

June 19, 2002

Mr. George B. Wingblade  
Vice Chancellor, Facilities  
Board of Regents of the University System of Georgia  
270 Washington Street, SW  
Atlanta, GA 30334

Re: Bartow Campus: Conversation with Georgia Power Company

Dear George:

During this past year, while we have been developing plans for the Bartow Campus, we have been aware of the overhead transmission lines that dissect the fifty acres through the middle of the planned campus. Based on the master plan the Phase II building is located directly under the lines. The thought obviously has been that we would have the lines moved at some point (see attachment A).

Earlier, I had initiated inquiries with Georgia Power Company's Area Manager in Bartow County, Mr. Bill McMullen, to discuss what remedies might be feasible as we considered ways to relocate the lines. J. Dorsey was also included or copied regarding these discussions. Bill McMullen did present a plan A to us that consisted of moving the lines at an estimated cost to us of \$600,000. Needless to say, we were looking for a way to accomplish this without incurring any direct cost to either the BOR or Floyd College.

With Phase II of the Bartow Campus being presented for possible inclusion on the Capital Project list, I have resumed discussions with Mr. McMullen. I have learned that Georgia Power Company has a Plan B they would be interested in pursuing. They have a need to build a substation in the vicinity of our new campus. Their first choice for a site was northeast of our property across Cline-Smith Rd. and under the power lines. However, this location is controversial because it is directly adjacent to a subdivision. Their second choice for a site is 10 acres of land the BOR owns on the south side of Highway 20, adjacent to the WalMart/Lowes development (see attachment A). It is my understanding from Bill, that given relative market prices, this arrangement would result in an even exchange (their moving the lines in exchange for the 10 acres).

Mr. George B. Wingblade  
June 19, 2002  
Page Two

Clearly, this seems to be a win/win for both Georgia Power and the Bartow Campus. I understand there are certain stipulations regarding how this land was conveyed to the BOR. However, I believe this is an option that needs to be thoroughly researched. Timing is critical from Georgia Power's point of view. They need to have a substation on line by this time next year. Therefore, the window of opportunity is getting smaller.

Bill McMullen is available as am I to meet with you and the facilities group to brain storm how we might make such a proposal work. Please let me know if there might be a time in the near future when we can discuss this matter.

Please call me if this generates questions for you. Again, J. Dorsey is also very familiar with the property and the plans.

Sincerely,

J. Randy Pierce  
President

C: Thomas E. Daniel, Senior Vice Chancellor, Office of External Activities and Facilities  
Linda Daniels, Assistant Vice Chancellor, Design and Construction  
J. Dorsey, Program Manager  
Bill McMullen, Area Manager, Georgia Power Company  
Karen Porter, Vice President Financial Affairs, Floyd College  
Doug Webb, Director Facilities, Floyd College



# FLOYD COLLEGE

P.O. BOX 1864 - ROME, GEORGIA 30162-1864

[www.fc.peachnet.edu](http://www.fc.peachnet.edu)

July 23, 2002

Commissioner Clarence Brown  
Bartow County Commission  
135 W. Cherokee Street  
Cartersville, GA 30120

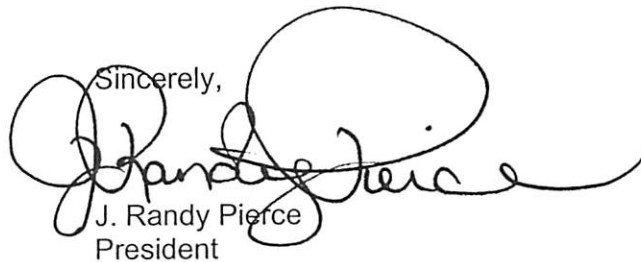
Dear Commissioner Brown:

First, let me personally thank you for all of your help and the support we have received from the county. Last Wednesday was a great day for Cartersville, Bartow County, and Floyd College. With the groundbreaking behind us the real work commences. It is getting down to detail time.

I am told by the architects that we will need water, sewage, and gas supply to the building site during the first quarter of 2003. Please let me know who the appropriate department heads are so we can put them in contact with the civil engineers. They will supply the necessary site plans to the department heads and will coordinate the locations with the general building contractor.

Again, thanks for all you have done, and don't hesitate to call should you have questions.

