CITY COUNCIL
ATLANTA, GEORGIA

03-0-1352

AN ORDINANCE BY COUNCILMEMBER FELICIA MOORE

AS SUBSTITUTED BY
CITY UTILITIES COMMITTEE

AN ORDINANCE AUTHORIZING THE MAYOR, ON BEHALF OF THE CITY OF ATLANTA, TO ENTER 1NT0 A CONTRACTUAL AGREEMENT WITH GENERAL SHALE PRODUCTS LLC FOR THE INSTALLATION OF A PRIVATE FORCE MAIN IN CERTAIN RIGHTS OF WAY OF THE CITY GRANTING TEMPORARY ENCROACHMENTS AS NEEDED; AUTHORIZING THE MAYOR TO EXECUTE ALL CONTRACTS, EASEMENTS, AND OTHER DOCUMENTS AS NEEDED TO ACCOMPLISH THIS `TRANSACTION; AND FOR OTHER PURPOSES

WHEREAS, General Shale Products LLC ("General Shale") is the owner of a 75.3-acre parcel located at 2142 James Jackson Parkway in the City of Atlanta (the "Property"); and,,

WHEREAS, the Property is currently zoned I-1 and I-2 and a brick manufacturing plant was operated on the Property for many decades; and

WHEREAS, Ordinance No. 02-0-1986/Z-02-76, which is currently pending before the Council, would rezone the property to PD-H to allow construction of a residential community of single family homes, townhomes, condominiums, apartments, and recreational amenities (the "Development'); and

WHEREAS, the City desires to promote and encourage the redevelopment of this under-utilized industrial parcel to provide new housing stock for the' area and to serve as a catalyst for the development of retail, grocery, and service businesses as envisioned in the *Northwest Atlanta Framework Plan* recently adopted by the City; and

WHEREAS, the sanitary sewer basin in which the Property lies, Proctor Creek - Other, has been determined to be a restricted sewer basin under the terms of the First Amended Consent Decree; and

WHEREAS, the City has determined that adequate flow capacity for the Development does not currently exist; and

WHEREAS, the necessary capital improvements for this basin are not scheduled to be constructed for several years and thus will not be available before the Development is scheduled to be completed; and

WHEREAS, General Shale has proposed to construct a private lift station on the Property and a private force main in the rights of way of certain City streets to carry the flow down certain

streets from the private lift station to connect to an existing gravity sewer main in the adjacent sewer basin, which is not capacity restricted; and

WHEREAS, General Shale has entered into an agreement to sell the Property for construction of the Development and has agreed to create the Chattahoochee Village Homeowners' Association and include in its duties and responsibilities the obligation to maintain the private lift station and private force main at no cost to the City; and

WHEREAS, the private lift station and private force main will be taken out of service once the City constructs sufficient permanent improvements in the Proctor Creek basin so that the private lift station and private force main are no longer needed to carry the sanitary sewer flow from the Property; and

WHEREAS, the Council now desires to authorize construction and installation of a private force main and allow sewer service to the Development.

NOW, THEREFORE, THE COUNCIL OF THE CITY OF ATLANTA, GEORGIA HEREBY ORDAINS as follows:

Section 1. That the Mayor shall be authorized to enter into an agreement with General Shale (or its successors or assigns) to allow General Shale to construct a private force main in City rights of way from the Property to an existing sanitary sewer in the adjoining sewer basin with adequate capacity, where such an agreement will permit General Shale to construct a private lift station on the Property and connect the private lift station to the private force main and to operate the private lift station and private force main, under the terms and conditions set forth therein, in substantial form as set forth in Exhibit A attached hereto.

Section 2. That pursuant to this contractual agreement, all plans and specifications for the private lift station and private force main must be approved by the Department of Watershed Management prior to construction, where all plans and specifications must be related to the specific Chattahoochee Village Development project.

Section 3. That to effectuate this contractual agreement, the City hereby grants to General Shale and its successors and assigns those temporary encroachments needed to permit construction and maintenance of the private lift station and private force main, as determined by the Department of Watershed Management.

