directly attributable to the change. In the event the Contractor performs the Work required by Change Order with its own forces, and not the forces of a Subcontractor, the overhead and profit due the Contractor for such work shall be twenty (20) percent. In the event the Change Order Work is performed by one or more Subcontractors, the Contractor's overhead and profit shall be seven and one-half (7-½) percent. In no event shall any expenditure or savings associated with the Contractor's home office or other non-jobsite overhead expense be included in any change in the Contract Price. Pending final determination of reasonable expenditures or savings to the Owner, payments on account shall be made to the Contractor on the Engineer's Certificate for Payment.

10.3.3 If unit prices are provided in the Contract, and if the quantities contemplated are so changed in a proposed Change Order that application of such unit prices to the quantities of Work proposed will cause substantial inequity to the Owner, the applicable unit prices shall be equitably adjusted.

#### **10.4 Effect of Executed Change Order**

10.4.1 The execution of a Change Order by the Contractor shall constitute conclusive evidence of the Contractor's agreement to the ordered changes in the Work, this Contract as thus amended, the Contract Price and the Contract Time. The Contractor by executing the Change Order waives and forever releases any claim against the Owner for additional time or compensation for matters relating to or arising out of or resulting from the Work included within or affected by the executed Change Order.

#### **10.5 Notice to Surety; Consent**

10.5.1 The Contractor shall notify and obtain the consent and approval of the Contractor's surety with reference to all Change Orders if such notice, consent or approval is required by the Contractor's surety or by law. The Contractor's execution of the Change Order shall constitute the Contractor's warranty to the Owner that the surety has been notified of and consents to, such Change Order and the surety shall be conclusively deemed to have been notified of such Change

Order and to have expressly consented thereto.

## **ARTICLE XI** **UNCOVERING AND CORRECTING WORK**

### **11.1 Uncovering Work**

11.1.1 If any of the Work is covered contrary to the Engineer's request or to any provisions of this Contract, it shall, if required by the Engineer or Owner, be uncovered for the Engineer's inspection, and shall be properly replaced at the Contractor's expense without change in the Contract Time.

11.1.2 If any of the Work is covered in a manner not inconsistent with Subparagraph 11.1.1 above, it shall, if required by the Engineer or Owner, be uncovered for the Engineer's inspection. If such Work conforms strictly to this Contract, costs of uncovering and proper replacement shall by Change Order be charged to the Owner. If such Work does not strictly conform to this Contract, the Contractor shall pay the costs of uncovering and proper replacement.

### **11.2 Correcting Work**

11.2.1 The Contractor shall immediately proceed to correct Work rejected by the Owner as defective or failing to conform to this Contract. The Contractor shall pay all costs and expenses associated with correcting such rejected Work, including any additional testing and inspections, and reimbursement to the Owner for any outside contracted services and expenses made necessary thereby.

11.2.2 If within one (1) year after Substantial Completion of the Work any of the Work is found to be defective or not in accordance with this Contract, the Contractor shall correct it promptly upon receipt of written notice from the Owner. This obligation shall survive final payment by the Owner and termination of this Contract. With respect to Work first performed and completed after Substantial Completion, this one-year obligation to specifically correct defective and nonconforming Work shall be extended by the period of time which elapses between Substantial Completion and completion of the subject Work.

11.2.3 Nothing contained in this Paragraph 11.2 shall establish any period of limitation with respect to other obligations which the Contractor has under this Contract. Establishment of the one-year time period in Subparagraph 11.2.2 relates only to the duty of the Contractor to specifically correct the Work.

### **11.3 Owner May Accept Defective or Nonconforming Work**

11.3.1 If the Owner chooses to accept defective or nonconforming Work, the Owner may do so. In such event, the Contract Price shall be reduced by the greater of (a) the reasonable cost

of removing and correcting the defective or nonconforming Work, and (b) the difference between the fair market value of the Project as constructed and the fair market value of the Project had it not been constructed in such a manner as to include defective or nonconforming Work. If the remaining portion of the unpaid Contract Price, if any, is insufficient to compensate the Owner for its acceptance of defective or nonconforming Work, the Contractor shall, upon written demand from the Owner, pay the Owner such remaining compensation for accepting defective or nonconforming Work.

## **ARTICLE XII** **CONTRACT TERMINATION**

### **12.1 Termination by the Contractor**

12.1.1 If the Work is stopped for a period of ninety (90) days by an order of any court or other public authority, or as a result of an act of the Government, through no fault of the Contractor or any person or entity working directly or indirectly for the Contractor, the Contractor may, upon ten (10) days' written notice to the Owner and the Engineer, terminate performance under this Contract and recover from the Owner payment for the actual reasonable expenditures of the Contractor (as limited in Subparagraph 10.3.2 above) for all Work executed and for materials, equipment, tools, construction equipment and machinery actually purchased or rented solely for the Work, less any salvage value of any such items.

12.1.2 If the Owner shall persistently or repeatedly fail to perform any material obligation to the Contractor for a period of fifteen (15) days after receiving written notice from the Contractor of its intent to terminate hereunder, the Contractor may terminate performance under this Contract by written notice to the Engineer and the Owner. In such event, the Contractor shall be entitled to recover from the Owner as though the Owner had terminated the Contractor's performance under this Contract for convenience pursuant to Subparagraph 12.2.1 hereunder.

### **12.2 Termination by the Owner**

#### *12.2.1 For Convenience*

12.2.1.1 The Owner may for any reason whatsoever terminate performance under this Contract by the Contractor for convenience. The Owner shall give written notice of such termination to the Contractor specifying when termination becomes effective.

12.2.1.2 The Contractor shall incur no further obligations in connection with the Work and the Contractor shall stop Work when such termination becomes effective. The Contractor shall also terminate outstanding orders and subcontracts. The Contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders. The Owner may direct the Contractor to assign the Contractor's right, title and interest under terminated orders or subcontracts to the Owner or its designee.

12.2.1.3 The Contractor shall transfer title and deliver to the Owner such completed or partially completed Work and materials, equipment, parts, fixtures, information and Contract rights as the Contractor has.

12.2.1.4

(a) The Contractor shall submit a termination claim to the Owner and the Engineer specifying the amounts due because of the termination for convenience together with costs, pricing or other data required by the Engineer. If the Contractor fails to file a termination claim within six (6) months from the effective date of the termination, the Owner shall pay the Contractor, an amount derived in accordance with sub-paragraph (c) below.

(b) The Owner and the Contractor may agree to the compensation, if any, due to the Contractor hereunder.

(c) Absent Agreement to the amount due to the Contractor, the Owner shall pay the Contractor the following amounts:

- (i) Contract prices for labor, materials, equipment and other services provided under this Contract;
- (ii) Reasonable costs incurred in preparing to perform and in performing the terminated portion of the Work, and in terminating the Contractor's performance, plus a fair and reasonable allowance for overhead and profit thereon (such profit shall not include anticipated profit or consequential damages); provided however, that if it appears the Contractor would have not profited or would have sustained a loss if the entire Contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss, if any;
- (iii) Reasonable costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to Subparagraph 12.2.1.2 of this Paragraph. These costs shall not include amounts paid in accordance with other provisions hereof.

The total sum to be paid the Contractor under this Subparagraph 12.2.1 shall not exceed the total Contract Price, as properly adjusted, reduced by the number of payments otherwise made, and shall in no event include duplication of payment.