Sincerely,



J. Randy Pierce  
President

g

c: Steve Bradley, Bartow County Manager  
Doug Webb, Director of Physical Plant, Floyd College  
Tim Fish, Project Manager, Cooper Carry, Architects

Affirmative Action/Equal Employment and Educational Opportunity Institution

CENTRAL CAMPUS  
3175 Cedartown Hwy., SE  
Rome, GA 30161  
Phone (706) 802-5000  
FAX (706) 295-6610

HERITAGE HALL  
DOWNTOWN ROME  
415 E. Third Ave.,  
Rome, GA 30161  
(706)802-5000

FC AT NORTH METRO  
Room 207 F  
Technical Bldg.  
North Metro Tech Inst.  
5198 Ross St.  
Acworth, GA 30102  
(770) 975-4088  
FAX (770) 975-4119

FC AT CARTERSVILLE  
19 N. Gilmer St.  
Cartersville, GA 30120  
(770) 387-3775  
FAX (706) 802-5402

FC HARALSON SITE  
60 Waco School Road  
Bremen, GA 30110  
(770) 537-5145  
FAX (770) 537-5109

# COOPER CARRY

August 2, 2002

Mr. Doug Webb  
Floyd College  
3175 Hwy 27 South  
Rome, Georgia 30162

**RE: Bartow Center – Floyd College I-87  
Cooper Carry Project No. 200120/D.1**


Dear Doug,

Cooper Carry is pleased to present our proposal for Interior Furnishings, Fixtures and Equipment Services for Bartow Center. We are excited about the potential to fully integrate the architecture, interiors and furnishings.

The proposal has been broken down to include the Library and remaining spaces separately. Please consider this our initial effort at providing the appropriate level of service for your needs.

Sincerely,

**Cooper Carry, Inc.**



C. Timothy Fish, AIA  
Associate Director

cc Jerry Cooper  
Sherry Wilson

Jerome M. Cooper, FAIA  
Walter J. Carry, FAIA  
E. Pope Bullock, AIA  
Kevin R. Canley, AIA  
Roger L. Miller, AIA  
Gar Munc, AIA

Angelo A. Carusi, AIA  
Richmond Cogburn, AIA  
Richard J. Fleet, ASLA  
Teri S. Ginn, AIA  
David W. Kitchens, AIA  
C. Robert Reed, AIA  
J. Ben Waulford, AIA

Steven M. Berberich, AIA  
C. Timothy Fish, AIA  
Richard W. Freeman, AIA  
Mark L. Jones, AIA  
Gregory A. Miller, AIA  
Stephen L. Smith, AIA  
Sherry M. Wilson

Jason L. Kren, AIA, CSI, CCS  
Michael B. Lowry, AIA  
Ms. Scott McLendon, AIA  
Thomas E. Robbins, AIA  
Stanley W. Williams, AIA

Vivian S. Blackmon  
Rick A. Casey, NCIDQ  
Dorothy M. Culley, AIA  
Mark P. Crittenden, AIA  
B. Allen Dedich, AIA  
Flora P. Elliott, AIA  
Robert M. Fischer, AIA  
Michael E. Hernandez, AIA  
Paul K. Rosen, AIA  
Robert N. Kramer, AIA  
Mark S. Lange, AIA  
Patrick L. Murphy, SECD  
Mark A. Novak, AIA  
Carl J. Oelrig, AIA  
David F. Thomson, AIA  
Robert I. Uhlir, AIA  
Brett R. White, ASIA

3520  
PIEDMONT ROAD, N.E.  
ATLANTA  
GEORGIA  
30305 - 1595

N:\Admin\Proposal\Floyd College interiorsprop cover ltr 8 2 02.doc

telephone 404 • 237 • 2000  
facsimile 404 • 237 • 0276



# FLOYD COLLEGE

P.O. BOX 1864 - ROME, GEORGIA 30162-1864

[www.fc.peachnet.edu](http://www.fc.peachnet.edu)

September 23, 2002

Commissioner Clarence Brown  
Bartow County  
135 W. Cherokee Street  
Cartersville, GA 30120

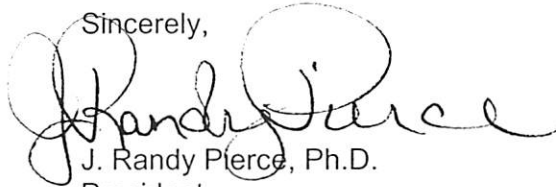
Dear Commissioner Brown:

We continue to be excited about the progress of the Bartow Campus of Floyd College. We met recently with the Georgia State Financing and Investment Commission to approve the plans for the building and campus. We are anticipating that the bids will be advertised around the third week of October with bid opening scheduled around Friday, November 21.

We are anticipating that all pre-construction site infrastructure will be completed and in place when the contractor is chosen. This would include all sewage, gas, and water lines as well as the construction of the building pad and parking lots, to include base paving, and all curbing and gutters.

I remain deeply appreciative of the commitment made by Bartow County in an effort to make this long-awaited project a reality. Please let me know should you have questions.