Section 4. That as a condition precedent to the execution of this contractual agreement, General Shale must obtain all necessary and required local, state and federal permits, at its expense and shall indemnify the City for all liability.

Section 5. That the Mayor is further authorized to execute any and all agreements and other documents and instruments as needed to accomplish this transaction after approval by the City Attorney as to form.

Section 6. No agreement shall be binding on the City, nor shall the City incur any obligation or liability thereunder, unless the agreement has been signed by the Mayor and delivered to the contracting party.

Section 7. That any ordinance or any part of any ordinance in conflict with the terms of this ordinance is hereby waived.

A true copy,
Municipal Clerk, CMC

ADOPTED by the Council September 2, 2003
APPROVED by the Mayor September 10, 2003

PRIVATE SANITARY SEWER AND LIFT STATION AGREEMENT

This AGREEMENT, and any ancillary agreements necessary to this agreement, are entered into on this the _____ day of _____, 2003, by and between the CITY OF ATLANTA, a municipal corporation of the State of Georgia, organized and existing under the laws of the State of Georgia (hereinafter the "City"), and General Shale Products LLC ("General Shale"), a Georgia corporation. The City and General Shale are referred to collectively as "Parties" and individually as "Party."

RECITALS

WHEREAS, General Shale is the owner of a 75.3-acre parcel located at 2142 James Jackson Parkway in the City ("Property"); and

WHEREAS, the Property is currently zoned I-1 and I-2 and a brick manufacturing plant was operated on the Property for many decades; and

WHEREAS, General Shale, if the Property is rezoned for residential use, intends to construct a residential community of single family homes, townhomes, condominiums, apartments, and recreational amenities "Development"); and

WHEREAS, the City desires to promote and encourage the redevelopment of this industrial parcel to provide new housing stock for the area as envisioned in the Northwest Atlanta Framework Plan recently adopted by the City; and

WHEREAS, the sanitary sewer basin in which the Property lies, Proctor Creek – Other, is a restricted sewer basin under the terms of the First Amended Consent Decree; and

WHEREAS, General Shale proposes to construct and maintain a privately held lift station and to construct and maintain a force main in the rights of way of certain City streets to carry the flow approximately 1500 feet from Property line to connect to an existing gravity sewer main in the adjacent sewer basin which, at this time, can support the additional flow of waste water; and

WHEREAS, General Shale desires to maintain and use its lift station and force main until such time as the Proctor Creek – Other sewer basin has sufficient capacity to support the flow from the Property at which time the flow may be directed into the Proctor Creek – Other sewer basin; and

WHEREAS, General Shale wishes to accept a responsibility and service that is normally considered a public service operated and maintained by the City; and

WHEREAS, the execution of this Agreement on the part of the City has been authorized by City Council Resolution number _____, adopted on _____,

2003, and approved by the Mayor of the City on _____, 2003, and a copy of said Resolution is attached hereto as Exhibit ____ and made a part hereof by reference.

NOW, THEREFORE, FOR AND IN CONSIDERATION OF THE MUTUAL TERMS AND CONDITIONS hereinafter set forth, the Parties agree as follows:

ARTICLE I

Scope of the Project

1.1 In the opinion of the City, the construction, installation, operation, use and maintenance of the force main and lift station by General Shale, including the installation of the force main through the public Right-of-Way, as shown on attached plans/drawings, in conjunction with the development of the Property for residential use, will constitute a benefit to the public and, except for permitted temporary disruptions of service, will not adversely impact the ability of the Right-of-Way to handle vehicular or pedestrian traffic or otherwise to perform its intended public function.

1.2 General Shale shall be responsible for the construction and maintenance of a privately owned and operated lift station and force main running from the lift station constructed on the Property running through the property then through public rights of way using City streets and State routes to carry the flow from the lift station to an existing gravity sewer on or near Peyton Road in the adjacent sewer basin.

1.3 The Parties have attached to this Agreement as Exhibit ___ a drawing that sets forth the anticipated scope of work for the project. The Parties agree that this drawing is to be used as a general reference document only, and they each understand and agree that the locations shown on the drawings are approximate only.

