

10-0-1974  
(Do Not Write Above This Line)

AN ORDINANCE

BY CITY UTILITIES COMMITTEE

AN ORDINANCE TO AMEND THE FY 2011 (WATER AND WASTEWATER RENEWAL AND EXTENSION FUND) BUDGET BY ADDING TO ANTICIPATIONS AND APPROPRIATIONS PROCEEDS IN THE AMOUNT OF \$1,588,848.00 FOR THE INDIAN CREEK DRAINAGE BASIN PROJECT; AND FOR OTHER PURPOSES.

- CONSENT REFER
- REGULAR REPORT REFER
- ADVERTISE & REFER
- 1<sup>ST</sup> ADOPT 2<sup>ND</sup> READ & REFER
- PERSONAL PAPER REFER

Date Referred: 11/5/10  
 Referred To: City Utilities  
 Date Referred:  
 Referred To:  
 Date Referred:  
 Referred To:

First Reading  
 Committee: City Utilities  
 Date: Nov. 30 2010  
 Chair: Michael G. Buckley  
 Referred To: City Utilities

Committee: City Utilities  
 Date: Nov. 30 2010  
 Chair: Michael G. Buckley  
 Action: Fav, Adv, Hold (see rev. side)  
 Other:  
 Members: [Signatures]  
 Refer To:

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

Committee:  
 Date:  
 Chair:  
 Action: Fav, Adv, Hold (see rev. side)  
 Other:  
 Members:  
 ADOPTED BY  
 [Signature]  
 DATE: 6 2 2010  
 COUNCIL

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

FINAL COUNCIL ACTION  
 2<sup>nd</sup>  1<sup>st</sup> & 2<sup>nd</sup>  3<sup>rd</sup>  
 Readings  
 Consent  V Vote  RC Vote

CERTIFIED

CERTIFIED  
 DEC 06 2010  
 ATLANTA CITY COUNCIL PRESIDENT  
 [Signature]

CERTIFIED  
 DEC 06 2010  
 [Signature]  
 MUNICIPAL CLERK  
 MAYOR'S ACTION

APPROVED  
 DEC 15 2010  
 WITHOUT SIGNATURE  
 BY OPERATION OF LAW



10-O-1974

**AN ORDINANCE  
BY CITY UTILITIES COMMITTEE**

**AN ORDINANCE TO AMEND THE FY 2011 (WATER AND WASTEWATER RENEWAL AND EXTENSION FUND) BUDGET BY ADDING TO ANTICIPATIONS AND APPROPRIATIONS SURETY PROCEEDS IN THE AMOUNT OF \$1,588,848.00 PER THE SETTLEMENT AGREEMENT APPROVED BY THE FULL COUNCIL OF THE CITY OF ATLANTA, GEORGIA AUGUST 16, 2010 TO COMPLETE ADDITIONAL CORRECTIVE WORK FOR THE INDIAN CREEK DRAINAGE BASIN PROJECT; AND FOR OTHER PURPOSES.**

**WHEREAS**, the City of Atlanta (the "City") owns and operates a Water and Wastewater System; and

**WHEREAS**, the City entered into an agreement with Modern Continental South ("Modern") to complete the Indian Creek Basin project on or about May 15, 2002; and

**WHEREAS**, Modern secured a performance bond naming the City as obligee for 100% of the contract amount, which was issued by U.S. Fidelity & Guaranty ("USF&G"); and

**WHEREAS**, Modern defaulted on the performance of the agreement and entered into voluntary default with USF&G, which agreed to complete the incomplete and defective work per the Agreement; and

**WHEREAS**, Subsequent to the completion of the corrective work, additional defective work was discovered; and

**WHEREAS**, per mediation, USF&G has agreed to enter into a completion contract to complete the remaining work in accordance with the terms and conditions of the Agreement for an amount not to exceed \$2,950,000; and

**WHEREAS**, Resolution 10-R-1394, approved by the Full Council of the City of Atlanta on August 16, 2010 and approved by the Mayor on August 24, 2010 authorized the Mayor to enter into a Settlement Agreement with the surety; and

**WHEREAS**, the Settlement Agreement requires USF&G to contribute the remaining contract amount of \$1,588,848.00; and

**WHEREAS**, said proceeds must be anticipated and appropriated;

**NOW THEREFORE**, the City Council of the City of Atlanta, Georgia, hereby ordains as follows:



**SECTION 1:** That the FY 2010 (Water and Wastewater Revenue Bond Fund) Budget be hereby amended as follows to anticipate and appropriate funds of \$1,588,848.00 per the Settlement Agreement:

**INCREASE IN ANTICIPATION (SOURCE) OF SURETY PROCEEDS OF \$1,588,848.00:**

Anticipation of:	
5052.000002.3890033.0000000.000000.00000.0000.00000.00000000.00000000	\$1,588,848.00
Water and Wastewater Renewal & Extension Fund/Default – Revenue Department/ Non-recurring Revenue	
	_____
<b>Total Anticipation (Source)</b>	<b>\$1,588,848.00</b>