Sincerely,



J. Randy Pierce, Ph.D.  
President

g

c: J. Dorsey, BOR  
Doug Webb, FC, Physical Plant  
Steve Bradley, Bartow County Manager

Affirmative Action/Equal Employment and Educational Opportunity Institution

CENTRAL CAMPUS  
3175 Cedartown Hwy., SE  
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FAX (706) 295-6610

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FAX (706) 802-5402

FC HARALSON SITE  
60 Waco School Road  
Bremen, GA 30110  
(770) 537-5145  
FAX (770) 537-5109

## Randy Pierce

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**From:** Ron Reed [Ron.Reed@usg.edu]  
**Sent:** Wednesday, May 28, 2003 5:40 PM  
**To:** Randy Pierce  
**Cc:** Doug Webb  
**Subject:** I-87, Bartow Center



I-87.XLS



ATT04735.txt

Dr. Pierce,

I am very pleased that the bids were favorable the other day. I hope that the low bid will create some good opportunities for you. I am currently reviewing the Project Budget for Bartow Center taking into account the low bid that we received, see the attachment. We want to determine what will be the best way for the campus to use the remaining funds so that OPB will not be tempted to claim them for other use. The best way to secure the funds is to have them allocated for other project related items at the same time that you award the bid. I would like to ask you to consider this matter with me.

First of all, I took a look at the loose equipment request that was sent. I am afraid that we will have to take out all of the computer related items, see Appendix 6J.11.h of the Procedure Manual, they are not allowed. GSFIC will kick them out when they review it. Also, the security system should not be included as loose equipment, this can be budgeted as an allotment register and performed under a separate contract. I took out these items and your loose equipment total was reduced to about \$1,978,000. I will send a mark-up of your loose equipment submittal to you so that it can be revised and resubmitted.

Some items that we may want to consider allocating the money to:

- Georgia Power lines moved. (Do you have a cost proposal on this?)
- Irrigation System
- Additional Landscaping
- Fountain
- Genetics Building Renovation (?I don't know that we could get a decision fast enough for this?)

It appears that we may have as much as \$1.28m to use, see the revised Project Budget attached. Please let me know what you think. Thanks.

# PROJECT BUDGET - AWARD

Project :	<b>Bartow Center, Phase I</b>	Project No.:	<b>I-87</b>
Institution:	<b>Floyd College</b>	Date:	<b>Feb 25, 2000</b>
Location:	<b>Bartow County, Georgia</b>	Revised:	<b>May 28, 2003</b>
Architect:	<b>Cooper Carry &amp; Associates</b>		

## A. CONSTRUCTION

1. Construction Cost exclusive of "A" 2 Below		\$13,846,000	
2. Reserve for subsurface conditions based on Para. 6 of Architect's Budget Certificate / Site Infrastructure		0	
3. Total for construction (referred to as Total Cost or Stated Cost Limitation in architectural contract)			\$13,846,000

## B. REGENTS CONSTRUCTION INSPECTOR

Full-Time Construction Inspector	20	242,000	
			<u>242,000</u>

## C. ARCHITECTURAL & ENGINEERING SERVICES

1. Construction Documents (Fixed Fee)	4.98%	690,000	
2. Construction Administration (Fixed Fee)	2.53%	350,000	
3. Programming		60,000	
4. Special Consultants (Technology) (\$60,000 Included in C1)		0	
5. Extra Drawings & Specifications (0.05% of "A"3 with a minimum of \$1,000 and a max. of \$40,000)	6,923	7,350	
6. Engineering Data, Surveys, Laboratory Testing, Etc. (1% of "A"3 with a min. of \$6,500 and a max. of \$400,000)	138,460	147,000	
7. Travel Expenses (minimum of \$1,000 and no less than cost of six trips per month during construction)		0	
8. A & E Services Total			<u>1,254,350</u>

## D. LOOSE EQUIPMENT

Original Institution's Estimate	1,468,000		
Additional Needs	510,188		<u>1,978,188</u>

## E. SPECIAL COSTS - Subject to Contingency Allowance

AR - Security System	35000		
Cost Management (included in SCL above)	0		
Technology (included in SCL above)	0		
Site Infrastructure (provided by County - \$1,500,000)	0		<u>35,000</u>

## F. GENERAL CONTINGENCY ( on Items "A" through "E" )

	17,355,538		
5 % - New Construction	867,777	+	0
Regents Contingency	0		<u>867,777</u>

## G. SPECIAL COSTS - Not Subject to Contingency

Amend #1 - conceptual sketches	12,000	expended	
Amend #2 - early infrastructure	98,000		
Amend #3 - civil, landscape, irrigation, plan changes	25,900		
Cost Verification - Boyken	6,000		
Peer Review - Hatch	5,880		<u>147,780</u>

## H. TOTAL PROJECT COST

Fund Sources:		Total Project Budget	<u>\$18,371,095</u>
		Total Funds Anticipated	\$19,660,000
		Remaining Funds	1,288,905
Chancellors Funds - Cash Supplement	\$12,000	expended	
Anticipated Bond Funds for Equip.	1,468,000		
2002D Series Bond Funds	\$18,180,000		

Note: Revisions to the Project Budget must be approved by the Board of Regents' Office of Facilities.