12.2.2 *For Cause*

12.2.2.1 If the Contractor persistently or repeatedly refuses or fails to prosecute the Work in a timely manner, supply enough properly skilled workers, supervisory personnel or proper equipment or materials, or if it fails to make prompt payment to Subcontractors for materials or labor, or persistently disregards laws, ordinances, rules, regulations or orders of any public authority that has jurisdiction, or otherwise is guilty of a substantial violation of a material provision of this Contract, then the Owner may by written notice to the Contractor, without prejudice to any other right or remedy, terminate the employment of the Contractor and take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon owned by the Contractor and may finish the Work by whatever methods it may deem expedient. In such case, the Contractor shall not be entitled to receive any further payment until the Work is finished.

12.2.2.2 If the unpaid balance of the Contract Price exceeds the cost of finishing the work, including compensation for the Engineer's additional services and expenses made necessary thereby, such excess shall be paid to the Contractor. If such costs exceed the unpaid balance, the Contractor shall pay the difference to the Owner. This obligation for payment shall survive the termination of the Contract.

12.2.2.3 In the event the employment of the Contractor is terminated by the Owner for cause pursuant to Subparagraph 12.2.2 and it is subsequently determined by a Court of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a Termination for Convenience under Subparagraph 12.2.1 and the provisions of Subparagraph 12.2.1 shall apply.

### **12.3 Renewal**

12.3.1 Pursuant to O.C.G.A. § 36-60-13, this Agreement shall commence on the effective date of this Agreement and shall terminate absolutely and without further obligation on the part of the Owner at the close of the calendar year in which it was executed, and at the close of each succeeding calendar year for which it may be renewed following the process outlined in subsection 12.2.3.2 below.

12.3.2 The Owner shall determine no less than forty-five (45) days prior to the end of the calendar year in which the Agreement was executed whether or not said contract shall be renewed for the following calendar year. Such determination shall be made at the sole discretion of the Owner and may depend on factors such as budgeted funding for the following calendar year, performance of the Contractor under the Agreement during the current calendar year, or any other such factors the Owner may choose to consider. The Owner shall notify the Contractor in writing of the Owner's decision to either renew or not renew this Agreement no less than thirty (30) calendar days before the end of the current calendar year.

12.3.3 Notwithstanding anything contained in subsection 12.2.3.2 above, this Agreement shall terminate immediately and absolutely at such time as appropriated and otherwise

unobligated funds are no longer available to satisfy the obligations of the Owner under the Agreement.

12.3.4 This Agreement is not deemed to create a debt of the Owner for the payment of any sum beyond the calendar year of execution or, in the event of renewal, beyond each calendar year of renewal.

**ARTICLE XIII**  
**OWNER'S RIGHT TO SUSPEND CONTRACTOR'S PERFORMANCE**

**13.1** The Owner shall have the right at any time to direct the Contractor to suspend its performance, or any designated part thereof, for any reason whatsoever, or without reason, for a cumulative period of up to sixty (60) calendar days. If any such suspension is directed by the Owner, the Contractor shall immediately comply with same.

**13.2** In the event the Owner directs a suspension of performance under Paragraph 13.1 through no fault of the Contractor, the Owner shall pay the Contractor as full compensation for such suspension the Contractor's reasonable costs, actually incurred and paid, of;

- (i) demobilization and remobilization, including such costs paid to Subcontractors;
- (ii) preserving and protecting work in place;
- (iii) storage of materials or equipment purchased for the Project, including insurance thereon;
- (iv) performing in a later, or during a longer time frame than contemplated by this Contract.

**ARTICLE XIV**  
**INSURANCE**

**14.1 Insurance**

14.1.1 The Contractor will provide minimum insurance coverage and limits as per the following:

Insurance requirements shall be consistent with the Department of Administrative Services, SPD-SP048, as amended.

Commercial General Liability

Coverage must be afforded under a Commercial General Liability policy with limits not less than:

Commercial General Liability (CGL): Each \$ 1,000,000  
Occurrence Limit

Damage to Rented Premises – Ea. Occ.	\$300,000
Medical Expense – any one person	\$10,000
Personal & Advertising Injury Limit	\$ 1,000,000
General Aggregate Limit	\$ 2,000,000
Products/Completed Ops. Aggregate Limit	\$ 2,000,000
Bodily injury by Disease – each employee	\$100,000
Bodily injury by Disease – policy limit	\$500,000
Excessive / Umbrella Liability	
Each Occurrence	\$5,000,000
Aggregate	\$5,000,000

Policy must include coverage for Contractual Liability and Independent Contractors.

**Professional Liability Insurance (Errors and Omissions):**

Coverage must be afforded for Wrongful Acts in an amount not less than \$1,000,000 each occurrence, and \$2,000,000 annual aggregate.

**Business Automobile Liability:**

Coverage must be afforded for all Owned, Hired, Scheduled, and Non-Owned vehicles for Bodily Injury and Property Damage in an amount not less than \$1,000,000 combined single limit each accident.

**Workers' Compensation and Employer's Liability:**

Coverage must be afforded per the Worker's Compensation Act in the State of Georgia, Official Code of Georgia Annotated (O.C.G.A.) Title 34, Chapter 9) as amended. Any Contractor performing work on behalf of the City must provide Workers' Compensation insurance in the amount not less than \$100,000 per accident. Exceptions and exemptions will be allowed in accordance with the Department of Administrative Services (SPD-SP048, as amended).

**Contractors Pollution Liability Coverage:**

For sudden and gradual occurrences and in an amount not less than \$1,000,000 per claim arising out of this Contract, including but not limited to, all hazardous materials identified under the Contract.

**Property Coverage (Builder's Risk)**

Coverage must be afforded in an amount not less than 100% of the total project cost, including soft costs, with a deductible of no more than \$25,000 each claim. Coverage form shall include, but not be limited to:

- All Risk Coverage including Flood and Windstorm with no coinsurance clause;
- Guaranteed policy extension provision;
- Waiver of Occupancy Clause Endorsement, which will enable the City to occupy the facility under construction/renovation during the activity;

- Storage and transport of materials, equipment, supplies of any kind whatsoever to be used on or incidental to the project; and
- Equipment Breakdown for cold testing of all mechanized, pressurized, or electrical equipment.

14.1.2 The Contractor will file with the Owner Certificates of Insurance, certifying the required insurance coverage below and stating that each policy has been endorsed to provide thirty (30) day notice to the Owner in the event that coverage is cancelled, non-renewed or the types of coverage or limits of liability are reduced below those required. All bonds and insurance coverage must be placed with an insurance company approved by the Owner, admitted to do business in the State of Georgia, and rated Secure (“B+” or better) by A.M. Best Company in the latest edition of Property and Casualty Ratings, or rated by Standard & Poors Insurance Ratings, latest edition as Secure (“BBB” or better). Worker’s Compensation self-insurance for individual Contractors must be approved by the Worker’s Compensation Board, State of Georgia and/or Self-Insurance pools approved by the Insurance Commissioner, State of Georgia.

## **ARTICLE XV** **MISCELLANEOUS**

### **15.1 Governing Law**

15.1.1 The Contract shall be governed by the law of the State of Georgia, exclusive of its choice of law provisions. In the event of any litigation arising from this Contract, venue shall be in any court of competent jurisdiction of the County of DeKalb, Georgia.

### **15.2 Successors and Assigns**

15.2.1 The Owner and the Contractor bind themselves, their successors, assigns and legal representatives to the other party hereto and to successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in this Contract. The Contractor shall not assign this Contract without written consent of the Owner.

### **15.3 Interpretation**

15.3.1 The Parties acknowledge that this Agreement and all the terms and conditions herein have been fully reviewed and negotiated by the Parties. Having acknowledged the foregoing, the Parties agree that any principle of construction or rule of law that provides that, in the event of any inconsistency or ambiguity, an agreement shall be construed against the drafter of the agreement shall have no application to the terms and conditions of this Agreement.