**INCREASE IN APPROPRIATION (USE) OF SURETY PROCEEDS OF \$1,588,848.00:**

Appropriation of:	
5052.200101.5999901.1512000.000000.00000.0000.00000.00000000.00000000	\$1,588,848.00
Water and Wastewater Renewal & Extension Fund/ NDP Reservation of Fund Appropriation/Reserve Conversion Account – Class 1/ Accounting	
	_____
<b>Total Appropriation (Use)</b>	<b>\$1,588,848.00</b>

**SECTION 2:** That all ordinances and parts of ordinances in conflict herewith are hereby waived to the extent of the conflict.

A true copy,  
  
 Rhonda Dauphin Johnson  
 Municipal Clerk

**ADOPTED** as amended by the Council  
**RETURNED WITHOUT SIGNATURE OF THE MAYOR**  
**APPROVED** as per City Charter Section 2-403

**DEC 06, 2010**  
**DEC 15, 2010**



A RESOLUTION

10-R-\_\_\_\_\_

BY PUBLIC SAFETY AND LEGAL ADMINISTRATION COMMITTEE

**A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A SETTLEMENT AGREEMENT WITH U.S. FIDELITY, AS FINAL SETTLEMENT OF THE MATTER OF CITY OF ATLANTA V. UNITED STATES FIDELITY & GUARANTY CO., CIVIL ACTION FILE NO. 2009-CV-171666, RELATED TO COMPLETION OF THE WORK FOR INDIAN CREEK BASIN, SEGMENTS 3 & 4, FC- 7402; AND FOR OTHER PURPOSES.**

**WHEREAS**, on or about May 15, 2002, Modern Continental South, Inc. ("Modern") and the City entered into Contract No. FC-7402, Indian Creek Basin, Segments 3 and 4 ("Agreement") project for an amount not to exceed \$13,387,000.00; and

**WHEREAS**, pursuant to the Agreement, Modern secured a performance bond naming the City as obligee for 100% of the contract amount to ensure completion of the Agreement, which performance bond was issued by U.S. Fidelity & Guaranty ("USF & G"); and

**WHEREAS**, Modern defaulted on its performance of the Agreement, resulting in incomplete and defective work; and

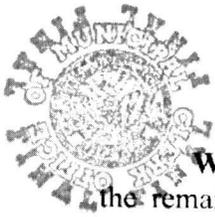
**WHEREAS**, as a result, Modern entered into voluntary default with USF & G, who agreed to complete the work in accordance with the Agreement, pursuant to a certain "Takeover Agreement," as such agreement was authorized by the City pursuant to Resolution No. 05-R-2453; and

**WHEREAS**, USF & G, through its completion contractor, performed such completion work in a manner satisfactory to the City; and

**WHEREAS**, subsequent to the completion of the corrective work identified in the Takeover Agreement, additional defective work was discovered; and

**WHEREAS**, pursuant to the City's rights under the Takeover Agreement, the City withheld the remaining contract balance as an offset to the work needed to correct the additional defects, in an amount of \$1,201,239.71; and

**WHEREAS**, the City further filed suit against USF & G to enforce its rights under the Agreement and the Takeover Agreement, specifically to include requiring USF & G to remediate the additional identified defective work, pursuant to its obligations under the performance bond and the Takeover Agreement, filed as the City of Atlanta v. USF & G, Civil Action File No. 2009-CV-171666 ("Lawsuit"); and



**WHEREAS**, after a successful mediation between the parties to resolve the correction of the remaining work, USF & G has further agreed to correct the additional defective work, pursuant to the terms and conditions of a Final Amendment to the Takeover Agreement, as such amendment agreement is described in Exhibit "A" to this resolution; and

**WHEREAS**, specifically, pursuant to its rights and obligations under the original performance bond, USF & G has agreed to enter into a completion contract with Ruby-Collins, Inc. ("Completion Contractor") to complete the remaining work in accordance with the terms and conditions of the Agreement for an amount not to exceed \$2,950,000.00, according to the following terms:

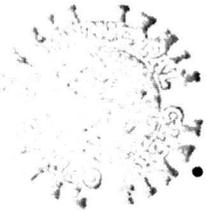
- City will contribute \$1,361,152.00 for work (which is comprised of the remaining contract balance under the Takeover Agreement in an amount of \$1,201,239.71 plus amounts acknowledged as reasonable interest accrued on withholding contract balance); and
- USF & G will contribute remaining contract amount of \$1,588,848.00 and issue a check to the City, which shall be deposited in the project account and used to issue payments to the Completion Contractor; and
- USF & G will tender the completion contract to the City for management and payment of the completion contract from funds received by USF & G plus the remaining contract balance and interest; and
- USF & G, its parent, or other surety affiliated with USF & G, will be responsible for the completion of the work in accordance with the Agreement and the Final Amendment to the Takeover Agreement, pursuant to a newly issued performance bond for the completion work.