BOARD OF REGENTS OF THE UNIVERSITY SYSTEM OF GEORGIA  
270 Washington Street, S.W.  
Atlanta, Georgia 30334

OFFICE OF THE VICE CHANCELLOR  
FOR FACILITIES

August 22, 2003

(404) 656-2243  
FAX 657-7433

Ms. Gena Abraham, Interim Director  
Construction Division  
Georgia State Financing and Investment Commission  
Suite 1002 - West Tower  
2 Martin Luther King, Jr. Drive, S.E.  
Atlanta, Georgia 30334

RE: Request to Redirect Bond Proceeds  
Project No. I-87, Bartow Center, Phase 1  
Floyd College

Dear Ms. Abraham:

Enclosed is a copy of a memorandum dated January 17, 2003 from Mr. Terry Gandy of the Office of Planning and Budget ("OPB") in which a request is made to redirect \$1,468,000 in funds from various Board of Regent ("BOR") projects to fund the loose equipment for Project I-87, Bartow Center, Floyd College.

Of the fifteen BOR projects identified by OPB as candidates for redirected funds only seven projects have unspent funds according to the GSFIC Project Budget Status Report. GSFIC's report indicates that Projects H-32, H-44, H-45, H-64, H-70, I-17B, and I-34B have an approximate total of \$605,500 in unspent funds. Projects H-77B, I-16B, I-34A, I-34D, I-74, I-97, and J-3 do not appear in the GSFIC report, which indicates that they have no remaining funds. If, however, you do find that there are unspent funds in these accounts it is our intention that they be redirected to Project I-87.

One of the BOR projects identified by OPB, Project H-51, Continuing Education Center, Georgia Southern University is not eligible for redirection of unspent funds due to the need to remedy problems that have materialized subsequent to occupation of the facility.

It will be necessary that we request FY'05 bond funds in the amount of \$862,500 for the remainder of the loose equipment not covered by the redirected project funds.

I request that you redirect \$605,500 in unspent funds from projects H-32, H-44, H-45, H-64, H-70, I-17B and I-34B into Project I-87 equipment account 804000.

Thank you for your assistance. Please call if there are any questions.

Sincerely,

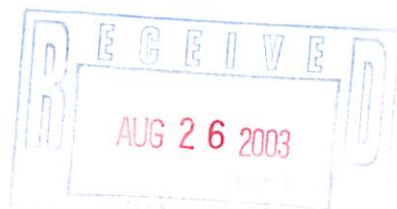


Linda Daniels  
Vice Chancellor for Facilities

Enclosures

cc: Mr. Terry Gandy, Office of Planning and Budget  
Mr. David Tanner, Office of Planning and Budget  
Mr. Don Cox, Legislative Budget Office  
Mr. Tom Daniel, Board of Regents  
Mr. Bill Bowes, Board of Regents  
Dr. Randy Pierce, Floyd College  
File (general) w/ enc.





**Nottingham, Brook & Pennington, Inc.**  
Consulting Engineers

CHARLES E. PENNINGTON  
W.A. NOTTINGHAM  
NEIL S. WYCHE  
JAMES A. KASULKA  
TIMOTHY W. TROTTER

MERRY A. HARRIS

GEORGE M. NOTTINGHAM, III  
SANDY M. BLACK  
SUSAN H. DAY

1291 JEFFERSON TERRACE  
P. O. BOX 5127  
MACON, GEORGIA 31206-5127

478/745-1691  
FACSIMILE 478/750-9873

GEORGE M. NOTTINGHAM, Jr.  
ARTHUR D. BROOK  
EMERITUS

August 29, 2003

Floyd College  
3175 HWY 27 South  
Rome, Georgia 30162-1864

Attn: Mr. Doug Webb

Re: Bartow Satellite Electrical Servicing  
NBP Project# 03041

Subject: Georgia Power Company and The City of Cartersville  
Proposal for Electrical Service

Dear Mr. Webb:

I have reviewed the responses from both Georgia Power Company and the City of Cartersville to the RFP for Electrical Service for your Bartow Satellite Campus. We recommend that the City of Cartersville be selected as your electrical provider.