1.4 General Shale will be responsible, under this Agreement, for the relocation of the infrastructure owned or maintained by any other utility or other entity that is impacted or affected by the installation of the force main or lift station.

ARTICLE II

Encroachment of City Right-of-Way

2.1 The City grants to General Shale, consistent with the encroachment, permit and fee requirements listed in City Code of Ordinance, the right to construct, install, operate, use and maintain a force main with the City Right-of-Way as identified on the plans and specifications in Exhibit ____.

2.2 The force main must be installed pursuant to plans, calculations, and technical specifications prepared by a professional engineer licensed to practice in the State of Georgia, and approved by the Commissioner of the City's Departments of Public Works and Watershed Management, pursuant to the standards set forth in or promulgated under Chapter 138 of the City's Code of Ordinance and, when applicable, all other appropriate legal requirements or administrative rules, including, but not limited to, the standards of Georgia Department of Transportation or the Federal Highway Administration, or any other governmental agency having jurisdiction over the Right-of-Way or environmental issues.

2.3 General Shale agrees that the City may carry out inspection, monitoring, and evaluation concerning the construction, operation and maintenance of the force main, whether in the Right-of-Way, the Property on General Shale easements or encroachments as the City deems necessary.

2.4 General Shale agrees to indemnify and hold the City harmless from all claims arising out of the use of the Right-of-Way and the construction, operation, use, maintenance or removal of the force main in the Right-of-Way by it or any of its contractors, and to maintain a policy of public liability insurance, in an amount approved by City's Risk Manager. General Shale's hold harmless and indemnification obligations under this Agreement will not be limited to the amount of insurance.

2.5 General Shale's indemnification obligations under this Agreement are not waived or reduced because the City approved any plan, calculation or specification submitted by or on behalf of General Shale concerning or relating to the installation of the force main or by requiring or not requiring modifications to any plans, calculations or specifications, even if the City is later adjudicated to have been negligent because of its acts or failure to act concerning its approval of any plans, calculations or specifications for the force main.

2.6 General Shale agrees to operate and maintain the force main at no cost to the City. As condition precedent to this Agreement and in the event that General Shale fails to responsibly operate and maintain the force main and the lift station, General Shale has purchased a maintenance bond in the amount of $_____, and is in effect for a period of _____ years. The amount of the bond shall be sufficient to cover costs and expenses as well as indemnification obligations arising from such a breach of the Agreement. The Parties agree that the term of years is an estimate of the maximum time needed to sufficiently expand the flow capacity in the Proctor Creek – Other sewer basin. The City agrees to release the bond at such time as the Proctor Creek – Other sewer basin has sufficient capacity to permit sanitary sewer flow from the Property and General Shale installs the necessary sewer lines to make the necessary connections and to stop use of the force main and the lift station.

2.7 This Agreement is not exclusive and does not negate any past, present, or future agreement that the City may enter into with any other utility owner or provide for use of the Right-of-Way.

2.8 General Shale agrees to conduct all activities within the Right-of-Way in accordance with all applicable local, state, and federal rules, regulations, and standards. General Shale agrees to maintain all work associated with the installation and construction of the force main in good condition, and to repair any damage to any City facilities, and any public or private utilities, and to reimburse the City for any consequential damages that may result from General Shale's occupation of the Right-of-Way or the installation of the force main. If the City determines that the condition of the force main or the manner in which the force main is installed presents an imminent danger to life or property of the public, the City may undertake all reasonable measures to protect life or property of the public, and the expense of those measures will be borne by General Shale.

2.9 General Shale agrees to repair any damage to the Right-of-Way resulting from the use or construction, installation, maintenance, repair or use of the force main in the Right-of-Way and to reimburse the City for any damages to the Right-of-Way resulting from the use of the Right-of-Way or the construction, installation, maintenance, repair or use of the force main in the Right-of-Way.