**WHEREAS**, the Commissioner of the Department of Watershed Management and the City Attorney recommend authorizing this settlement in accordance with the terms described above to correct the remaining deficient work performed by Modern Continental and ensure a properly functioning sewerage system, according the terms bargained for under the Agreement.

**NOW THEREFORE, BE IT AND ITS IS HEREBY RESOLVED BY THE CITY COUNCIL OF THE CITY OF ATLANTA**, that the Mayor is hereby authorized to enter into the Final Amendment to the Takeover Agreement with USF & G, pursuant to and in substantial conformity with the terms and conditions contained in Exhibit "A;" and

**BE IT FURTHER RESOLVED**, that the Final Amendment to the Takeover Agreement shall include the terms including the following:

- City will contribute \$1,361,152.00 for work (remaining contract balance of \$1,201,239.71 plus amounts acknowledged as reasonable interest accrued on withholding contract balance); and
- USF & G will contribute remaining contract amount of \$1,588,848.00 and issue a check to the City, which shall be deposited in the project account and used to issue payments to the completion contractor; and



- USF & G will tender the completion contract to the City for management and payment of the completion contract from funds received by USF & G plus the remaining contract balance and interest; and
- USF & G will be responsible for the completion of the work in accordance with the Agreement, pursuant to a newly issued performance bond for the completion work.

**BE IT FURTHER RESOLVED**, that the USF & G payment shall be deposited in FDOA 5052-000002-3890033-0000000 for the payment of the Completion Contractor in accordance with Exhibit "A;" and

**BE IT FINALLY RESOLVED**, that all resolutions in conflict with this Resolution shall be waived to the extent of such conflict.

A true copy,

*Rhonda Daughia Johnson*  
Municipal Clerk

ADOPTED by the Atlanta City Council  
APPROVED by Mayor Kasim Reed

AUG 16, 2010  
AUG 24, 2010



**CONSTRUCTION SERVICES AGREEMENT AND FINAL MODIFICATION TO  
THE TAKEOVER AND SETTLEMENT AGREEMENT**

This Construction Services Agreement and Final Modification to the Takeover Agreement (the "Tender Agreement") is made and entered into by and between the United States Fidelity and Guaranty Company (the "Surety"), the City of Atlanta (the "City") and Ruby-Collins, Inc. ("Completion Contractor") (collectively the "Parties").

**WITNESSETH**

**RECITALS:**

WHEREAS, Modern Continental South, Inc. (the "Former Contractor" or "MCS") and the City entered into Contract No. FC-7402-02 (the "Original Contract") for the Former Contractor to furnish all labor and material and perform all work designated as the Indian Creek Drainage Basin, Segments 3 & 4 (the "Project"), which was part of the overall Indian Creek Sanitary Sewer Improvement Program;

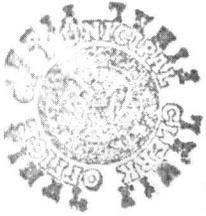
WHEREAS, as required by law and under the terms of the Original Contract, the Former Contractor and the Surety made, executed and delivered to the City a Performance Bond and Payment Bond (the "Surety's Bonds") on behalf of MCS as principal and naming the City as Obligee;

WHEREAS, the Former Contractor was declared in default under the terms of the Original Contract, and the Surety entered into a Takeover Agreement with the City, dated November 30, 2005 (the "Takeover Agreement"), to fulfill its obligations as surety under the terms of the Surety's Performance Bond;

WHEREAS, certain disputes arose with respect to the Takeover Agreement and Surety's Performance Bond and on or about July 6, 2009, the City filed a complaint in the Superior Court of Fulton County, civil action no. 2009-cv-171666, and Surety answered and counterclaimed on or about November 19, 2009 (collectively the "Lawsuit");

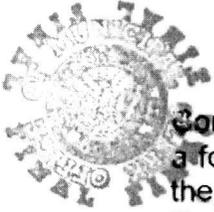
WHEREAS, Surety, in final satisfaction of its obligations under the Takeover Agreement and its Performance Bond, hereby tenders Completion Contractor to the City to perform and complete all remaining construction on Segment 4 of the Project as set forth in the Scope of Work attached hereto as Exhibit A ("the Tendered Work"), under the terms of this Tender Agreement by and between Surety, the City, and Completion Contractor with the approval and acceptance of the City; and

WHEREAS, Completion Contractor has agreed with Surety and the City that Completion Contractor shall satisfy all the obligations required to complete the Tendered Work and in consideration thereof, the Completion Contractor will be paid a lump sum as set forth herein;



NOW THEREFORE, in consideration of the mutual promises and covenants contained herein it is understood and agreed as follows:

1. The above recitals are not merely recitals but are incorporated into this Tender Agreement.
2. In full and final satisfaction of all of its obligations under the Surety's Performance Bond, the Takeover Agreement and the Original Contract, Surety hereby tenders the Completion Contractor to the City, and the City accepts such tender, with the approval and acceptance of Completion Contractor, in accordance with which the Completion Contractor shall have sole and complete responsibility for the performance and completion of the Tendered Work. Subject to the Surety's full performance of its payment obligations in ¶ 3, the City shall have the sole responsibility to administer and pay for Completion Contractor's performance of the Tendered Work as set forth herein.
3. Surety shall have no responsibility or obligation with respect to the administration and performance of the Tendered Work other than Surety's obligation to provide this Tender Agreement to the City and Surety's obligation to make payment to the City in the amount of \$1,588,848.00. This payment shall be made directly to the City within 60 days of the effective date of this Tender Agreement. The City shall retain the Remaining Contract Balance in the amount of \$1,361,152.00, which includes accrued interest, if any, and the Surety releases any claim at law or in equity to the Remaining Contract Balance and agrees that it shall not make any further claims to the Remaining Contract Balance, the Takeover Agreement, or any other amount related to the construction of the Project.
4. Completion Contractor hereby agrees to undertake the performance of the Original Contract between plan manholes E-38 and E-47 of the Indian Creek Drainage Basin Segment 4 pipeline, including all modifications thereto, which has not been completed, including correction of defective work identified in Exhibit A hereto, in accordance with the terms and conditions thereof, and agrees to be bound by the Original Contract, including, without limitation, all plans, specifications, and approved submittals applicable to Contractor's Scope of Work. The provisions of the Original Contract, as heretofore modified and amended, are incorporated herein by reference. The term "Contractor" as used in the Original Contract shall be deemed, after the effective date of this Tender Agreement to refer to Completion Contractor rather than MCS.
  - a. The lump sum, fixed price for the Tendered Work is \$2,950,000 (the "Completion Contract Price"), which is subject to modification only as provided in the Original Contract.

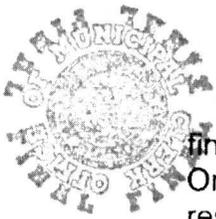


b. Prior to commencement of the Tendered Work, Completion Contractor shall submit to the City for approval, a complete schedule of values in a form acceptable to the City, which aggregates one hundred percent (100%) of the Completion Contract Price. The schedule of values shall subdivide the Tendered Work into component parts in sufficient detail to serve as the basis for progress payments during construction and shall be supported by such data to substantiate its correctness as the City may require.

c. Thereafter, assuming timely and proper progress of the Tendered Work and subject to the Surety's compliance with its payment obligations in ¶ 3, the City will make progress payments to Completion Contractor on a "percent complete" basis based upon measurable progress of the Tendered Work within forty five (45) days from approval of the Completion Contractor's payment application for ninety percent (90%) of the Completion Contract Price with ten percent (10%) being held as retainage. After progress payments, including retainage, total fifty percent of the Completion Contract Price, no additional retainage amounts shall be withheld, provided that the City has determined that the Completion Contractor is making satisfactory progress to insure completion of the work within the time specified therefor, and that the Completion Contractor is performing the work within the requirements of the Contract Documents. The City may reinstate ten percent (10%) withholding of retainage if the City determines that the Completion Contractor is not making satisfactory progress to insure completion of the work and all portions thereof within the time specified therefor, or if there is other specific cause for such withholding. The payment application form and data substantiating the payment application shall fully comply with the requirements of the Original Contract.

d. The last interim progress payment shall only be due upon Completion Contractor achieving Substantial Completion of the Tendered Work. Substantial Completion shall be achieved when i) all work identified in Exhibit A hereto is completely performed with the exception of minor punchlist work; ii) Completion Contractor has thoroughly cleaned the sewer pipe from MH E-38 through MH E-50; iii) Completion Contractor has provided the City with a CCTV inspection of the re-installed 36" ductile iron pipe from MH E-38 to MH E-47 verifying that the existing lines and grades of the pipe comply with the requirements of the Original Contract and this Tender Agreement; iv) Completion Contractor has thoroughly cleaned the sewer pipe from MH E-47 to MH E-50 and provided CCTV inspection confirming that this portion of the sewer line has been successfully cleaned; and v) the City has certified that Completion Contractor has achieved Substantial Completion of the Tendered Work. The date of the City's certification of Substantial Completion shall be the Substantial Completion Date.

e. Subject to Completion Contractor's full compliance with all terms and conditions of this Tender Agreement, the City will make final payment of the Completion Contract Price to Completion Contractor within forty-five (45) days after Final Completion of the Tendered Work. Final Completion shall mean i)



final acceptance of the Tendered Work by the City in the manner required by the Original Contract; ii) punchlist completion; iii) landscaping repair; iv) clean-up; v) restoration of the repair areas for the Tendered Work; vi) delivery of a complete set of record as-built drawings for the Tendered Work; vii) an affidavit verifying that all payrolls, bills for materials and equipment, and other indebtedness connected with the Tendered Work have been paid or otherwise satisfied; viii) consent of Completion Contractor's surety to final payment; and ix) full compliance with the terms of the Tender Agreement.