There is not a substantial difference in cost to the College, but the City of Cartersville proposal appears to be slightly lower than the Georgia Power Company proposal. Georgia Power Company provided a proposal for RTP pricing, but the RFP specifically requested that this type of rate not be included. Your operational constraints would make it difficult to maintain the load profile required by the RTP type of rate structure. One "slip up" could be very costly to the College in terms of overall electrical energy cost.

Future rates (beyond five years) for Georgia Power Company will be established by the Georgia Public Service Commission. Future rates for the City of Cartersville are at the discretion of the City. There is some liability in this issue, but it is important to the City, as well as to the College, to maintain a good relationship.

Georgia Power Company probably provides a better history of maintenance and emergency repair than the City of Cartersville can provide under normal circumstances. However, in the event of a natural disaster or major power outage in the area, it is unlikely that the College would continue to operate if the City is without power.

If there are questions, please contact us.

Sincerely,

  
Charles E. Pennington, P.E., CEO  
CEP/adh

*Talk to  
major customers  
of Cartersville*



**GEORGIA STATE FINANCING AND INVESTMENT COMMISSION  
CONSTRUCTION DIVISION**

Suite 1002 - West Tower  
2 Martin Luther King, Jr. Drive S. E.  
Atlanta, Georgia 30334

**Office of the Director**

**404-656-3400  
FAX: 404-656-6009**

September 4, 2003

**MEMORANDUM TO LOCAL OFFICIAL**

Dr. Randy Pierce  
Floyd College  
US 27 South  
Rome, Georgia 30162-1864

Re: Occupancy of Building, Project No. I-87, Bartow Center, Phase I,  
Floyd College, Rome, Georgia

Dear Dr. Pierce:

1. The construction contract establishes a certain number of days within which the contractor is obligated to complete the work. However, under the terms of the general conditions of the contract, the contractor is entitled to an extension of time for conditions which are beyond his control or for which he does not assume the risk such as strikes, delays in transportation, casualties, inclement weather, acts of God, *etc.* You should not, therefore, assume that a building may be occupied within the number of days shown in the bid form because this provision of the contract is subject to change. You must not make any irrevocable commitments which are based on the time for completion shown in the contract because during the progress of the work the contractor may become entitled to extensions of time as a contract right. You are further advised not to place confidence in informal statements made by persons connected with the work as to expected date of completion. We attach hereto a copy of Form No. 451, "A Discussion Regarding Occupancy of Buildings and Extensions of Time", which we recommend you read carefully.

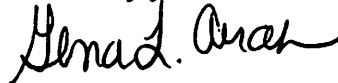
2. We are bringing this matter to your attention because in the past we have been asked to permit occupancy of buildings before the final certificate of the architect was executed and because some local officials have made definite plans based on the assumption that the completion date shown in the bid form is final or based on advice obtained from some party other than the owner. By bringing this matter to your attention now, we believe that you will be saved expense and inconvenience that might result from an assumption that you will absolutely be able to get in the building in accordance with the number of days for completion shown in the bid form.

completion shown in the bid form.

3. We will issue an authorization to enter within a reasonable length of time after execution of the final certificate by the architect. We cannot issue an authorization to enter until the architect can execute the final certificate. We are anxious to cooperate in every way possible in the matter of turning buildings over to you promptly, but we ask that no request for acceptance of buildings be made until the final certificate has been executed by the architect and we remind you again: Place no confidence in any report of progress received from any source except from this office.

4. We are furnishing you two copies of our Confirmation of Correct Site form [Form No. 268] one copy of which we request that you execute and return to us at the earliest possible date.

Sincerely yours,



Gena L. Abraham  
Director

GLA:ms

cc: Architect: Cooper Carry & Associates, Inc.  
Resident Engineer Inspector: [WHEN ASSIGNED]  
Status Folder  
Pending File -- Suspend 20 days [awaiting receipt of Form No. 268 executed]

Enclosures: 2

#1 - Form No. 451

#2 - Two copies of Form No. 268

## A DISCUSSION REGARDING OCCUPANCY OF BUILDINGS AND EXTENSIONS OF TIME

1. Time is of the Essence. -- The first principle to remember in connection with a discussion of occupancy and extensions of time is the fact that a covenant that all time limits stated in the contract are of the essence means that the performance by one party by the time specified in the contract or within the period specified is essential in order to enable him to require performance from the other party.

2. Extensions of Time. -- The second point to remember is the fact that when a contractor submits a proposal for construction he is protected by a provision in the general conditions of the contract pursuant to which he shall be granted [note the peremptory language] an extension of time for delays resulting from conditions beyond his control or for which he did not assume the risk. Even if there were no such provision, the principle is implied in law.