### **15.4 Severability**

15.4.1 If any provision of this Contract shall be deemed invalid or unenforceable by a court of competent jurisdiction, such provision shall be modified to the extent necessary to cure

such invalidity or unenforceability; provided, however, if such modification is not possible without creating a material conflict with another provision of this Contract, such invalid or unenforceable provision shall be deemed stricken from this Contract.

## **15.5 Amendment and Waiver**

15.5.1 This Contract may not be amended, modified, or waived except by a writing signed by an authorized representative of each part. No waiver of or any failure or omission to enforce any of the provisions hereof by the Owner shall be construed to be a waiver of the Owner to enforce any such provisions or any other provision(s) of this Contract.

## **15.6 Notice**

15.6.1 Notices. Where a party is required or permitted to give notice to the other pursuant to this Contract, such notice is deemed given: (i) when delivered in hand; (ii) three (3) days after it is mailed by registered or certified United States mail, return receipt requested, postage prepaid to the address listed below; or (iii) one (1) day after it is sent by courier or facsimile transmission if receipt is verified by the receiving party and such notice is addressed to the Party to receive such notice. Any notice required to be given by or on behalf of either party to the other shall be sent to the address specified below, or as such other address as may be specified, from time to time, by notice in the manner herein set forth.

**If to the Owner/City:**  
City Manager  
City of Stonecrest  
3120 Stonecrest Blvd.  
Stonecrest, Georgia 30038  
Email:

With copies to:  
City Attorney  
Denmark Ashby Marticardi  
100 Hartsfield Centre Pkwy.  
Ste. 400  
Atlanta, Georgia 30354  
Email:

**If to the Contractor:**  
**F.H. Paschen, S.N. Nielsen & Associates, LLC**  
**1371 Southland Circle, NW**  
**Atlanta, Georgia 30318**  
Email: [wthompson@fhpaschen.com](mailto:wthompson@fhpaschen.com)

**If to the Engineer:**  
**City Engineer**  
**3120 Stonecrest Blvd, Suite 190**  
**Stonecrest, Georgia 30038**

## **15.7 Time is of the Essence**

15.7.1 Time is of the essence for this Contract, the Contract Documents, and all supporting documents.

## **15.8 Participation in Federal Work Authorization Program**

15.8.1 The Contractor shall participate in the federal work authorization program throughout the contract period, as provided in O.C.G.A. §13-10-91. The Contractor shall be required to, at the time of the contract, provide a signed, notarized affidavit, attesting that it has registered with, is authorized to use, and uses the federal work authorization program; it will continue to use the federal work authorization program throughout the contract period; and it will contract for the physical performance of services in satisfaction of such contract only with Subcontractors who present an affidavit containing the above information. Further, to the extent that a Subcontractor is utilized, the Subcontractor's federal work authorization program user identification number and the date of authorization shall be included in the affidavit. Said affidavit shall be attached hereto and incorporated by reference herein as **Exhibit C**.

## **15.9 Counterparts**

15.9.1 This Agreement may be executed in multiple counterparts, each of which shall constitute the original, but all of which taken together shall constitute one and the same Agreement. PDF signatures shall constitute original signatures.

## **15.10 Captions**

15.10.1 The captions appearing herein are for convenience of reference only and shall not affect the meaning or interpretation of this Agreement or any clause or provision hereof.

## **15.11 Surety**

15.11.1 The Contractor shall furnish separate performance and payment bonds to the Owner. Each bond shall set forth a penal sum in an amount not less than the Contract Price. Each bond furnished by the Contractor shall incorporate by reference the terms of this Contract as fully as though they were set forth verbatim in such bonds. In the event the Contract Price is adjusted by Change Order executed by the Contractor, the penal sum of both the performance bond and the payment bond shall be deemed increased automatically by like amount. The performance and payment bonds furnished by the Contractor shall be in form suitable to the Owner and Owner's legal counsel and shall be executed by a surety, or sureties, reasonably suitable to the Owner.

## **15.12 Interpretation**

15.12.1 The Parties acknowledge that this Agreement and all the terms and conditions herein have been fully reviewed and negotiated by the Parties. Having acknowledged the foregoing, the

Parties agree that any principle of construction or rule of law that provides that, in the event of any inconsistency or ambiguity, an agreement shall be construed against the drafter of the agreement shall have no application to the terms and conditions of this Agreement.

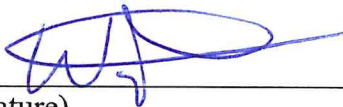
[SIGNATURES CONTAINED ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, this Contract has been signed and delivered by a duly authorized representative of each party as of the last date indicated below.

CITY OF STONECREST, GEORGIA

F.H. PASCHEN, S.N. NIELSEN & ASSOCIATES, LLC

By: \_\_\_\_\_  
(Signature)

By:  \_\_\_\_\_  
(Signature)

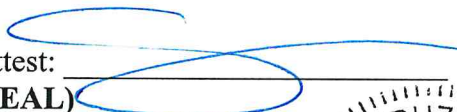
\_\_\_\_\_  
(Printed Name and Title)

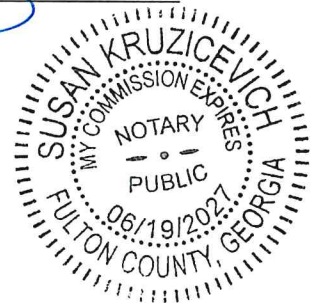
Wayne Thompson VP  
\_\_\_\_\_  
(Printed Name and Title)

\_\_\_\_\_  
(Date of Execution)

5/11/26  
\_\_\_\_\_  
(Date of Execution)

Attest: \_\_\_\_\_  
(SEAL)

Attest:  \_\_\_\_\_  
(SEAL)



**EXHIBIT A**  
**SCOPE OF WORK**

1. **PURPOSE:**

The City of Stonecrest (“City”) is seeking qualified and experienced Design-Build Firm (“DBF”), herein after referred to as (“**Contractor**”) to respond to a fixed (one-time) project for the Design-Build and Construction of a dog park at the Southeast Athletic Complex in the City of Stonecrest. The dog park shall include fencing, equipment, water fountain, installation of potable water line, access sidewalk etc. Work shall be performed in accordance with the terms, conditions, and specifications contained in this Construction Invitation to Bid (“CITB”).

The Contractor shall furnish all labor, materials, equipment, personnel, tools, supervision, transportation, machinery and other incidentals necessary to perform the work requested herein and typical of these types of projects.

Prices offered on the *Attachment “B”* - Bid Cost Proposal Form (Bid Sheet) are all inclusive and shall constitute complete compensation. Note: Bid Line Items may not be fully disbursed. Please incorporate the cost within the provided bid line items in *Attachment “B”*.

2. **BACKGROUND:**

Stonecrest is a community of approximately 60,000 people that was incorporated in 2017. The City is located along Interstate 20 roughly three miles east of I-285 (“The Perimeter”) and 20 miles east of Downtown Atlanta. Stonecrest is in the southeastern portion of Dekalb County and is bordered by Rockdale County to the east, Henry County to the south, and the City of Lithonia and unincorporated Dekalb County to the north and west. I-20 separates the City into a northern area which includes residential neighborhoods, commercial development along Covington Highway, industrial parks that date to the 1960s and active quarries that predate incorporation by 130 years. South of I-20 features regional retail and lodging, suburban neighborhoods, and substantial outdoor recreation areas.

3. **CONTRACT ADMINISTRATOR/DESIGNEE/PROJECT MANAGER:**

The designated Contract Administrator for this project is Hari Karikaran, P.E., City Engineer, he can be reached at [hkarikaran@stonecrestga.gov](mailto:hkarikaran@stonecrestga.gov) or (770) 224-0200. The Contractor will work with the Contract Administrator / Designee to complete this project.