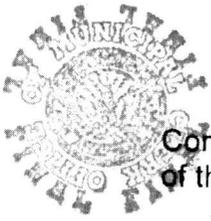
f. The Parties agree that the provisions of this Tender Agreement supersede the provisions of O.C.G.A. §§ 13-11-1 through 13-11-11.

5. The Parties acknowledge that TIME IS OF THE ESSENCE for the performance of this Tender Agreement. The Completion Contractor agrees that it shall achieve Substantial Completion of the Tendered Work within 413 calendar days of the City's issuance of a Notice to Proceed to the Completion Contractor in the form contemplated by the Original Contract.

6. It is understood and agreed that the City will sustain substantial monetary and other injury and damages in the event that Completion Contractor fails to achieve Substantial Completion within the time required by ¶ 5. Accordingly, should the Completion Contractor fail to achieve Substantial Completion of the Tendered Work within the time required by ¶ 5, then Completion Contractor agrees to pay to the City liquidated damages in the following amounts:

- a. For the first thirty (30) calendar days (up to and including 443 calendar days after the City issued the Notice to Proceed) \$/day;
- b. For the next thirty (30) calendar days (up to and including 473 calendar days after the City issued the Notice to Proceed) \$/day;
- c. For each calendar day delay in achieving Substantial Completion of the Tendered Work thereafter \$/day.

The Completion Contractor shall be liable for any liquidated damages in excess of the amount due the Completion Contractor on the final payment. The liquidated damages fixed herein are not established as a penalty but are calculated and agreed upon in advance by the City and the Completion Contractor due to the uncertainty and impossibility of making a determination as to the actual direct, incidental, and consequential damages which will be incurred by the City as a result of the failure on the part of Completion Contractor to complete the Tendered Work within the time required by ¶ 5. Completion



Contractor and the City further agree that such amount is a reasonable estimate of the City's probable loss.

7. Completion Contractor agrees to provide the City with a schedule for completing the Tendered Work in accordance with the terms of this Tender Agreement. The City may extend the required date for Substantial Completion pursuant to the clauses of the Original Contract permitting extensions of time. Completion Contractor acknowledges and accepts all current field conditions and agrees that the current field conditions are part of the Tendered Work to be performed under this Tender Agreement. Completion Contractor also acknowledges and agrees that it shall be solely responsible for all construction means, methods, techniques, sequences, coordination, and procedures for performance of the Tendered Work, which shall not serve as a basis for adjustment of the Completion Contract Price.
8. Completion Contractor acknowledges and agrees that the City has made no representations or warranties to it whatsoever regarding the current condition of the sewer system, the difficulty of the means and methods to perform the Tendered Work, the current condition of the Project, or otherwise and that Completion Contractor's agreement to perform the Tendered Work for the fixed, lump sum Completion Contract Price is based solely upon its independent investigation and judgment as a sophisticated contractor.
9. The City acknowledges and agrees that the Surety has made no representations or warranties to it whatsoever regarding Completion Contractor, Completion Contractor's subcontractors or suppliers, the availability of any leased equipment or facilities or the availability of any materials supplied or to be supplied for the Tendered Work.
10. Completion Contractor agrees to provide and furnish proof of insurance in the manner and in the amounts required by the Original Contract (except as provided in this ¶10), naming Surety and the City as additional insureds, and has provided its own performance and payment bonds to the City in the manner and in the amounts required by the Original Contract for the Tendered Work naming the City as obligee in a form acceptable to the City. Notwithstanding the foregoing, Completion Contractor shall only be required to procure and maintain Builder's Risk Insurance which provides "All Risk" coverage on the buildings, structure or work and property of the City in the care, custody and control of the Completion Contractor. The amount of such insurance shall at all times be equal to one hundred percent (100%) of the value of the Tendered Work at the time of loss or one hundred percent (100%) of the amount paid to Completion Contractor for work performed, whichever is greater. The policy or policies shall be in the name of the City and Completion Contractor as their interest shall appear, and this shall be so stated on the certificate of insurance.



11. Completion Contractor acknowledges and agrees that the Surety has made no representations or warranties to it whatsoever regarding the City or the Tendered Work or the condition of the sewer system, the difficulty of or means and methods to perform the Tendered Work.

12. Surety shall have no liability, if, for any reason, Completion Contractor cannot fulfill its obligations under this Tender Agreement. Any breach by Completion Contractor shall be governed by the terms of this Tender Agreement.