3. Delays Resulting from Necessity for Interpretations. -- Under the general conditions of the contract the contractor is prohibited from proceeding with the work in the absence of a complete, definite, and clear designation of the methods and materials for installing the work. The architect is initially the interpreter of the conditions and the judge of the performance of the contract. Consequently, in the event the architect has prepared bidding documents which require interpretation, additional instructions, or decisions, it follows that (a) the contractor is required to obtain decisions, interpretations, or additional instructions from the architect, and (b) the architect is required to respond promptly and in any event within ten days. If the architect neglects to respond with dispatch to a proper request for an interpretation, clarification, or additional instructions, this is a breach of a time limit which is established in the contract and may deprive the owner of recourse against the contractor in the event the latter should fail to install the various parts of the work with equal steps as shown on the construction progress schedule and at the same rate shown on the construction progress schedule.

4. Orders of Condemnation. -- The general conditions also contain a provision pursuant to which the architect may issue orders of condemnation in the event the contractor shall have failed to maintain a rate of progress which equal steps as provided in the construction progress schedule. However, as noted above, such a provision can serve its intended purpose only if the architect has fulfilled his duty to make decisions promptly. If the architect shall have been negligent and the owner undertakes to enforce an order of condemnation against the contractor for failing to install the work in accordance with the requirements of the construction progress schedule, the contractor may maintain that inasmuch as the architect has been delinquent the contractor is not required to carry out his part of the contract with respect to the covenant as to time or he may even, in some circumstances, allege that failure of the architect to enforce the requirements of the contract documents amounts to a waiver.

5. Change Orders. -- Using Agencies frequently overlook the fact that requests for change orders which delay the contractor produce difficulties in the event a contractor should be delinquent as to time because the contractor sets up as a defense against a demand for recovery of lost time an allegation that the owner has breached the covenant as to time by delays incident to the preparation of change orders. This usually occurs when the contractor alleges that the delay is greater than is reasonable and when he maintains that even with an extension of time he is not made whole.

6. Delays Not Apportioned. -- The Using Agencies must recognize that in the event each party has delayed the other there can be no apportioning of the delays. If the contractor shall have delayed the owner, for example, by thirty days and the architect shall have delayed the contractor by three days, we do not subtract the three days from the thirty days; on the contrary, the courts have held that the mutual breaching of the covenants as to time nullifies any claim for damages for delay.

7. Specified Due Date on Specified Portion of Work. -- Occasionally a Using Agency will indicate that a specified portion of a project must be ready by a specified time. The agreement as to extensions of time is

no less applicable to a separate portion of the work than it is entire work — that is, if for any reason beyond the control of the contractor he is delayed in completing the work in connection with the specified portion, he becomes entitled to an extension of time on that portion which was to have been completed with in a specified period.

8. Covenant as to Extensions of Time Beneficial to Owner. — The covenant in the bidding documents with respect to extensions of time is not only necessary to the contractor. The covenant is equally important to the owner. It enables the owner to establish with certainty the due date for completion. In the absence of a provision for extensions of time the owner might never find it possible to escape the effect of the principle that the courts will not apportion claims for delays when there has been a breach of the covenant as to time by both parties because "unliquidated" claims for extensions of time would never become certain and hence the time for completion would remain uncertain. The granting of an extension of time in connection with a change order amounts to an accord and satisfaction — that is, in consideration of the granting of an extension of time by the owner and an adjustment in the cost of the work the contractor gives up his right to proceed with the work in accordance with the original contract. The provision in the general conditions with respect to the execution of change orders and the granting of extensions of time is an expedient device for providing that the owner is not in breach of contract when he demands changes in the work.

9. Slowing of Pace as Project Nears Completion. — As a project approaches completion there is a gradual diminution in activity and in the rate of progress. This is normal. As a matter of fact, an analysis of the work in place and the work required to be in place will be a sufficient explanation as to why the activity is reduced.

10. Legal Defenses Against Unpunctual Performance. — The owner takes competitive bids because of public policy. In the absence of proof of incompetence or unfitness, the owner must award contracts to the apparent low bidder. The owner unavoidable gets some contractors who barely escape classification as incompetent or unfit. If the contractor is unskillful or negligent, the owner must resort to the use of all the legal weapons available. These weapons are:

- (a) Orders of Condemnation
- (b) Withholding contract fees
- (c) Demands on the surety
- (d) Declaration of default
- (e) Claims for damages

The owner exercises all of its rights and uses all of the weapons available.

11. Using Agency can Contribute to Progress of Work. — There are several ways in which the Using Agency can contribute to the completion of work on schedule. The first and most important is to check the original design carefully in order that there will be no necessity to request change orders. The second is to supply on time any utilities promised to the contractor. The third is to make plans to permit interruption of utilities in accordance with contract provisions. The fourth is to complete arrangements in good season to relinquish to the contractor any spaces or areas to which the contractor needs access in order to perform his work.