ARTICLE III

Construction, Operation and Maintenance of the Lift Station

3.1 General Shale shall design and build on the property identified in Exhibit _____, a sanitary sewer lift station pursuant to plans, calculations, and technical specifications prepared by a professional engineer licensed to practice in the State of Georgia, and approved by the Commissioner Watershed Management and, when applicable, all other appropriate legal requirements or administrative rules, including, but not limited to, the standards of the Environmental Protection Division of the Georgia Department of Natural Resources or the Environmental Protection Agency of the United States of American, or any other local, state, or federal governmental agency having jurisdiction over issues related to the construction of the lift station on the Property.

3.2 General Shale will connect all necessary utilities including natural gas service, potable water, and electrical power to the lift station. General Shale will at all times comply with all federal, state, and local laws and permitting requirements, including soil erosion and sedimentation control laws during construction of the lift station.

3.3 General Shale agrees that the City may carry out inspection, monitoring, and evaluation concerning the construction, operation and maintenance of the lift station s the City deems necessary.

3.4 General Shale agrees to indemnify and hold the City harmless from all claims arising out of the use of the lift station and the construction, operation, use, maintenance or removal from use of the lift station by it or any of its contractors, and to maintain a policy of public liability insurance, in an amount approved by City's Risk Manager. General Shale's hold harmless and indemnification obligations under this Agreement will not be limited to the amount of insurance.

3.5 General Shale's indemnification obligations under this Agreement are not waived or reduced because the City approved any plan, calculation or specification submitted by or on behalf of General Shale concerning or relating to the installation of the lift station or by requiring or not requiring modifications to any plans, calculations or specifications, even if the City is later adjudicated to have been negligent because of its acts or failure to act concerning its approval of any plans, calculations or specifications for the lift station

3.6 General Shale agrees to operate and maintain the lift station at no cost to the City. As condition precedent to this Agreement and in the event that General Shale fails to responsibly operate and maintain the force main and the lift station, General Shale has purchased a maintenance bond in the amount of $_____, and is in effect for a period of _____ years. The amount of the bond shall be sufficient to cover costs and expenses as well as indemnification obligations arising from such a breach of the Agreement. The Parties agree that the term of years is an estimate of the maximum time needed to sufficiently expand the flow capacity in the Proctor Creek – Other sewer basin. The City agrees to release the bond at such time as the Proctor Creek – Other sewer basin has sufficient capacity to permit sanitary sewer flow from the Property and General Shale installs the necessary sewer lines to make the necessary connections and to permit the transfer of the sanitary waste flow from the lift station and force main.

3.7 General Shale agrees to construct, operate and maintain the lift station in accordance with all applicable local, state, and federal rules, regulations, and standards. General Shale agrees to maintain all work associated with the installation and construction of the lift station in good condition and to reimburse the City for any consequential damages that may result from General Shale's construction, operation or maintenance of the lift station. If the City determines that the condition of the lift station or the manner in which the lift station is operated or maintained presents an imminent danger to life or property of the public, the City may undertake all reasonable measures to protect life or property of the public, and the expense of those measures will be borne by General Shale.

ARTICLE IV

Miscellaneous Provisions

4.1 Inspection and Approval. General Shale agrees that the force main and lift pump shall not be made operational until it has been inspected by the City and General Shale has received the City's written notice that General Shale may connect its private system to the public sanitary sewer system.

4.2 Record Keeping. General Shale shall maintain such books, documents, papers and records related to the operation and maintenance of the force main and lift station as are deemed necessary by the City and are required by local, state, and federal and regulations. The records and accounts shall be maintained at General Shale's expense and shall be made available to City representatives upon written request. General Shale's obligation to maintain such records and the City's right to examine any books, records or other documents shall expire when General Shale receives approval to switch the Property's sanitary sewer flow to the Proctor Creek – Other sewer basin.

4.3 Notices.

4.3.1 General Shale and the City agree that all notices, demands, and requests required under this Agreement must be in writing and sent to the City or to General Shale addressed as follows:

To the City:	Commissioner City of Atlanta, Department of Watershed Management 55 Trinity Avenue Atlanta, GA 30335
To General Shale:	Ms. Sharon A. Gay McKenna Long & Aldridge 303 Peachtree Street, NE Suite 5300 Atlanta, GA 30308

4.3.2 All notices given by any party to the others under this Agreement must be in writing and may be delivered to the addresses in this section by:

(a) regular mail, first class, postage prepaid;
(b) certified or registered mail;
(c) facsimile, with a hard copy sent within 24 hours of transmission by one of the other permitted delivery means; or
(d) hand delivery.