13. It is expressly agreed by and between the Surety, the City and Completion Contractor that the Surety's Bonds shall not apply to or cover Completion Contractor or any of its subcontractors, materialmen or suppliers for any labor performed and or materials delivered or stored after the date of this Tender Agreement. Such work shall be separately bonded by Completion Contractor pursuant to ¶ 10.

14. The City and Completion Contractor shall deal directly with each other in the performance, completion and administration of the Tendered Work in accordance with the terms and conditions of the Original Contract and this Tender Agreement.

15. Completion Contractor shall forever release Surety, its predecessors, successors and assigns of any and from any and all claims, rights, demands, or damages of whatsoever kind or nature with regard to the Project and this Tender Agreement.

16. Any future change orders or modifications to the Tendered Work shall be governed and administered by the provisions of the Original Contract as modified by this Tender Agreement and resolved directly between the City and Completion Contractor.

17. In consideration of the payment made hereunder and the other good and valuable consideration that the Parties acknowledge with regard to this Tender Agreement, the City and the Surety in its capacity as Surety for Modern Continental South, Inc. under the Surety's Bonds and its capacity under the Takeover Agreement, each on behalf of itself and its affiliated, subsidiary, parent, predecessor and related companies or entities and anyone claiming by or through it in the aforementioned capacity, except as otherwise stated in this Tender Agreement, hereby respectively discharges and releases each other and all of their respective affiliated, subsidiary, parent, predecessor and related companies or entities and all of their respective authorized representatives, agents, officers, employees, principals, directors, shareholders, indemnitors, heirs, beneficiaries, trustees, attorneys, sureties (including re-insurers), co-sureties, successors, subcontractors, suppliers, experts, consultants, and assigns, each as they relate to Surety in the aforementioned capacity, from any and all damages, debts, liabilities, obligations and causes of action, appeals,



suits, claims for interest, attorneys fees, costs, accounts, covenants, contracts, contract balances, controversies and any and all other claims and demands of any kind whatsoever, in law or equity, in tort or contract, and whether within the contemplation of the City and/or Surety or not, which each other may have against the other relating to the Original Contract, the Surety's Bonds, the Takeover Agreement, and/or the Project, except as otherwise set forth herein. The foregoing notwithstanding and specifically excepted from this release are claims for breach of this Tender Agreement.

18. The effective date of this Tender Agreement shall be the date it was last signed by one of the Parties below.

19. It is understood and agreed that this Tender Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Georgia. Any proceeding to enforce this Tender Agreement shall be filed in the Superior Court of Fulton County, Georgia.

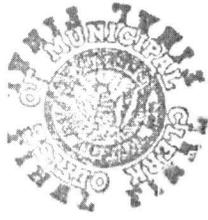
20. This Tender Agreement is strictly for the benefit of the Parties to this Tender Agreement and they expressly declare that they do not intend to confer any rights or benefit whatsoever on any third party.

21. The parties to the Lawsuit agree to cooperate and effectuate the dismissal of the Complaint and Counterclaim with prejudice as soon as practical after the effective date of this Tender Agreement and Surety's full payment of the amounts set forth in ¶ 3.

22. This Tender Agreement sets forth the entire agreement and understanding among Surety, the City and Completion Contractor as to the subject matter hereof and merges all prior discussions among them, and the Parties shall not be bound by any conditions, definitions or representations with respect to the subject matter of this Agreement other than as expressly provided for in this Agreement or as duly set forth on, or subsequent to, the date hereof in writing and signed by a proper and duly authorized representative of the party to be bound thereby. This written agreement embodies all the understandings and obligations among the Parties with respect to the subject matter hereof and is signed by duly authorized representatives of each Party.

23. The Parties acknowledge that they have had the opportunity to consult legal counsel of their choosing, that they understand the terms of this Tender Agreement, that no other promise or inducement has been made except as set forth herein, and that they sign voluntarily.

24. The Parties acknowledge that this Agreement was the product of negotiations among the Parties and agree that this Tender Agreement was mutually drafted by the Parties.



25. In the event that one or more provisions of this Tender Agreement shall be declared to be invalid, illegal, or unenforceable in any respect, unless such invalidity, illegality, or unenforceability shall be tantamount to a failure of consideration, the validity, legality, and enforceability of the remaining provisions contained in this Agreement shall not in any way be affected or impaired thereby.

**United States Fidelity and Guaranty Company**

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

Its: \_\_\_\_\_

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

**The City of Atlanta**

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

Its: \_\_\_\_\_

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

**Ruby-Collins, Inc.**

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

Its: \_\_\_\_\_

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



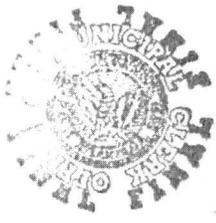
## EXHIBIT A – SCOPE OF WORK

### **Summary of Work:**

The purpose of this work is to correct pipe misalignments in approximately 1,030 linear feet between Plan Manholes E-38 and E-47 of the Indian Creek Drainage Basin Segment 4 pipeline. The area of work is located in the North East Section of the City between the intersections of Lakeside Drive and East Paces Ferry Road and Lenox Place Road between Ferncliff Place and Ferncliff Road. The Completion Contractor (contractor) will divert the current sanitary flows around the work zone. The work will consist of establishing two shafts at existing manhole locations which will allow access to the existing 36" DIP and re-set the existing pipe to the contractually specified line and grade, and cleaning the pipe between Plan Manholes E-38 and E-50. The contractor shall then support the pipe and re-grout the interstitial space within the tunnel. The access shafts will then have their manholes reinstalled and be backfilled and then flow will be reestablished in the pipeline.