4. **GOVERNING REGULATIONS:**

The Contractor shall perform services requested herein in accordance with all State, Federal, Local, and City rules, regulations, policies, procedures and requirements herein but not limited to:

1. City of Stonecrest ordinances and regulations;
2. OSHA standards and guidelines;
3. Americans with Disabilities Act (ADA).
4. ASTM International standards for fences (F209) and playground surfaces (F1951, F2223), as amended;
5. U.S. Consumer Product Safety Commission (CPSC) Public Playground Safety Handbook, as amended; and

6. Local, State, and Federal Park Installation regulations and requirements, as amended.

**Note:** Failure to follow governing regulations may lead to project delays and stoppage of work as deemed necessary by the Contract Administrator / Designee.

5. PROJECT LOCATION AND CONDITION: (See *Attachment "C"* – Dog Park Location & GIS Map)  
The dog park will be constructed at the Southeast Athletic Complex, 5845 Hillvale Road, Stonecrest, Ga. 30058. Total internal area of small and large dog park is approximately 14,600 sq. ft. The complex is open to the public during regular operating hours. The Contractor shall take measures to not disrupt access to the parks. Link to Google Maps aerial view: <https://maps.app.goo.gl/qBiwXrSxsZe5F3Qz9>.
6. PROJECT MEETINGS & PROJECT PROGRESS MEETINGS:  
After the contract is awarded and prior to commencement of any work, a pre-construction conference will be held between the Contractor, City representative, Utility Providers and others affected by this work. The time and place of the meeting will be arranged by the City Contract Administrator/Project Manager. The project schedule and dates for completion will be established during this meeting.
- 6.1 At the pre-construction conference, the Contractor shall identify his designated project manager, foreman, site supervisor and any additional personnel representing the Contractor and their respective roles and responsibilities for the work. The designated project manager shall represent the Contractor, and communications given to the project manager shall be as binding as if given to the Contractor. Important communications shall be confirmed in writing. Other communications shall be similarly confirmed in written requests in each case.
- 6.2 At the pre-construction conference, the Contractor shall furnish in writing to the City's Contract Administrator the names of person(s) or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the work.
- 6.3 The City will promptly reply to the Contractor in writing stating whether or not, after due investigation, has reasonable objection to any such proposed person or entity.
- 6.4 The Contractor shall not contract with a proposed person or entity to whom the City has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.
- 6.5 The Contractor shall hold bi-weekly progress meetings at the site, including City and subcontractor representatives. The Contractor shall record meeting minutes and distribute them to attendees prior to the next progress meeting.
7. ISSUANCE OF NOTICE TO PROCEED AND PURCHASE ORDER (PO):  
The Contractor shall not commence any work until receipt of a Notice to Proceed (NTP) from the Contract Administrator / Designee and receipt of a Purchase Order (PO). Upon receipt of the NTP and PO, the Contractor shall commence work upon the direction of the Contract Administrator / Designee.

8. PROJECT DURATION:

The Contractor shall complete all services no less than **One Hundred and Eighty (180)** days from receipt of Purchase Order and Notice to Proceed (NTP).

Time is of the essence for the Contractor's performance of the work. The Contractor is expected to complete this project as expeditiously as possible. The work to be performed under this contract shall commence upon issuance of a Purchase Order (PO) and in conjunction with a Notice to Proceed (NTP). Contract Time extensions will not be allowed for holidays or vacations. At a minimum, the selected Contractor must adhere to the following schedule as set by the City:

8.1 The Contractor recognizes that TIME IS OF THE ESSENCE. The Work shall commence within **10** calendar days of the date of the Notice to Proceed.

8.2 Preliminary Project Schedule:

Within Ten **10** days after notice of award and as a condition precedent to executing the Contract, prior to commencement of any work, the Contractor shall submit their preliminary project schedule to the City for review and approval. The schedule shall be written in sufficient detail to show the chronological relationship of all major aspects of the project (in the form of tabulation, chart/graphic), procurement of materials, scheduling of equipment, construction, phases of each work site, estimated start and completion dates of the various project activities.

8.3 The Work shall be Substantially Completed within **120** calendar days, after the date when the Contract Time commences to run as provided in the Notice to Proceed.

8.4 The Work shall be finally completed on the Final Completion Date and ready for final payment in accordance with this Agreement within **150** calendar days, after the date when the Contract Time commences to run as provided in the Notice to Proceed.

9. WORK TO BE PERFORMED:

The Contractor shall furnish all materials, equipment, tools, and the performance of all necessary labor necessary to complete the scope of work requested herein and in accordance with **Attachment "D"** – Dog Park Amenities, **Attachment "C"** – Dog Park Location and GIS Map, and manufacturers' technical Specifications. Work shall include but is not limited to; purchase and installation of amenities and equipment. The Contractor is to carefully review and comply with all the notes and requirements shown on **Attachment "C" and Attachment "D"**.

**Note: Attachment "C" – Amenities are illustrative of the amenities the City would like used for the dog park.**

9.1 Surveying:

A Georgia licensed land surveyor shall lay out the park and roadway boundaries. Upon achievement of substantial completion milestone, the contractor shall provide the City with an as-built plan prepared by the land surveyor.

9.2 Design:

A Georgia licensed design professional (civil engineer or landscape architect) shall prepare a detailed design for the dog park and associated amenities based on the schematic layout provided by the City. Design shall be reviewed by the City. Construction shall move forward after the City has indicated plan approval in writing.

9.3 Erosion Control:

The Contractor is to install erosion controls around the area of land to be disturbed. The erosion control plan, prepared by a certified professional, is to be provided to the City in advance for review and approval. Erosion control elements are to be maintained for the duration of the construction period.

9.4 Clearing and grubbing:

Existing ground cover is to be removed. This shall include the removal of existing kudzu on site. A minimum of 20 ft. is to be cleared beyond the footprint of the new construction.

9.5 Excavation and grading:

Excavated material shall be disposed of offsite in a lawful manner.

9.6 Fencing:

The Contractor shall supply and install approximately 1,050 linear feet of 5 ft. tall, 2-inch diameter post, black, chain link fencing with bottom rail and top rails shall be installed per schematic layout provided. A doggie airlock (double-gate system) is essential for safety, allowing dogs to enter/exit off-leash in a contained space.

9.7 Gates:

The Contractor shall supply and install Three (3), 4ft wide walk gates with spring loaded closer and hardware including latch/lock hardware shall be provided at entrance to the dog park to prevent unauthorized dog entry and exit.

## FENCE & GATE ILLUSTRATION

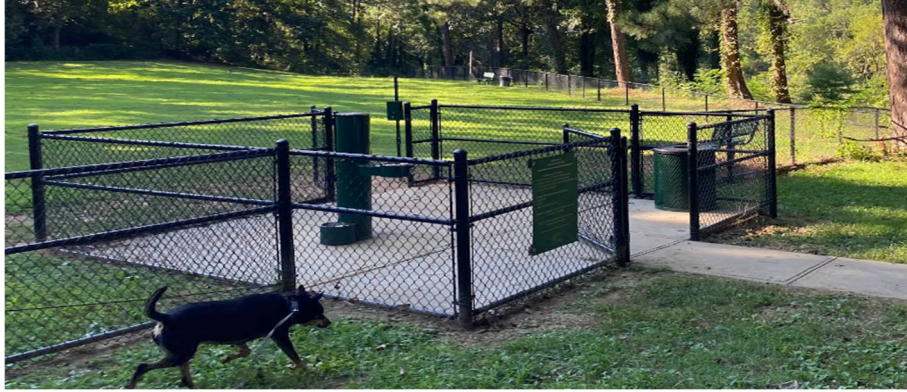


ILLUSTRATION OF DOG PARK ENTRANCE CONFIGURATION SHOWING LEASHING/UNLEASHING ENTRANCE AREA WITH FOUNTAIN

### 9.8 Ground Cover & Sod:

The Contractor shall supply and install ground cover within the dog park.