## CONFIRMATION OF CORRECT SITE

**INSTRUCTIONS FOR USE:** Each using agency is required under the terms of the commitment letter to furnish the confirmation set forth hereinbelow with respect to operations by the contractor. The paragraph of the commitment letter captioned "Verification of Site" reads as follows:

Immediately upon issuance of the proceed order for work to commence at the site, the authorized representative of the Using Agency [or a deputy designated by him in writing] shall inspect the site in the company of the surveyor who prepared the plat of boundary-line survey furnished to the architect by the Using Agency and will within twenty days confirm in writing to the Commission on a form to be supplied to the Using Agency by the Commission that the correct site is being used. The authorized representative and the surveyor shall point out each concrete monument with bronze dowel to the resident engineer inspector and to the contractor's superintendent."

One copy of this form should be forwarded to Georgia State Financing and Investment Commission, Suite 1002, West Tower, #2 Martin Luther King, Jr. Drive, S. E., Atlanta, Georgia 30334.

Project No.: \_\_\_\_\_

Name of Project: \_\_\_\_\_

Authorized Representative: \_\_\_\_\_,

I, \_\_\_\_\_

Authorized Representative of the \_\_\_\_\_

Using Agency, having inspected the site of the captioned work since commencement of physical operations at the site in the company of the surveyor who prepared the plat of survey furnished to the architect by the aforesaid using agency pursuant to Paragraph (b) of Article 6 of the architectural contract, submit this confirmation to the Georgia State Financing and Investment Commission that the surveyor and I have assured ourselves that the operations now in progress are located on the correct site for the work referred to in the caption hereof.

This \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Authorized Representative

\_\_\_\_\_  
Using Agency

## A DISCUSSION REGARDING OCCUPANCY OF BUILDINGS AND EXTENSIONS OF TIME

1. Time is of the Essence. — The first principle to remember in connection with a discussion of occupancy and extensions of time is the fact that a covenant that all time limits stated in the contract are of the essence means that the performance by one party by the time specified in the contract or within the period specified is essential in order to enable him to require performance from the other party.

2. Extensions of Time. — The second point to remember is the fact that when a contractor submits a proposal for construction he is protected by a provision in the general conditions of the contract pursuant to which he shall be granted [note the peremptory language] an extension of time for delays resulting from conditions beyond his control or for which he did not assume the risk. Even if there were no such provision, the principle is implied in law.

3. Delays Resulting from Necessity for Interpretations. — Under the general conditions of the contract the contractor is prohibited from proceeding with the work in the absence of a complete, definite, and clear designation of the methods and materials for installing the work. The architect is initially the interpreter of the conditions and the judge of the performance of the contract. Consequently, in the event the architect has prepared bidding documents which require interpretation, additional instructions, or decisions, it follows that (a) the contractor is required to obtain decisions, interpretations, or additional instructions from the architect, and (b) the architect is required to respond promptly and in any event within ten days. If the architect neglects to respond with dispatch to a proper request for an interpretation, clarification, or additional instructions, this is a breach of a time limit which is established in the contract and may deprive the owner of recourse against the contractor in the event the latter should fail to install the various parts of the work with equal steps as shown on the construction progress schedule and at the same rate shown on the construction progress schedule.

4. Orders of Condemnation. — The general conditions also contain a provision pursuant to which the architect may issue orders of condemnation in the event the contractor shall have failed to maintain a rate of progress which equal steps as provided in the construction progress schedule. However, as noted above, such a provision can serve its intended purpose only if the architect has fulfilled his duty to make decisions promptly. If the architect shall have been negligent and the owner undertakes to enforce an order of condemnation against the contractor for failing to install the work in accordance with the requirements of the construction progress schedule, the contractor may maintain that inasmuch as the architect has been delinquent the contractor is not required to carry out his part of the contract with respect to the covenant as to time or he may even, in some circumstances, allege that failure of the architect to enforce the requirements of the contract documents amounts to a waiver.

5. Change Orders. — Using Agencies frequently overlook the fact that requests for change orders which delay the contractor produce difficulties in the event a contractor should be delinquent as to time because the contractor sets up as a defense against a demand for recovery of lost time an allegation that the owner has breached the covenant as to time by delays incident to the preparation of change orders. This usually occurs when the contractor alleges that the delay is greater than is reasonable and when he maintains that even with an extension of time he is not made whole.

6. Delays Not Apportioned. — The Using Agencies must recognize that in the event each party has delayed the other there can be no apportioning of the delays. If the contractor shall have delayed the owner, for example, by thirty days and the architect shall have delayed the contractor by three days, we do not subtract the three days from the thirty days; on the contrary, the courts have held that the mutual breaching of the covenants as to time nullifies any claim for damages for delay.