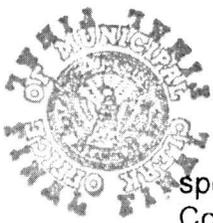
### **Scope of Work:**

1. The contractor shall obtain all necessary permits
2. The contractor is required to obtain a secure and safe work area to adequately perform this scope of work. This includes access to shafts and any lay-down areas that the contractor will need to perform this work.
3. The contractor is required to obtain any temporary easements, if necessary, to complete the work.
4. The contractor shall submit a safety, traffic control, sewer diversion and work plan to the City of Atlanta (COA) before beginning any work.
5. If required, the contractor shall temporarily divert the sanitary flows from the work zone with the use of "Quiet Zone" pumps. The system shall be able to maintain the maximum flow rates of the sewer system, with a redundant backup pump(s). During this time period, the contractor will assign capable personnel to monitor the system 24 hours per day, 7 days per week on the work site until the gravity flow is reestablished. It is anticipated that a bypass pumping line will need to be installed from existing manhole E-51 to an existing bypass pumping stub-out located at the curb line along the north side of East Paces Ferry Road.
6. The contractor shall establish working shafts to gain access to the 36" gravity sewer pipe and the 96" tunnel.
  - o Shaft A – Manhole E-42
  - o Shaft B – Manhole E-47



7. The contractor shall utilize the locations discussed above to access the existing grouted tunnel sections.
8. A 36" DIP carrier pipe was installed and the annular space was filled with 150-psi Impermix grout supplied by Liquid Earth Support.
9. The contractor shall remove the grout and adjust the existing 36" DIP to the contractually specified line and grade as shown on the Contract Drawings. Any de-coupling of the pipe will require the replacement of the existing pipe gaskets.
10. The contractor shall support the 36" DIP carrier pipe and re-grout the annular space.
11. The manholes at Shaft A and B will be re-installed and backfilled.
12. The contractor will be responsible for all costs associated with any sanitary spills including clean-up, fines, etc. as a result of his operations.
13. The contractor shall perform a post-internal inspection of the existing gravity Sewer at the work locations. This will include CCTV of the re-installed 36" DIP and verifying the existing grades of the pipe, using differential levels at minimum 50 foot intervals. This information will then be submitted to the COA for review.
14. The contractor is responsible to provide any surface restoration made necessary by his construction activities.
15. The contractor is not required to make major modifications to the existing tunnel installed by the Original Contractor.
16. The existing 6 ft. 6 inch PVC future monitoring conduits may be removed by the contractor and not re-installed during the performance of the work.
17. If the City requires holiday or work hour restrictions on the street closure and traffic permits to the contractor, contractor may be entitled to a no cost extension of the contract time. In the event that the City requires holiday or other work hour restrictions on the street closure and traffic permits, then contractor agrees that an extension of its contract time shall be its sole and exclusive remedy.
18. The contractor shall assist the City in its public information management and shall accommodate all reasonable requests of the City with respect to public information management.

All work is to be performed in accordance with the existing Contract Documents, including all General, Supplementary and Special Conditions drawings,



specifications, forms, addenda and documents forming a part of the Original Contract, and any modifications to the Original Contract which are incorporated herein for reference.

The total fixed cost of this work is to be \$2,950,000 and is estimated to take 59 weeks to complete.

RCS# 487  
8/16/10  
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Atlanta City Council

REGULAR SESSION

CONSENT I

EXCEPT 10-O-1338,10-R-1416

ADOPT

YEAS: 13  
NAYS: 0  
ABSTENTIONS: 0  
NOT VOTING: 1  
EXCUSED: 0  
ABSENT 2

Y Smith	Y Archibong	Y Moore	Y Bond
Y Hall	B Wan	Y Martin	Y Watson
Y Young	Y Shook	Y Bottoms	B Willis
Y Winslow	Y Adrean	Y Sheperd	NV Mitchell

