



**TO:** Mayor and City Council

**FROM:** Wendell K. Willard, City Attorney

**DATE:** November 3, 2016 for submission on the agenda of the November 15, 2016 City Council Meeting

**ITEM:** Resolution to approve an amendment to the Contract for Construction and General Conditions for the City Center Project between the City of Sandy Springs and Holder Construction Group, LLC ("Contract") and to authorize the City Manager to execute the amendment

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***Recommendation:***

The City Attorney recommends that Mayor and Council adopt the attached Resolution and Amendment, authorizing the amendment of the Contract to incorporate an order of precedence provision and authorizing the City Manager to execute the Amendment.

***Background and Discussion:***

At the June 16, 2015 Regular City Council meeting, City Council approved the Contract between the City and Holder Construction Group, LLC ("Holder") for the construction of the City Springs project. The Contract does not contain an order of precedence provision.

It is customary for construction contract documents to contain an order of precedence provision to determine the priority of documents in the event of inconsistency or conflict of terms. This is especially important in the case of complex projects, such as the City Springs project. Holder has requested an amendment to the Contract to incorporate such a provision, and the City Attorney agrees. The Amendment incorporates, in descending order, the document priority which is generally the order used in construction contracts.

***Alternative:***

Reject the recommendation and pose a greater risk of litigation in the event of a conflict in the terms of the Holder contract documents.

***Attachments:***

Resolution with attached Amendment.

*City  
Attorney*

STATE OF GEORGIA  
COUNTY OF FULTON

**RESOLUTION TO APPROVE AN AMENDMENT TO THE CONTRACT FOR CONSTRUCTION AND GENERAL CONDITIONS FOR THE CITY SPRINGS PROJECT BETWEEN THE CITY OF SANDY SPRINGS AND HOLDER CONSTRUCTION GROUP, LLC (“CONTRACT”) AND TO AUTHORIZE THE CITY MANAGER TO EXECUTE THE AMENDMENT**

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**WHEREAS**, on June 16, 2015 at a regular Council meeting, City Council adopted a resolution approving that certain Contract for Construction and General Conditions for the City Center Project (“Contract”) between the City of Sandy Springs (“City”) and Holder Construction Group, LLC (“Holder”) for the construction of the City’s project known as “City Springs”; and

**WHEREAS**, the Contract does not contain an order of precedence clause; and

**WHEREAS**, an order of precedence clause clarifies how conflicts with contract documents are to be interpreted by prioritizing the contract documents; and

**WHEREAS**, because City Springs is a complex project and there are a large number of contract documents, there is a greater possibility for inconsistency and conflict of terms in provisions, and

**WHEREAS**, the parties to the Contract desire to amend the Contract to include an order of precedence clause as set forth in the Amendment attached hereto, to determine the priority of documents in the event of a conflict;

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Sandy Springs, Georgia, while in regular session on November 15, 2016, at 6:00 p.m., as follows:

1. The attached Amendment is hereby approved; and
2. The City Manager is hereby authorized to execute the Amendment; and
3. The City Manager and the City Attorney are hereby authorized to make such minor revisions to the Amendment as may be deemed reasonable, necessary, and in the best interest of the City prior to execution by the City Manager; and
4. The City Manager and City Attorney are hereby authorized to take such actions deemed necessary or prudent to effectuate the intent of this resolution.

**RESOLVED** this the 15th day of November, 2016.

Approved:

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Russell K. Paul, Mayor

Attest:

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Michael D. Casey, City Clerk

(Seal)

**ATTACHMENT**

**AMENDMENT**

**Amendment (Change Order No. One)**

**AMENDMENT TO  
AGREEMENT BETWEEN OWNER AND CONSTRUCTION MANAGER**

**THIS AMENDMENT** to Agreement Between Owner and Construction Manager (“Amendment”) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2016, by and between the **City of Sandy Springs, GA** (“Owner”) and **Holder Construction Group, LLC** (“Construction Manager”).

**WITNESSETH:**

**WHEREAS**, Owner and Construction Manager entered into that certain Agreement Between Owner and Construction Manager (“Agreement”), as of June 30, 2015, for the construction of the City of Sandy Springs, GA, City Springs Project, formerly known as the City of Sandy Springs, GA, City Center Project (“Project”) described in the Contract Documents, as defined therein; and

**WHEREAS**, the Owner and the Construction Manager desire to amend the Agreement by this Amendment to provide for the priority of Contract Documents in the event of a conflict.

**NOW, THEREFORE**, for good and valuable consideration, the receipt of which is hereby acknowledged, and in consideration of the mutual covenants, promises and conditions herein set forth, it is hereby acknowledged and agreed as follows:

1. **ARTICLE 16, MISCELLANEOUS PROVISIONS**, of the Agreement shall be amended by adding an additional paragraph entitled “Section 16.13 Order of Precedence,” as follows:

**“Section 16.13 Order of Precedence.** If any portion of the Contract Documents shall be in conflict with any other portion, the various documents comprising the Contract Documents shall govern in the following order of precedence: Modifications; Agreement; General Conditions of the Agreement; Specifications; Drawings; and other documents specifically enumerated in the Agreement as part of the Contract Documents. As between large scale drawings and small scale drawings, the larger scale shall govern. Any material or operation specified by reference to published specifications of a manufacturer, a society, an association, a code, or other published standard, shall comply with the requirements of the listed documents which are current on the date of execution of this Agreement. In the case of a conflict between referenced documents, the one having more stringent code or performance requirements shall govern.”

2. The terms of this Amendment shall control and take precedence over any and all terms, provisions and conditions of the Agreement which might vary, contradict or otherwise be inconsistent with the terms and conditions hereof.

3. All other terms, provisions and conditions of the Agreement, except as expressly amended and modified by this Amendment, shall remain unchanged and are hereby ratified and confirmed and shall remain in full force and effect.

4. This Amendment may be executed in any number of counterparts, each of which shall be deemed to be an original as against any part whose signature appears thereon and all of which shall together constitute one and the same instrument.

**IN WITNESS WHEREOF**, the parties hereto have executed these presents in form and manner proper and sufficient in law as of the day and year first above written.

Sworn to and subscribed before me this  
\_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Notary Public

My Commission Expires:  
\_\_\_\_\_

(NOTARIAL SEAL)

**OWNER:**

**City of Sandy Springs, GA**

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

Name: John McDonough

Title: City Manager

Sworn to and subscribed before me this  
\_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Notary Public

My Commission Expires:  
\_\_\_\_\_

(NOTARIAL SEAL)

**CONSTRUCTION MANAGER:**

**Holder Construction Group, LLC**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_