7. Specified Due Date on Specified Portion of Work. — Occasionally a Using Agency will indicate that a specified portion of a project must be ready by a specified time. The agreement as to extensions of time is



no less applicable to a separate portion of the work than it is entire work — that is, if for any reason beyond the control of the contractor he is delayed in completing the work in connection with the specified portion, he becomes entitled to an extension of time on that portion which was to have been completed with in a specified period.

8. Covenant as to Extensions of Time Beneficial to Owner. — The covenant in the bidding documents with respect to extensions of time is not only necessary to the contractor. The covenant is equally important to the owner. It enables the owner to establish with certainty the due date for completion. In the absence of a provision for extensions of time the owner might never find it possible to escape the effect of the principle that the courts will not apportion claims for delays when there has been a breach of the covenant as to time by both parties because "unliquidated" claims for extensions of time would never become certain and hence the time for completion would remain uncertain. The granting of an extension of time in connection with a change order amounts to an accord and satisfaction — that is, in consideration of the granting of an extension of time by the owner and an adjustment in the cost of the work the contractor gives up his right to proceed with the work in accordance with the original contract. The provision in the general conditions with respect to the execution of change orders and the granting of extensions of time is an expedient device for providing that the owner is not in breach of contract when he demands changes in the work.

9. Slowing of Pace as Project Nears Completion. — As a project approaches completion there is a gradual diminution in activity and in the rate of progress. This is normal. As a matter of fact, an analysis of the work in place and the work required to be in place will be a sufficient explanation as to why the activity is reduced.

10. Legal Defenses Against Unpunctual Performance. — The owner takes competitive bids because of public policy. In the absence of proof of incompetence or unfitness, the owner must award contracts to the apparent low bidder. The owner unavoidable gets some contractors who barely escape classification as incompetent or unfit. If the contractor is unskillful or negligent, the owner must resort to the use of all the legal weapons available. These weapons are:

- (a) Orders of Condemnation
- (b) Withholding contract fees
- (c) Demands on the surety
- (d) Declaration of default
- (e) Claims for damages

The owner exercises all of its rights and uses all of the weapons available.

11. Using Agency can Contribute to Progress of Work. — There are several ways in which the Using Agency can contribute to the completion of work on schedule. The first and most important is to check the original design carefully in order that there will be no necessity to request change orders. The second is to supply on time any utilities promised to the contractor. The third is to make plans to permit interruption of utilities in accordance with contract provisions. The fourth is to complete arrangements in good season to relinquish to the contractor any spaces or areas to which the contractor needs access in order to perform his work.

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Authorized Representative: \_\_\_\_\_,

I, \_\_\_\_\_

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This \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Authorized Representative

\_\_\_\_\_  
Using Agency



# City of Cartersville

E L E C T R I C S Y S T E M

P.O. Box 1390 • 320 South Erwin Street • Cartersville, Georgia 30120

Telephone: 770-387-5631 • Fax: 770-387-5630 • [www.cityofcartersville.org](http://www.cityofcartersville.org)

September 8, 2003

FYI  
[Signature]

Mr. Doug Webb  
Director of Physical Plant  
Floyd College  
3175 Cedartown Hwy., SE  
P.O. Box 1864  
Rome, GA 30162-1864

Dear Doug:

This letter is to inform you that the City of Cartersville is in receipt of your "Request for Electric Service" and that we are proceeding with serving the Bartow Campus of Floyd College with temporary and permanent power.

We are also in receipt of the "Contract for Electric Power Service" which will be presented before the Cartersville City Council at the next scheduled meeting on September 18, 2003. Once approved, I will forward a signed contract to you.

As stated before, we are very excited that Floyd College has chosen to partner with the City of Cartersville for your power needs and we look forward to serving you to better our community.

Sincerely,



David J. Myers  
Director

# City of Carterville

City of Carterville  
100 North Main Street  
Carterville, Illinois 62901  
Phone: 618-232-1234 Fax: 618-232-1235

*Handwritten:*  
Mr. [unclear]  
[unclear]

September 11, 2003

Mr. [unclear]  
Director of Physical Plant  
Rivers College  
2175 Oakdown Dr. SE  
PO Box 1801  
Kane, GA 30143-1801

Dear Sir:

This letter is to inform you that the City of Carterville is in receipt of your letter of September 8, 2003, regarding the proposed electric service, and that we are presently working on the matter. We will contact you again as soon as we have a decision.

We are also in receipt of the Contract for Electric Power Service, which will be presented before the Carterville City Council at the next scheduled meeting on September 15, 2003. Once approved, I will forward a signed contract to you.

We are very excited that Rivers College has chosen to partner with the City of Carterville for your power needs and we look forward to serving you in the future.