4.3.3 Notices sent by mail will be deemed received 3 days after deposit in the mail, properly addressed. Notices sent by certified or registered mail will be deemed to be received upon the date of the acknowledgement. Notices sent by facsimile will be deemed to be received upon successful

transmission to the proper facsimile number; if the sender can produce a facsimile transmission confirmation report. Notices delivered by hand-delivery will be deemed to be received upon written acceptance by the respective party.

4.3.4 Any party may, at any time, change its respective address or facsimile number by sending written notice to the other parties of the change.

4.4 Entire Agreement. This Agreement contains the entire agreement of the parties with respect to its subject matter and no representation or agreements, oral or otherwise, which are not set forth in this Agreement, will be of any force or effect.

4.5 Counterparts. This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original and all of which together will constitute a single instrument.

4.6 Title Certificate. General Shale must provide to the City, contemporaneously with the execution and delivery of this Agreement to the City, a title certificate of an attorney authorized to practice law in the State of Georgia, setting forth the names and the addresses of all signatories to this Agreement other than the City. If any of the parties set forth in the title certificate are corporate or other similar entities (i.e. not natural persons), the title certificate must provide the full formal organizational name of the entity, as reflected in any of the entity's organizational papers or filings with any applicable governmental or other authorities in the state in which the entity was formed.

4.7 Default and Termination. If General Shale defaults in its performance of this Agreement, and fails to cure the default within fifteen (15) days of the City's written notice to General Shale of the default (or if such default is not capable of being cured within fifteen (15) days, General Shale has not commenced curing the default and diligently pursued such cure to completion within a reasonable amount of time), this Agreement may be terminated by the City upon five (5) days prior written notice to General Shale. Upon termination of this Agreement by Written Notice of Termination, General Shale must remove, at its own cost, the force main from the Right-of-Way and replace any area beneath and including the Right-of-Way to its condition prior to the installation of the force main. The rights and remedies of the City provided in this clause are not exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

4.8 Successors and Assigns. This Agreement will be binding upon and inure to the benefit of the City and General Shale and their respective permitted successors, successors in title and assigns.

4.8.1 General Shale shall not assign or subcontract this Agreement or any portion thereof without the prior expressed written consent of the City.

Any attempted assignment or subcontracting by General Shale shall at the City's sole option terminate this Agreement without any notice to General Shale of such termination. General Shale binds itself, its successors, assigns, and legal representatives of such other party in respect to all covenants, agreements and obligations contained herein.

4.9 Governing Law. This Agreement will be construed under Georgia law. General Shale and the City fix jurisdiction and venue for any action brought with respect to this Agreement in Fulton County, Georgia.

4.10 Legal Construction. If any provision contained in this Agreement is held to be invalid, illegal or unenforceable, that invalidity, illegality or unenforceability will not effect any other provision of this Agreement and this Agreement will be construed as if the invalid, illegal or unenforceable provision had never been contained in this Agreement.

4.11 Waiver. The failure of the City to seek redress for any violation of, or to insist upon the strict performance of, any term of this Agreement will not prevent a subsequent violation of this Agreement from being actionable by the City. The provisions in this Agreement of any particular remedy will not preclude the City from any other remedy.

4.12 Further Act. The City and General Shale agree to perform any additional acts and execute and deliver any additional documents as may reasonably be necessary in order to carry out the provisions and effectuate the intent of this Agreement.

4.13 Modification. This Agreement may be altered or amended only by written instrument signed by the City and General Shale.

4.14 Ethics: Gratuities and Kickbacks.

4.14.1 Gratuities and Kickbacks. This Agreement may be terminated if General Shale, or any other representative of General Shale, gave or agreed to give any employee or former employee of the City a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation or any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of any advice, investigation, auditing, or in any other adversary capacity in any procurement or application, request for ruling, determination, claim or controversy, or other particular matter pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal or subcontract.