#### 9.8.1 Grass:

The Contractor shall maintain grass by watering and fertilizing for a period of thirty (30) days period after substantial completion.

#### 9.8.2 Sod:

The Contractor shall supply and install TIFTUF Bermuda Sod. After construction has been completed the disturbed area around the facility footprint shall be permanently stabilized with grass sod. The Contractor shall supply and install sod. The Contractor shall water and fertilize the installed sod for a thirty (30) day period beyond installation to ensure viability.

### 9.9 Trees:

The Contractor shall supply and install Three (3) black gum trees outside the fencing of the dog park to provide shade. Trees shall be 3-inch caliper and must be staked. Exact position of trees is to be determined in the field by the City representative.

### 9.10 Park Amenities: (Attachment "B" – Dog Park Amenities or Approved Equal To)

Playground equipment, benches, and associated footings, pet waste station, leash post, trash receptacle, and drinking fountain and associated plumbing (shall include verification and connection to existing water line, dry backflow preventer, permit application, review, inspection, and signoff).

9.11 Signage:

A sign, similar to the one shown below, shall be installed at the entrance to the dog park in a location that is readily visible at eye level.



9.12 Permitting:

Georgia Soil and Water Conservation Commission (GSWCC) and City of Stonecrest permitting will be required. City of Stonecrest permitting fees will be waived.

9.13 Progress Plans:

Proposer is to provide the City with a full set of plans at the 30% and 90% stage for review and comments. 100% complete plans are to be used for permitting.

9.14 Construction Documents:

The Contractor shall maintain a set of approved construction documents, with all approved revisions, at the site as a record mark-up of as-built conditions. These redlined plans shall be made available throughout the contract. Prior to Final Completion, the DBC shall submit close-out documents including a PDF set of as-built plans.

9.15 Installation:

The Contractor shall include all costs associated with the foundations, installation, and removal of spoils etc. of items described below:

- Material and Installation of five (5) foot tall black vinyl coated #11-1/2-gauge chain link fence.
- Material and installation of all top rail, line posts with concrete, corner posts with concrete, gate posts with concrete, bottom tension wire.

- Material and installation of dark green PVC slats.
- Material and installation of single swing gates, as described above.

9.16 Repair:

The Contractor shall protect, touch-up, repair, or replace damaged material, items and products until receipt of final acceptance from the Contract Administrator/Designee at no additional cost to the City.

9.17 Utilities:

9.17.1 The Contractor may encounter utilities at the locations where work is to be performed. The Contractor shall contact the City Engineer/Designee to discuss next steps. The Contractor shall work with the City to ensure the applicable companies are notified and obtain all applicable clearances prior to commencement of any clearing and excavation activities.

9.17.2 Disruption in services:

It is not anticipated there will be a disruption in service. However, if it is necessary, the Contractor shall notify the Contract Administrator/Designee and obtain written authorization prior to commencement of such work.

9.18 Schedule:

The Contractor shall submit a construction schedule showing planned and actual start and finish dates for each design and construction phase, sequencing, submission dates for required deliverables, and major milestones. The schedule shall begin with a Notice-to-Proceed (NTP) through Final Completion. Schedules shall be provided within 5 business days of NTP.

9.19 Electrical

All electrical work shall be done in accordance with IBC, NFPA, and NEC.

9.20 Amenities Minimum Requirements or Approved Equal To:

The Contractor shall provide amenities and equipment that are in the same style depicted in *Attachment "D"* – Amenities or an **Approved Equal To**.

**Note:** Products provided by the Contractor shall be installed in accordance with manufacturer's instructions and technical specifications.

Manufacturer: The Park and Facilities or Approved Equal To

- Doggy Drinking Fountain – Model No. 513-1018 or **Approved Equal To**.
- Pet Waste Station with Sign – Model No. 135-1015 or **Approved Equal To**.
- Pet Waste Bag Dispenser – Model No. 135-1015 or **Approved Equal To**.
- Pet Waste Station Trash Receptacle – Model No. 135-1015 or **Approved Equal To**.
- Pet Waste Station Mounting Post – Model No. 135-1015 or **Approved Equal To**.

- Basic Bench – Model No. 439-1011 or **Approved Equal To.**
- Leash Post – Model No. 439-1010 or **Approved Equal To.**
- Trash Receptacle – Model No. 439-1013 or **Approved Equal To.**
- King of The Hill – Model No. 439-1001 or **Approved Equal To.**
- Doogie Crawl – Model No. 439-1007 or **Approved Equal To.**
- Hoop Jump – Model No. 439-1007 or **Approved Equal To.**
- Rover Jump Over – Model No. 439-1006 **Approved Equal To.**

**Note:** Please Refer to page ITB-3, Request for Approved Equals or Equivalent. Contractor shall provide the accepted and approved gazebo style and type submitted bid response.

**Alternatives/Deviations:** Alternatives/Deviations after bids due date and contract award shall be at no additional cost to the City, if accepted by the City. The Contractor shall purchase and install the gazebo style and type approved by the City. Alternatives/Deviations will not be accepted without written authorization by the City. If Alternative/Deviations are approved by the City, it will be at no additional cost to the City. The amount to be paid to the Contractor shall be in accordance with Attachment “B” – Bid Cost Proposal (Bid Sheet) received on bids due date.

9.21 Materials and Equipment:

Materials & Equipment shall be non-toxic, and resistant to weather, chewing, and scratching. Common materials include heavy-duty metal, aluminum, and thermoplastic coating. Equipment shall be free of sharp edges, pinch points, and entrapment hazards. Safe surfacing, such as wood fiber or engineered wood fiber (EWF), is recommended to provide stability and safety.

9.22 Sidewalk and ADA Ramp:

The Contractor shall install a 5 ft sidewalk and ADA Ramp where specified in **Attachment “C”** – Dog Park Location and GIS Map. The ADA Ramp shall be installed in compliance with ADA requirements. Sidewalk installation includes clearing, grubbing, and installation of temporary erosion control measures.

9.23 Water Line:

The Contractor shall install a water line for the fountain that will be installed. Refer to Attachment “C” – Dog Park Location and GIS Map to view the existing water and sewer infrastructure at the site. The drinking fountain at the dog park shall be connected to the existing 8-inch diameter ductile iron portable water line on site.

10. CONTRACTOR RESPONSIBILITIES:

Unless otherwise specified, Contractor will be responsible for the provision and performance of all equipment, materials, work, etc. offered in their response.