CONSENT I

<b>ITEMS ADOPTED ON CONSENT</b>	<b>ITEMS ADVERSED ON CONSENT</b>	<b>08-16-10</b>
1. 10-O-1422 2. 10-O-0603 3. 10-O-1279 4. 10-O-1345 5. 10-O-1421 6. 10-O-1276 7. 10-O-1417 8. 10-O-1272 9. 10-R-1368 10. 10-R-1369 11. 10-R-1370 12. 10-R-1372 13. 10-R-1409 14. 10-R-1411 15. 10-R-1412 16. 10-R-1413 17. 10-R-1414 18. 10-R-1415 19. 10-R-1423 20. 10-R-1424 21. 10-R-1425 22. 10-R-0727 23. 10-R-1394 24. 10-R-1401 25. 10-R-1402 26. 10-R-1403 27. 10-R-1404 28. 10-R-1405 29. 10-R-1406 30. 10-R-1426 31. 10-R-1427 32. 10-R-1375 33. 10-R-1376 34. 10-R-1377 35. 10-R-1378 36. 10-R-1379 37. 10-R-1380	38. 10-R-1381 39. 10-R-1382 40. 10-R-1383 41. 10-R-1384 42. 10-R-1385 43. 10-R-1386 44. 10-R-1387 45. 10-R-1388 46. 10-R-1389 47. 10-R-1390 48. 10-R-1391 49. 10-R-1392 50. 10-R-1393	

RCS# 709  
12/06/10  
2:33 PM

Atlanta City Council

REGULAR SESSION

CONSENT I                    EXCEPT 10-O-1919,10-O-1991,10-O-2107

ADOPT

YEAS: 14  
NAYS: 0  
ABSTENTIONS: 0  
NOT VOTING: 1  
EXCUSED: 0  
ABSENT 1

Y Smith	Y Archibong	Y Moore	Y Bond
Y Hall	B Wan	Y Martin	Y Watson
Y Young	Y Shook	Y Bottoms	Y Willis
Y Winslow	Y Adrean	Y Sheperd	NV Mitchell

CONSENT I

		<b>12-06-10</b>
<b>ITEMS ADOPTED ON CONSENT</b>	<b>ITEMS ADOPTED ON CONSENT</b>	<b>ITEMS ADVERSED ON CONSENT</b>
1. 10-O-1656	42. 10-R-2128	83. 10-R-2034
2. 10-O-1878	43. 10-R-2132	84. 10-R-2035
3. 10-O-1879	44. 10-R-2005	85. 10-R-2036
4. 10-O-1920	45. 10-R-2072	86. 10-R-2037
5. 10-O-1921	46. 10-R-2073	87. 10-R-2038
6. 10-O-1990	47. 10-R-2108	88. 10-R-2039
7. 10-O-1992	48. 10-R-2119	89. 10-R-2040
8. 10-O-2095	49. 10-R-2120	90. 10-R-2041
9. 10-O-1893	50. 10-R-2121	91. 10-R-2042
10. 10-O-1894	51. 10-R-2124	92. 10-R-2043
11. 10-O-1895	52. 10-R-2011	93. 10-R-2044
12. 10-O-1965	53. 10-R-1996	94. 10-R-2045
13. 10-O-1966	54. 10-R-2000	95. 10-R-2046
14. 10-O-1967	55. 10-R-2001	96. 10-R-2047
15. 10-O-1993	56. 10-R-2002	97. 10-R-2048
16. 10-O-1995	57. 10-R-2074	98. 10-R-2049
18. 10-O-2094	58. 10-R-2075	99. 10-R-2050
19. 10-O-2105	59. 10-R-2076	100. 10-R-2051
20. 10-O-2106	60. 10-R-2012	101. 10-R-2052
21. 10-O-1914	61. 10-R-2013	102. 10-R-2053
22. 10-O-1915	62. 10-R-2014	103. 10-R-2054
23. 10-O-1972	63. 10-R-2015	104. 10-R-2055
24. 10-O-1973	64. 10-R-2015	105. 10-R-2056
25. 10-O-1974	65. 10-R-2016	106. 10-R-2057
26. 10-R-1657	66. 10-R-2017	107. 10-R-2058
27. 10-R-1922	67. 10-R-2018	108. 10-R-2059
28. 10-R-1924	68. 10-R-2019	109. 10-R-2060
29. 10-R-1925	69. 10-R-2020	110. 10-R-2061
30. 10-R-1926	70. 10-R-2021	111. 10-R-2062
31. 10-R-2008	71. 10-R-2022	112. 10-R-2063
32. 10-R-2109	72. 10-R-2023	113. 10-R-2064
33. 10-R-2084	73. 10-R-2024	114. 10-R-2065
34. 10-R-2086	74. 10-R-2025	115. 10-R-2066
35. 10-R-2087	75. 10-R-2026	116. 10-R-2067
36. 10-R-2088	76. 10-R-2027	117. 10-R-2068
37. 10-R-2089	77. 10-R-2029	118. 10-R-2069
38. 10-R-2090	78. 10-R-2030	119. 10-R-2070
39. 10-R-2113	79. 10-R-2031	
40. 10-R-2114	80. 10-R-2032	
41. 10-R-2115	81. 10-R-2033	
	82. 10-R-2129	