4.14.2 Contingent fees. General Shale warrants that it has not employed or retained any company or Person, other than a bona fide employee working for General Shale, to solicit or secure this Agreement; and that General Shale has not paid or agreed to pay any company, association, corporation, firm or person, other

than a bona fide employee working for General Shale, any fee, commission, percentage, gift or any other consideration contingent upon or resulting form the award of making of this Agreement. For the breach or violation of this warranty, the City may terminate this Agreement and, at its discretion, may recover the full amount of any fee, commission, percentage, gift or consideration.

4.14.3 Rights and remedies. The rights and remedies of the City provided in this clause are not exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused these presents to be executed by their duly authorized officials or officers, to be attested, and the corporate seals affixed, as of the day and year first above written.

CITY OF ATLANTA:

_____
MAYOR

ATTEST:

_____
MUNICIPAL CLERK (SEAL)

APPROVED:

_____
COMMISSIONER, DEPT. OF WATERSHED MANAGEMENT

_____
COMMISSIONER, DEPT. OF PUBLIC WORK

GENERAL SHALE:

BY:_____
NAME:_____
TITLE:_____

_____
CORPORATE SECRETARY/ ASSISTANT SECRETARY [SEAL]

APPROVED AS TO FORM:

_____
CITY ATTORNEY

RECOMMENDED:

_____
DIRECTOR, BUREAU OF PURCHASING AND REAL ESTATE

RCS# 4981
9/02/03
1:28 PM

Atlanta City Council

Regular Session

03-O-1352

AGREE W/GEN SHALE PRODUCTS LLC PRIVATE
FORCE MAIN AND TEMP ENCROACHMENT
ADOPT ON SUB

YEAS:	14
NAYS:	0
ABSTENTIONS:	0
NOT VOTING:	2
EXCUSED:	0
ABSENT	0

Y Smith	Y Archibong	Y Moore	Y Mitchell
NV Starnes	Y Fauver	Y Martin	Y Norwood
Y Young	Y Shook	Y Maddox	Y Willis
Y Winslow	Y Muller	Y Boazman	NV Woolard

#9

03-O-1352

(Do Not Write Above This Line)

AN ORDINANCE
BY COUNCILMEMBER FELICIA MOORE

AUTHORIZING THE INSTALLATION OF A FORCE MAIN IN CERTAIN RIGHTS OF WAY OF THE CITY; GRANTING TEMPRORARY AND PERMANENT EASEMENTS AS NEEDED; AUTHORIZING THE MAYOR TO EXECUTE ALL CONTRACTS, EASEMENTS, AND OTHER DOCUMENTS AS NEEDED TO ACCOMPLISH THIS TRANSACTION; AND FOR OTHER PURPOSES.

ADOPTED BY

SEP 02 2003

COUNCIL

- ☐ CONSENT REFER
- ☐ REGULAR REPORT REFER
- ☐ ADVERTISE & REFER
- ☐ 1st ADOPT 2nd READ & REFER
- ☑ PERSONAL PAPER REFER

Date Referred 8/18/03

Referred To: City Utilities

Date Referred

Refferred To:

Date Referred

Referred To:

First Reading

Committee
Date
Chair
Referred To

Committee	Committee
Date	Date
Chair	Chair
Action Fav, Adv, Hold (see rev. side) Other	Action Fav, Adv, Hold (see rev. side) Other
Members	Members
Refer To	Refer To

Committee	Committee
Date	Date
Chair	Chair
Action Fav, Adv, Hold (see rev. side) Other	Action Fav, Adv, Hold (see rev. side) Other
Members	Members
Refer To	Refer To

FINAL COUNCIL ACTION

☑ 2nd ☐ 1st & 2nd ☐ 3rd Readings

☐ Consent ☐ V Vote ☑ RC Vote

CERTIFIED

CERTIFIED
SEP 02 2003
ATLANTA CITY COUNCIL PRESIDENT

CERTIFIED
SEP 02 2003

DEPUTY MUNICIPAL CLERK

MAYOR'S ACTION

SEP 2003