- 10.1 Person of Contact (POC):  
The Contractor shall provide contact information for Primary and Secondary staff within the company who will be responsible for providing a response to City request for support work during the term of this agreement. Contact information shall include: Name of Contact(s), E-mail address, Website Information, Phone Number, and Fax Number.
- 10.2 The Contractor shall conform to all applicable OSHA, NEPA, Americans with Disabilities Act (ADA), State and Federal safety requirements, rules, regulations, policies, and procedures to perform the work requested herein.
- 10.3 The Contractor shall maintain all certifications, licenses, bonds, and certificate of insurance for the duration of this project until receipt of final acceptance.
- 10.5 The Contractor shall supervise and oversee all work performed under this contract.
- 10.5 The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and provide reasonable protection to prevent damage to properties surrounding the work site, injury or loss to employees, materials, and equipment in connection with the performance of the work herein.
- 10.6 The Contractor shall be responsible for protecting all existing utilities, irrigation, drainage structures, pipes and signs within the limits of this project site shall remain in place and be in working condition during and after the completion of this project.
- 10.7 The Contractor shall assess the conditions at this site, notify the designated Contract Administrator / Designee in writing of any discrepancies, conflicts, or omissions promptly upon discovery, and make necessary recommendations to resolve identified issues.
- 10.8 The Contractor shall be responsible for the appearance of all working personnel assigned to the projects (clean and appropriately always dressed), and their compliance with City Policies and Rules prohibiting smoking and consumption of alcohol and illegal drugs while on City projects.
- 10.9 The Contractor shall enforce strict discipline and good order amongst its employees and other persons carrying out work under this contract.
- 10.10 The Contractor shall be responsible to the City of acts and omissions of its employees, subcontractors, and other agents performing portions of the work for or on the behalf of the Contractor or any of its subcontractors.
- 10.11 The Contractor shall have an English-speaking supervisor/representative on the work site at all times, who shall be thoroughly knowledgeable of all plans, specifications, and other contract documents and has the authority to act on the contractor's behalf.

- 10.12 The Contractor shall be solely responsible for the safety of its employees and subcontractors hired to perform the work requested herein.
- 10.13 The Contractor shall ensure all employees and subcontractors assigned to perform work under this contract are properly licensed, trained and certified.
- 10.14 The Contractor shall restore all trees, shrubbery, and sodding if all areas disturbed while performing the work herein (as applicable).
- 10.15 Reporting Dangerous Conditions / Situations:  
The Contractor shall notify the Contract Administrator / Designee of any and all encounters with unsafe and dangerous conditions and/or unusual situations occurring at work sites while working on this project.
11. WORK SCHEDULE:  
Regular work Hours: 7:00 am to 7:00 pm, Monday through Friday. The City will consider extended workdays, workweeks and hours upon written request by the Contractor on a case-by-case basis. No work will be allowed on national holidays and City Holidays (i.e. Memorial Day, July 4th, Labor Day, etc.). Lane closures, if required, are limited to the hours of 9:00 AM to 4:00PM.
12. EQUIPMENT AND MATERIAL:  
The Contractor shall ensure all equipment used on this project complies with and is used in accordance with all pertinent safety regulations. Comply with the manufacturer's warranty and guaranty instructions for installation. Make all adjustments for alignment and operation. Clean all surfaces and remove excess sealant and lubricants. Before construction starts on any particular sequence of work, all equipment and materials necessary for proper execution of the work shall be on site and in good/full working order.
13. LIQUIDATED DAMAGES:  
Upon failure of the Contractor to complete the Work within the time specified for completion, the Contractor shall pay to the City the sum of One Hundred Dollars (**\$100.00**) for each and every calendar day that the completion of the Work is delayed beyond the time specified in this Agreement for completion, as fixed and agreed liquidated damages and not as a penalty, so long as the delay is caused by the Contractor.
14. WEATHER:  
The Time of Completion for this project has been calculated assuming that the weather conditions will be average to moderate. If in the opinion of the City's Contract Administrator / Designee / Project Manager that the weather escalates to a point where the work delays on the project more than the Contractor could have reasonably anticipated or controlled, the Contract Administrator / Designee will make arrangements for extending the time of completion for each individual work order package, once the request has been made for such extensions by the Contractor.
- 14.1 If adverse weather conditions are the basis of a Claim(s) for additional time, such Claim(s) 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 project scheduled activities.

14.2 The Contractor will be required to promptly notify the City's Contract Administrator / Designee / Project Manager in writing of any such delays to the work, explaining its efforts to mitigate the effects of such delays. Any such notification received by the Contract Administrator / Designee / Project Manager, more than five business days after the delay has occurred will not be considered. No extension of time shall be granted for delay(s) resulting from typical weather conditions prevailing in the applicable area(s) as defined by the average of the last ten (10) years of weather data recorded with the City and the applicable jurisdiction(s).

15. DELIVERY, STORAGE, AND HANDLING:

The Contractor shall coordinate delivery and arrange storage of materials (if needed). Storage space may be limited. Components sensitive to damage in a harsh environment shall be stored off-site and delivered as needed. The Contractor shall provide all necessary protective covering needed to prevent damage to surround work areas. The Contractor shall be responsible for on-site security of tools, equipment and materials.

16. RESPONSE TIME:

The Contractor shall respond to request for services within twenty-four (24) hours of notification by the City.

17. RESTORATION OF PROPERTY:

Property - whether public or private - if damaged during construction or removed for the convenience of the work; ALL such property shall be repaired and/or replaced by the Contractor at his/her own expense in a manner acceptable to the City's Contract Administrator, prior to final acceptance of the work. Restoration of certain items (such as benches, shelters, traffic signs, street signs, fences, sod, etc.) shall be performed promptly for reasons of public safety, health, and welfare.

18. DISPOSAL OF EXCESS MATERIAL:

All excavated and excess material(s) which is not required for the work shall be promptly removed from site and safely disposed of by the Contractor; such removal and disposal of the applicable material(s) shall be the sole responsibility of the Contractor and conducted at his/her expense. Disposal of all materials shall be carried out in accordance with State, Local, Federal rules and regulations. No stockpiling of removed materials shall be allowed on site.

19. CONTRACTOR AND SUBCONTRACTOR UNIFORM/BADGING:

The Contractor employees assigned to this contract must wear a professional uniform with the company name permanently affixed to the uniform. Uniforms shall comply with all safety provisions from the Georgia Department of transportation, OSHA, and the City.

20. CONTRACTOR AND SUBCONTRACTOR VEHICLES:

The Contractor's company vehicles shall be distinctly labeled with the company name; and shall only be parked in designated spaces provided by the City.

21. DAMAGE REIMBURSEMENT:

The Contractor shall be solely responsible for, and shall reimburse the City, any and all costs and/or expense of any kind or nature relating to the correction of any damage to any City property resulting from the installation, maintenance, replacement of mounted equipment and infrastructure.

22. WARRANTY:

The Contractor shall furnish all pertinent warranty information including manufacturers' warranties, effective dates, as they become available, for all new equipment. All materials, parts, components, equipment and labor work performed shall be fully warranted and guaranteed for a minimum of One (1) year from date of completion of services and acceptance by City. Parts and equipment shall be replaced during the warranty period and have a warranty matching that of the original part from date of replacement. Repair or replacement defects occurring in labor or product(s) within the warranty period shall be performed and provided at no additional cost to the City.

Thermoplastic/Canine Coated Elements shall have a warranty of five (5) years.

23. CLEAN UP:

All usable materials and debris shall be removed from the premises at the end of each workday and disposed of in an appropriate manner. Upon final completion, the Contractor shall thoroughly clean up all areas where work has been involved as mutually agreed with the associated location Contract Administrator / Designee.

24. WORK ACCEPTANCE:

24.1 Services performed under this agreement will be inspected by an authorized representative of the Engineering Department. This inspection shall be performed to determine acceptance of work, appropriate invoicing and warranty conditions.

24.2 The City shall provide written notice of acceptance or rejection within five (5) business days of completion of final inspection.

25. FINAL INSPECTION AND WORK ACCEPTANCE:

The Contractor shall perform a joint inspection with the City's authorized representative for each project upon the completion of all work. The Contractor shall notify the City when the work is complete and ready for the City's final inspection. After final inspection, the City's authorized representative for the project will accept the work if the Contractor has satisfactorily:

25.1 Corrected all deficiencies observed during the final inspection and no new deficiencies have been observed;

25.2 Submitted all other required contract deliverables; and

25.3 The Contractor shall correct work rejected by the City or work failing to conform to the requirements of the contract documents, whether or not fabricated, installed or completed. This shall occur within at least five (5) business days of notice to the Contractor, unless otherwise agreed upon with City staff. The Contractor bears the costs of correcting such

rejected work, including additional testing, inspections required and compensation for City services and expenses made necessary thereby.

25.4 The Contractor shall provide the following upon completion of the project:

25.4.1 Product list containing product names, product numbers, contact information and method of application for all materials used on the project.

25.4.2 Warranty letter (to cover a one-year period of trees starting with final written acceptance by the City)

26. REPORTING REQUIREMENTS:

The Contractor shall submit a two (2) week projected schedule each Friday by 3:00pm. The projected schedule of upcoming project activities shall clearly identify road segments to be paved within the next two (2) weeks.

27. INVOICING AND PAYMENT:

The Contractor shall submit a detailed “itemized” invoice list of equipment, labor, parts, and appurtenances used under this agreement. All one-time and reoccurring charges shall be identified on the invoice. Invoices will be reviewed and approved by City staff prior to payment. Invoices shall be submitted once a month. Invoices shall consist of the following:

27.1 Construction and installation service progress for the project.

27.2 Supporting documentation including narrative of completed work with associated photos, and any other data required by the City (e.g. daily activity reports).

27.3 Invoice should be signed by Contract Administrator/Designee.

27.4 Final Invoice Payment: Upon Completion and City’s Acceptance of Work.

**Note:** Payment Retainage is applicable to this agreement at a rate of **10%** and will be withheld until it has been determined that the Contractor has complied with the requirements of the contract.

**EXHIBIT B  
COST PROPOSAL**

**ATTACHMENT "B"  
BID COST PROPOSAL FORM  
(BID SHEET)**

ITEM NO.	ITEM	UNIT OF MEASUREMENT	QUANTITY	UNIT PRICE	TOTAL PRICE
1	Design Services	LS	1	\$ 49,812.50	\$ 49,812.50
2	Entrance: Construct, Install and Remove	EA	1	\$ 30,000.00	\$ 30,000.00
3	Double Row Slit Fence: Type S	LF	1380	\$ 7.50	\$ 10,350.00
4	Clearing and Grubbing	SY	5140	\$ 12.50	\$ 64,250.00
5	Seeding, Temporary Erosion Control	SY	5140	\$ 4.50	\$ 23,130.00
6	Seeding, Permanent Erosion Control: Outside Dog Park	SY	3160	\$ 3.75	\$ 11,850.00
7	Fencing (Including 3 Single Leaf Gates)	LF	720	\$ 67.50	\$ 48,600.00
8	TIFTUF Bermuda Sod: Installed inside dog park	SY	1622	\$ 6.50	\$ 10,543.00
9	Doggie Drinking Fountain: Model No. 513-1018 or Approved Equal To	EA	1	\$ 3,881.00	\$ 3,881.00
10	Pet Waste Station with Sign: Model No. 135-1015 or Approved Equal To	EA	1	\$ 560.00	\$ 560.00
11	Pet Waste Bag Dispenser: Model No. 135-1015 or Approved Equal To	EA	2	\$ 560.00	\$ 1,120.00
12	Pet Waste Station Trash Receptacle: Model No. 135-1015 or Approved Equal To	EA	1	\$ 600.00	\$ 600.00
13	Pet Waste Station Mounting Post: Model No. 135-1015 or Approved Equal To	EA	1	\$ 217.00	\$ 217.00
14	Basic Bench "Paws and Bone": Model 439-1011 or Approved Equal To	EA	4	\$ 1,612.00	\$ 6,448.00

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CITB-0002-26  
Southeast Athletic Complex Dog Park



15	Leash Post: Model 439-1010 or Approved Equal To	EA	2	\$ 886.50	\$ 1,773.00
16	Trash Receptacle: Model 439-1013 or Approved Equal To	EA	1	\$ 1,518.00	\$ 1,518.00
17	King of the Hill "Cover": Model No. 439-1001 or Approved Equal To	EA	2	\$ 5,782.50	\$ 11,565.00
18	Doogie Crawl: Model No. 439-1007 or Approved Equal To	EA	2	\$ 2,457.00	\$ 4,914.00
19	Hoop Jump: Model No. 439-1007 or Approved Equal To	EA	1	\$ 2,457.00	\$ 2,457.00
20	Rover Jump Over: Model No. 439-1006 or Approved Equal To	EA	2	\$ 1,933.50	\$ 3,867.00
21	Sidewalk: 5 ft, Approximately 4" Thick, No Rebar	SY	300	\$ 45.00	\$ 13,500.00
22	ADA Ramp	EA	1	\$ 15,000.00	\$ 15,000.00
23	Black Gum Tree: Minimum 3" Caliper	EA	3	\$ 3,250.00	\$ 9,750.00
24	Water Line to Fountain	LF	470	\$ 100.00	\$ 47,000.00
25	Signage	LS	1	\$ 10,000.00	\$ 10,000.00

**TOTAL COST:** \$ 382,705.50

**TOTAL COST IN WORDS:**

Three hundred eighty-two thousand seven hundred five dollars and fifty cents

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CITB-0002-26  
Southeast Athletic Complex Dog Park



**EXHIBIT C**  
**E-VERIFY AFFIDAVIT**



**GEORGIA SECURITY AND IMMIGRATION COMPLIANCE ACT AFFIDAVIT  
"E-VERIFY"**

Contractor(s) Name: F.H. Paschen, S.N. Nielsen & Associates LLC

Address: 1371 Southland Cir NW, Atlanta, GA 30318

By executing this affidavit, the undersigned person or entity verifies its compliance with O.C.G.A. § 13-10-91, stating affirmatively that the individual, firm, or corporation which is registered with, is authorized to participate in, and is participating in the federal work authorization program commonly known as E-Verify,\* in accordance with the applicable provisions and deadlines established in O.C.G.A. § 13-10-91.

The undersigned person or entity further agrees that it will continue to use the federal work authorization program throughout the contract period, and it will contract for the physical performance of services in satisfaction of such contract only with subcontractors who present an affidavit to the undersigned with the information required by O.C.G.A. § 13-10-91(b).

The undersigned person or entity further agrees to maintain records of such compliance and provide a copy of each such verification to the City of Stonecrest within five (5) business days after any subcontractor(s) is/are retained to perform such service.

450532  
E Verify™ Company Identification Number

09/23/2011  
Date of Authorization

BY:   
(Authorized Officer or Agent)  
Chuck Freiheit, PE


Agent / Chief Operating Officer  
Title

Date: 03/18/2026

\* or any subsequent replacement operated by the United States Department of Homeland Security or any equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, pursuant to the Immigration Reform and Control Act of 1986 (IRCA), P.L. 99-603.

Other Identifying Number: \_\_\_\_\_

The foregoing instrument was acknowledged before me this 18 day of March 2026, by Chuck Freiheit, who is (who are) personally known to me or who has produced \_\_\_\_\_ as identification and who did (did not) take an oath.

  
Notary Public Signature  
G. White  
Notary Name, Printed, Typed or Stamped



Commission Number: 888661 Commission Expires: 10/11/26



Subcontractor Affidavit under O.C.G.A. § 13-10-91(b)(3)

By executing this affidavit, the undersigned subcontractor verifies its compliance with O.C.G.A. § 13- 10-91, stating affirmatively that the individual, firm or corporation which is engaged in the physical performance of services under a contract with F.H. Paschen, S.N. Nielsen & Associates LLC on behalf of City of Stonecrest has registered with, is authorized to use and uses the federal work authorization program commonly known as E-Verify, or any subsequent replacement program, in accordance with the applicable provisions and deadlines established in O.C.G.A. § 13-10-91. Furthermore, the undersigned subcontractor will continue to use the federal work authorization program throughout the contract period and the undersigned subcontractor will contract for the physical performance of services in satisfaction of such contract only with sub-subcontractors who present an affidavit to the subcontractor with the information required by O.C.G.A. § 13-10-91(b). Additionally, the undersigned subcontractor will forward notice of the receipt of an affidavit from a sub-subcontractor to the contractor within five business days of receipt. If the undersigned subcontractor receives notice that a sub-subcontractor has received an affidavit from any other contracted sub-subcontractor, the undersigned subcontractor must forward, within five business days of receipt, a copy of the notice to the contractor. Subcontractor hereby attests that its federal work authorization user identification number and date of authorization are as follows:

1624474 Federal Work Authorization User Identification Number
06/05/2025 Date of Authorization
Pond & Company, Inc. Name of Subcontractor
Southeast Athletic Complex Dog Park Name of Project
City of Stonecrest Name of Public Employer
Name of Officer
Vice President Title of Officer

The foregoing instrument was acknowledged before me this 13th day of March 2026, by Mark Hanselman, who is (who are) personally known to me or who has produced as identification and who did (did not) take an oath.

Nicole Lynn Manuel Notary Public Signature
Nicole Lynn Manuel Notary Name, Printed, Typed or Stamped
Commission Number: N/A
Commission Expires: February 14, 2029



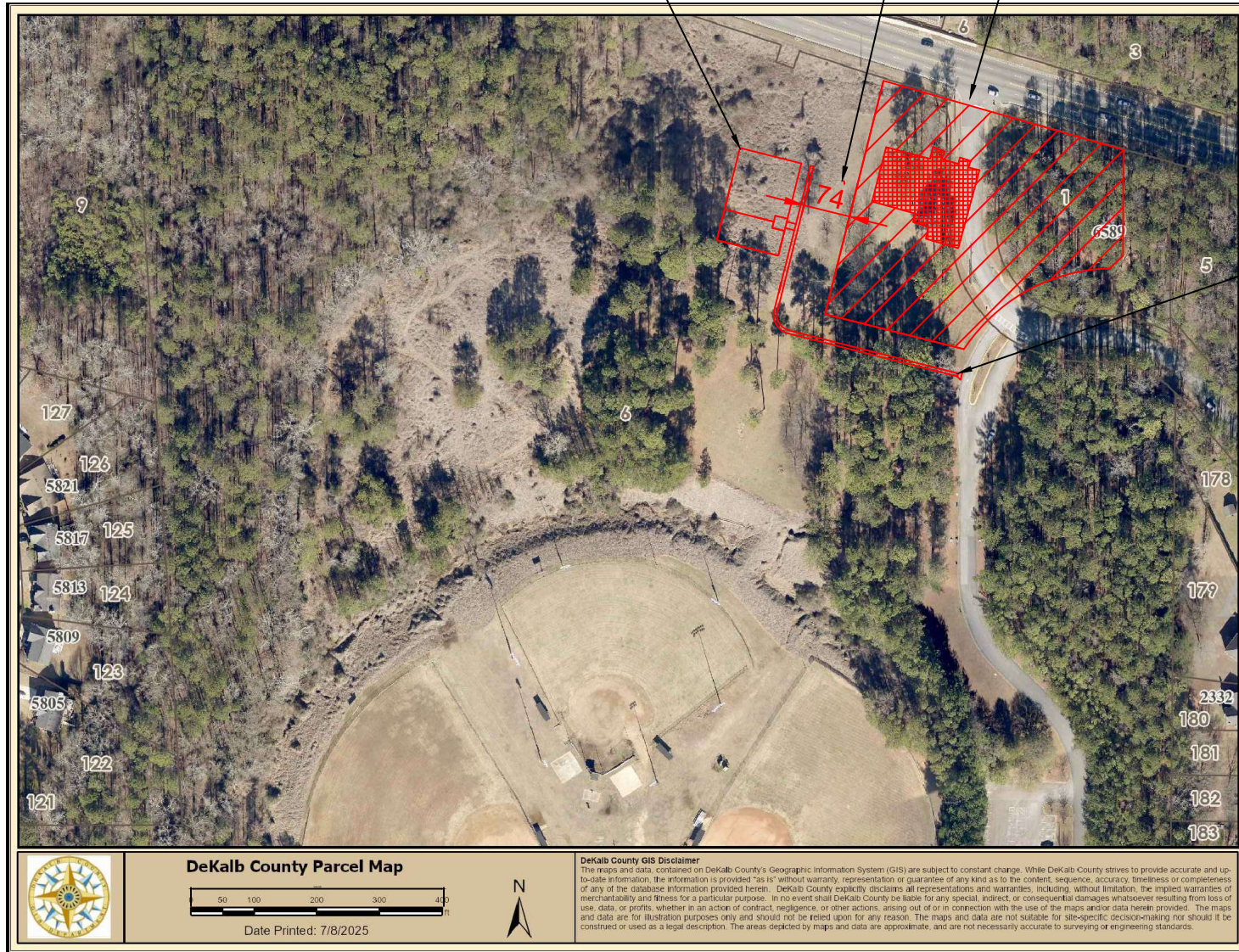
ATTACHMENT "C"  
DOG PARK LOCATION INFORMATION

FUTURE LOCATION OF FIRE STATION 14

APPROX. 74' (ALLOW MINIMUM 20 FT CLEARANCE FOR GRADING)

DOG PARK

SIDEWALK  
5 FT WIDE



DOG PARK LOCATION



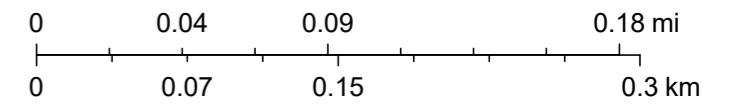
# ATTACHMENT "C" DOG PARK LOCATION INFORMATION "GIS MAP"



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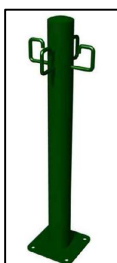
- |                    |                    |                       |             |                          |                  |
|--------------------|--------------------|-----------------------|-------------|--------------------------|------------------|
| Google Street View | <b>Sewer Mains</b> | <b>Water Fittings</b> | Hydrant Tap | Valve                    | Districts        |
| Manholes           | DEKALB             | 11 Bend               | Plug        | WML                      | Legal Annotation |
| DEKALB             | PRIVATE            | 22 Bend               | Reducer     | Water Transmission Lines | District         |
| PRIVATE            | Water Hydrants     | 45 Bend               | Tap Sleeve  | Water Mains              | Land Lot         |
|                    | Water Valves       | 90 Bend               | Tee         | Land Lot                 | Parcels          |



ATTACHMENT "D"  
AMENITIES OR APPROVE EQUAL TO



1) Paws and Bone Bench (4)



2) Leash Post (2)



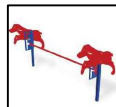
3) Trash Receptacle (1)



4) Pet Waste Station (1)



5) Doggie Crawl (2)



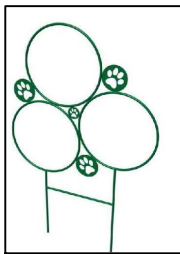
6) Rover Jump Over (2)



7) Drinking Fountain (1)



8) King of the Hill (2)



9) Hoop Jump (1)

DOG PARK AMENITIES

